

By Representative Constantine

1                                   A bill to be entitled  
2           An act relating to brownfields redevelopment;  
3           creating ss. 376.77-376.82, F.S., the  
4           Brownfields Redevelopment Act of 1997;  
5           providing legislative intent; providing  
6           definitions; providing duties of a local  
7           government that designates a brownfield area  
8           for rehabilitation; providing for notice to the  
9           Department of Environmental Protection;  
10          providing for public hearings; providing  
11          requirements for such designation; providing  
12          responsibilities of persons eligible for  
13          brownfield rehabilitation; requiring approval  
14          of a Corrective Action Rehabilitation Schedule;  
15          providing requirements for contractors and site  
16          assessment and cleanup activities; requiring  
17          approval of site assessments, remedial action  
18          reports, and completed tasks, with certain  
19          exceptions; providing consequences of failure  
20          to comply with a rehabilitation agreement;  
21          specifying the factors and criteria to be used  
22          in directing and supervising rehabilitation of  
23          brownfield sites; providing for issuance of a  
24          "No Further Action Order"; providing that  
25          source removal may be required under certain  
26          conditions; providing requirements for  
27          participation in brownfield rehabilitation;  
28          providing liability protection for persons who  
29          successfully complete an approved  
30          rehabilitation schedule; providing requirements  
31          for issuance of a letter evidencing completion

1 of rehabilitation; authorizing negotiation with  
2 the United States Environmental Protection  
3 Agency regarding enforcement; providing  
4 conditions under which further remedial action  
5 may be required; providing liability protection  
6 for certain financial institutions; providing  
7 an effective date.

8  
9 Be It Enacted by the Legislature of the State of Florida:

10  
11 Section 1. Section 376.77, Florida Statutes, is  
12 created to read:

13 376.77 Short title.--Sections 376.77-376.82 may be  
14 cited as the "Brownfields Redevelopment Act of 1997."

15 Section 2. Section 376.78, Florida Statutes, is  
16 created to read:

17 376.78 Legislative intent.--The Legislature finds and  
18 declares the following:

19 (1) The reduction of public health and environmental  
20 hazards on existing commercial and industrial sites is vital  
21 to their use and reuse as sources of employment and for  
22 housing, recreation, and open-space areas. The productive  
23 reuse of land is an important component of sound land-use  
24 policy that will help prevent the needless development of  
25 prime farmland, open-space areas, and natural areas, and  
26 reduce public costs for installing new water, sewer, and  
27 highway infrastructure.

28 (2) The abandonment or underuse of brownfield sites  
29 also results in the inefficient use of public facilities and  
30 services, as well as land and other natural resources; extends  
31 conditions of blight in local communities; and contributes to

1 concerns about environmental equity and the distribution of  
2 environmental risks across population groups.

3 (3) Incentives should be put in place to encourage  
4 responsible persons to voluntarily develop and implement  
5 cleanup plans without the use of taxpayer funds or the need  
6 for adversarial enforcement actions by state and local  
7 governments which frequently serve to delay cleanups and  
8 increase their cost.

9 (4) Environmental and public health hazards cannot be  
10 eliminated without clear, predictable remediation standards  
11 which provide for the protection of the environment and public  
12 health.

13 (5) Cleanup plans should be based on the actual risk  
14 that contamination on a site may pose to the environment and  
15 public health, taking into account its current and future use  
16 and the degree to which contamination can spread off site and  
17 expose the public or the environment to risk.

18 (6) Cooperation among federal, state, and local  
19 agencies, local community development organizations, current  
20 owners, and prospective purchasers of brownfield sites is  
21 required to accomplish timely cleanup activities and the  
22 redevelopment or reuse of brownfield sites.

23 Section 3. Section 376.79, Florida Statutes, is  
24 created to read:

25 376.79 Definitions.--As used in ss. 376.77-376.82,  
26 unless the context otherwise indicates:

27 (1) "Brownfield sites" means generally commercial or  
28 industrial properties where expansion or potential  
29 redevelopment is complicated by actual or perceived  
30 environmental contamination.

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1           (2) "Brownfield area" means a contiguous area of  
2 several brownfield sites, some of which may not be  
3 contaminated, and which has been designated by a local  
4 government by resolution. Such areas may include all or  
5 portions of community redevelopment areas, empowerment zones,  
6 enterprise communities, other such designated economically  
7 deprived communities and areas, and brownfield pilot projects  
8 designated by the United States Environmental Protection  
9 Agency.

10           (3) "Department" means the Department of Environmental  
11 Protection.

12           (4) "Person" means any individual, partner, joint  
13 venture, or corporation; any group of the foregoing, organized  
14 or united for a business purpose; or any governmental entity.

15           Section 4. Section 376.80, Florida Statutes, is  
16 created to read:

17           376.80 Brownfield program administration process.--

18           (1) A local government with jurisdiction over a  
19 brownfield area must notify the department of its decision to  
20 designate a brownfield area for rehabilitation for the  
21 purposes of ss. 376.77-376.82. The notification must include  
22 a resolution by the local government body to which is attached  
23 a detailed map adequate to clearly delineate exactly which  
24 parcels are to be included in the brownfield area or,  
25 alternatively, a less detailed map accompanied by a detailed  
26 legal description of the brownfield area. If a property owner  
27 within the area proposed for designation by the local  
28 government requests in writing to have his or her property  
29 removed from the proposed designation, the local government  
30 shall grant the request.

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1           (2) If a local government proposes to designate a  
2 brownfield area that is outside of community redevelopment  
3 areas, empowerment zones, enterprise communities, or  
4 brownfield pilot project areas designated by the United States  
5 Environmental Protection Agency, the local government must  
6 conduct at least one public hearing in the area to be  
7 designated to provide an opportunity for public input on the  
8 size of the area, the objectives for rehabilitation, job  
9 opportunities and economic developments anticipated,  
10 neighborhood residents' considerations, and other local  
11 concerns. Notice of the public hearing must be made in a  
12 newspaper of general circulation in the area and such notice  
13 must be at least 6 inches square in size, must be in ethnic  
14 newspapers or local community bulletins, must be posted in the  
15 affected area, and must be announced at a scheduled meeting of  
16 the local governing body prior to the actual public hearing.  
17 In determining the areas to be designated, the local  
18 government must consider:  
19           (a) Whether the brownfield area has a reasonable  
20 potential for economic development activities.  
21           (b) Whether the proposed area to be designated  
22 represents a reasonable, focused approach and is not overly  
23 large in geographic coverage.  
24           (c) Whether the area has interest from the private  
25 sector to participate in rehabilitation.  
26           (3) The local government must notify the department of  
27 the agency or person who will be responsible for the  
28 coordination of local private actions to rehabilitate the  
29 brownfield area.  
30           (4) The party eligible for brownfield rehabilitation  
31 must provide a Corrective Action Rehabilitation Schedule to

1 the department or the approved local pollution control program  
2 for approval.

3 (5) The eligible party must submit documentation to  
4 the department or approved local pollution control program  
5 that the contractor performing site rehabilitation activities  
6 is a certified professional engineer or a certified geologist  
7 who meets all the certification and licensure requirements  
8 imposed by law, and has submitted and obtained approval of its  
9 comprehensive quality assurance plan prepared under the  
10 department's rules.

11 (6) Site assessment and cleanup activities must be  
12 consistent with state and federal laws and rules and must be  
13 consistent with the department's risk-based corrective action  
14 rules and guidelines.

15 (7) All site assessment and remedial action reports  
16 must be submitted to and approved by the department or the  
17 approved local pollution control program. The department or  
18 approved local pollution control program shall approve, deny,  
19 or approve with modifications site assessments and remedial  
20 action reports within 30 days after their receipt.

21 (8) The department or the approved local pollution  
22 control program shall approve, deny, or approve with  
23 modifications all completed cleanup phases or tasks within 30  
24 days after being notified of their completion.

25 (9) Failure by the department or approved local  
26 pollution control program to meet the provisions of subsection  
27 (7) or subsection (8) shall constitute approval of the  
28 assessment, report, phase, or task, and the eligible party may  
29 proceed with site rehabilitation.

30 (10) During the cleanup process, an eligible party may  
31 proceed from one phase or task of cleanup to the next prior to

1 obtaining approval of the technical document for the next  
2 phase or task of cleanup. However, the eligible party will be  
3 required to complete any additional tasks identified by the  
4 department or local pollution control program found during the  
5 reviews provided for by subsections (7) and (8).

6 (11) Exceptions to the provisions of subsections (7),  
7 (8), and (10) include requests for "No Further Action,"  
8 "Monitoring Only Proposals," and feasibility studies which  
9 must be approved prior to implementation. The department or  
10 local pollution control program shall review and approve,  
11 deny, or approve with modifications these requests within 60  
12 days after their receipt. Failure by the department or  
13 approved local pollution control program to meet the  
14 provisions of this subsection shall constitute approval of the  
15 request.

16 (12) If the person responsible for brownfield site  
17 rehabilitation fails to comply with the brownfield site  
18 rehabilitation agreement, the department shall allow 90 days  
19 for such person to return to compliance with the provision at  
20 issue or to negotiate a modification to the brownfield site  
21 rehabilitation agreement with the department for good cause  
22 shown. If the project is not returned to compliance with the  
23 brownfield site rehabilitation agreement and a modification  
24 cannot be negotiated, the provisions of s. 376.82 shall be  
25 revoked.

26 (13) The department is authorized and encouraged to  
27 enter into delegation agreements with local pollution control  
28 programs to administer the brownfield program within their  
29 jurisdiction, thereby maximizing the integration of this  
30 process with the other local development processes needed to  
31 facilitate redevelopment of a brownfield area.

1           Section 5. Section 376.81, Florida Statutes, is  
2 created to read:

3           376.81 Brownfield sites and brownfield area  
4 contamination cleanup criteria.--

5           (1) The department and local governments with  
6 delegated department responsibilities shall utilize the  
7 following factors and criteria in directing and supervising  
8 the cleanup and rehabilitation of brownfield sites and  
9 brownfield areas contaminated with substances regulated by the  
10 department:

11           (a) The current exposure and potential risk of  
12 exposure to humans and the environment, including multiple  
13 pathways of exposure.

14           (b) The point of compliance shall be at the source of  
15 the contamination. However, the department is authorized to  
16 temporarily move the point of compliance to the boundary of  
17 the property, or to the edge of the plume when the plume is  
18 within the property boundary, while cleanup, including cleanup  
19 through natural attenuation processes in conjunction with  
20 appropriate monitoring, is proceeding. The department also is  
21 authorized, pursuant to criteria provided for in this section,  
22 to temporarily extend the point of compliance beyond the  
23 property boundary with appropriate monitoring, if such  
24 extension is needed to facilitate natural attenuation or to  
25 address the current conditions of the plume, provided human  
26 health, public safety, and the environment are adequately  
27 protected. Temporary extension of the point of compliance  
28 beyond the property boundary, as provided in this paragraph,  
29 shall include notice to local governments and owners of any  
30 property into which the point of compliance is allowed to  
31 extend.

1       (c) The cleanup goal shall be that all contaminated  
2 brownfields sites and brownfield areas ultimately achieve the  
3 applicable cleanup target levels provided in this section.  
4 However, the department is authorized to allow concentrations  
5 of contaminants to temporarily exceed the applicable cleanup  
6 target levels while cleanup, including cleanup through natural  
7 attenuation processes in conjunction with appropriate  
8 monitoring, is proceeding, provided human health, public  
9 safety, and the environment are adequately protected.

10       (d) Brownfield site and brownfield area rehabilitation  
11 programs may include the use of institutional or engineering  
12 controls to eliminate the potential exposure to contaminants  
13 to humans or the environment. Use of such controls must be  
14 preapproved by the department. When institutional or  
15 engineering controls are implemented to control exposure, the  
16 removal of such controls must have prior department approval  
17 and must be accompanied by the resumption of active cleanup,  
18 or other approved controls, unless cleanup target levels  
19 pursuant to this section have been achieved.

20       (e) The synergistic, antagonistic, and additive  
21 effects of contaminants shall also be considered when the  
22 scientific data become available.

23       (f) Individual site characteristics, which shall  
24 include, but not be limited to, the current and projected use  
25 of the affected groundwater and surface water in the vicinity  
26 of the site, current and projected land uses of the area  
27 affected by the contamination, the exposed population, the  
28 degree and extent of contamination, the rate of contaminant  
29 migration, the apparent or potential rate of contaminant  
30 degradation through natural attenuation processes, the  
31

1 location of the plume, and the potential for further migration  
2 in relation to site property boundaries.

3 (g) Applicable state water quality standards.

4 1. Cleanup target levels for each contaminant found in  
5 groundwater shall be the applicable state water quality  
6 standards. Where such standards do not exist, the cleanup  
7 target levels for groundwater shall be based on the minimum  
8 criteria specified in department rule. The department shall  
9 consider the following, as appropriate, in establishing the  
10 applicable minimum criteria: calculations using a lifetime  
11 cancer risk level of 1.0E-6; a hazard index of 1 or less; the  
12 best achievable detection limit; the naturally occurring  
13 background concentration; or nuisance, organoleptic, and  
14 aesthetic considerations.

15 2. Where surface waters are exposed to contaminated  
16 groundwater, the cleanup target levels for the contaminants  
17 shall be based on the surface water standards as established  
18 by department rule. The point of measuring compliance with  
19 the surface water standards shall be in the groundwater  
20 immediately adjacent to the surface water body.

21 (h) The department may issue a "No Further Action  
22 Order" based upon the degree to which the desired cleanup  
23 target level is achievable and can be reasonably and  
24 cost-effectively implemented within available technologies or  
25 engineering and institutional control strategies. Where a  
26 state water quality standard is applicable, a deviation may  
27 not result in the application of cleanup target levels more  
28 stringent than said standard. In determining whether it is  
29 appropriate to establish alternate cleanup target levels at a  
30 site, the department may consider the effectiveness of source  
31 removal that has been completed at the site and the practical

1 likelihood of: the use of low yield or poor quality  
2 groundwater; the use of groundwater near marine surface water  
3 bodies; the current and projected use of the affected  
4 groundwater in the vicinity of the site; or the use of  
5 groundwater in the immediate vicinity of the contaminated  
6 area, where it has been demonstrated that the groundwater  
7 contamination is not migrating away from such localized  
8 source; provided human health, public safety, and the  
9 environment are adequately protected.

10 (i) Appropriate cleanup target levels for soils.

11 1. In establishing soil cleanup target levels for  
12 human exposure to each contaminant found in soils from the  
13 land surface to 2 feet below land surface, the department  
14 shall consider the following, as appropriate: calculations  
15 using a lifetime cancer risk level of 1.0E-6; a hazard index  
16 of 1 or less; the best achievable detection limit; or the  
17 naturally occurring background concentration.

18 2. Leachability-based soil target levels shall be  
19 based on protection of the groundwater cleanup target levels  
20 or the alternate cleanup target levels for groundwater  
21 established pursuant to this paragraph, as appropriate.  
22 Source removal and other cost-effective alternatives that are  
23 technologically feasible shall be considered in achieving the  
24 leachability soil target levels established by the department.  
25 The leachability goals shall not be applicable if the  
26 department determines, based upon individual site  
27 characteristics, that contaminants will not leach into the  
28 groundwater at levels which pose a threat to human health,  
29 public safety, and the environment.

30 (2) The department shall require source removal, if  
31 warranted and cost-effective. Once source removal at a site

1 is complete, the department shall reevaluate the site to  
2 determine the degree of active cleanup needed to continue.  
3 Further, the department shall determine if the reevaluated  
4 site qualifies for monitoring only or if no further action is  
5 required to rehabilitate the site. If additional site  
6 rehabilitation is necessary to reach no-further-action status,  
7 the department is encouraged to utilize natural attenuation  
8 and monitoring where site conditions warrant.

9 Section 6. Section 376.82, Florida Statutes, is  
10 created to read:

11 376.82 Eligibility criteria and liability  
12 protection.--

13 (1) ELIGIBILITY.--Any person who has not caused or  
14 contributed to the contamination of a brownfield site after  
15 July 1, 1997, shall be eligible to participate in the  
16 brownfield rehabilitation program established in this act,  
17 subject to the following:

18 (a) Potential brownfield sites currently subject to  
19 ongoing corrective action or enforcement pursuant to federal  
20 authority under the Solid Waste Disposal Act, 42 U.S.C. s.  
21 6901 et seq., as amended; the Comprehensive Environmental  
22 Response Compensation and Liability Act (CERCLA), 42 U.S.C. s.  
23 9601 et seq., as amended; the Safe Drinking Water Act, 42  
24 U.S.C. ss. 300f-300i, as amended; or the Clean Water Act, 33  
25 U.S.C. ss. 1251-1387, as amended, are not eligible for  
26 participation in a brownfield corrective action.

27 (b) Potential brownfield sites currently subject to  
28 ongoing corrective action or enforcement pursuant to state  
29 authority established in this chapter or chapter 403,  
30 including those sites currently subject to a pending consent  
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1 order with the state, are eligible for participation in a  
2 brownfield corrective action, provided:

3 1. The proposed brownfield site will, immediately  
4 after cleanup or sooner, result in increased economic  
5 productivity at the site, including at a minimum the creation  
6 of 10 new jobs, whether permanent or part time, which are not  
7 associated with implementation of the brownfield site  
8 corrective action plan; and

9 2. The party is in good faith compliance with the  
10 terms of the existing consent order or corrective action plan  
11 or is responding to an enforcement action as evidenced by a  
12 good faith determination issued by the department or an  
13 approved local pollution control program.

14 (2) LIABILITY PROTECTION.--

15 (a) Any person, including his or her successors and  
16 assigns, who submits a brownfield site Corrective Action  
17 Rehabilitation Schedule to the department or an approved local  
18 pollution control program, which schedule is approved and  
19 implemented to successful completion, shall be relieved of  
20 further liability for remediation of the site to the state and  
21 to third parties and for liability in contribution to any  
22 other party who has or may incur cleanup liability for the  
23 brownfield site.

24 (b) This section shall not be construed as a  
25 limitation on the right of a third party other than the state  
26 to pursue an action for damages to property or person;  
27 however, such an action cannot compel site rehabilitation in  
28 excess of that required in the approved Corrective Action  
29 Rehabilitation Schedule or otherwise required by the  
30 department or approved local pollution control program.

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

5       (d) The liability protection provided by this section  
6 shall become effective upon the approval of a brownfield site  
7 Corrective Action Rehabilitation Schedule and shall remain  
8 effective, provided the person implements and completes the  
9 approved schedule.

10       (e) Completion of the performance of the remedial  
11 obligations at the brownfield site shall be evidenced by a  
12 "Site Rehabilitation Completion" letter or a "No Further  
13 Action" letter issued by the department or the approved local  
14 pollution control program, which letter shall include the  
15 following paragraph: "Based upon the information provided by  
16 (property owner) concerning property located at (address), it  
17 is the opinion of the Florida Department of Environmental  
18 Protection (substitute local pollution control agency where  
19 applicable) that (party) has successfully and satisfactorily  
20 implemented the approved brownfield site Corrective Action  
21 Rehabilitation Schedule and, accordingly, no further action is  
22 required to assure that this property, when used for the land  
23 use identified in the Corrective Action Rehabilitation  
24 Schedule, is protective of existing and proposed uses and does  
25 not pose an unacceptable risk to human health or the  
26 environment."

27       (f) The Legislature recognizes its limitations in  
28 addressing cleanup liability under federal pollution control  
29 programs. In an effort to secure federal liability protection  
30 for persons willing to undertake remediation responsibility at  
31 a brownfield site or brownfield area, the department is

1 directed to attempt to negotiate a memorandum of agreement or  
2 similar document with the United States Environmental  
3 Protection Agency, whereby the United States Environmental  
4 Protection Agency agrees to forego enforcement of federal  
5 corrective action authority at brownfield sites or brownfield  
6 areas which have received a "Site Rehabilitation Completion"  
7 or "No Further Action" determination from the department or  
8 the approved local pollution control program or are in the  
9 process of implementing a Corrective Action Rehabilitation  
10 Schedule in accordance with this act.

11 (3) REOPENERS.--Any person who completes remediation  
12 in compliance with this act shall not be required to undertake  
13 additional remedial actions unless the department demonstrates  
14 any of the following:

15 (a) That fraud was committed in demonstrating site  
16 conditions or completion of the Corrective Action  
17 Rehabilitation Schedule.

18 (b) That new information confirms the existence of an  
19 area of previously unknown contamination which exceeds the  
20 site-specific rehabilitation levels established by the  
21 department. This reopener shall not be construed to impose  
22 future remedial obligations when newly discovered risks or  
23 contaminants at a site are the result of advancements in  
24 science and technology such as improved detection limits,  
25 comprehension of synergistic effects of contamination, or the  
26 listing of a new contaminant.

27 (c) That the remediation efforts failed to achieve the  
28 cleanup standards or protection levels established by this  
29 act.

30 (d) That the level of risk is increased beyond the  
31 acceptable risk established in this act due to substantial

1 changes in exposure conditions, such as in a change in land  
2 use from nonresidential use to residential use. Any person  
3 who changes the land use of the brownfield site or brownfield  
4 area, thus causing the level of risk to increase beyond the  
5 acceptable risk level, may be required by the department or  
6 approved local pollution control program to undertake  
7 additional remediation measures to assure that human health,  
8 public safety, and the environment are protected to levels  
9 consistent with this act.

10 (e) That a new release occurs at the brownfield site  
11 subsequent to a determination of eligibility for participation  
12 in the brownfield program established in this act.

13 (4) ADDITIONAL LIABILITY PROTECTION FOR FINANCIAL  
14 INSTITUTIONS.--

15 (a) The Legislature declares that, in order to achieve  
16 the economic redevelopment and site rehabilitation of  
17 brownfield sites and brownfield areas in accordance with this  
18 act, it is imperative to encourage financing of real property  
19 transactions involving brownfield site corrective action  
20 plans. Accordingly, lenders, trustees, personal  
21 representatives, or any other fiduciaries are entitled to the  
22 liability protection established under subsection (2),  
23 provided they have not caused or contributed to a release of a  
24 contaminant at the brownfield site or brownfield area.

25 (b) Lenders who hold indicia of ownership at a  
26 brownfield site primarily to protect a security interest or  
27 who own a brownfield site as a result of foreclosure of a  
28 security interest who seek to sell, transfer, or otherwise  
29 divest the site by means of sale at the earliest possible time  
30 shall not be liable for the release or discharge of a  
31 contaminant from a brownfield site; for the failure of a

1 brownfield site owner to complete the Corrective Action  
2 Rehabilitation Schedule; or for future site rehabilitation  
3 activities required pursuant to a reopener established under  
4 subsection (3) where the lender has not divested the borrower  
5 of, or otherwise engaged in, decisionmaking control of the  
6 site rehabilitation or site operations or undertaken  
7 management activities beyond those required to protect its  
8 financial interest and where the lender has not otherwise  
9 caused or contributed to a release of a contaminant at the  
10 brownfield site.

11 Section 7. This act shall take effect July 1, 1997.

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#### HOUSE SUMMARY

15

16 Creates the Brownfields Redevelopment Act of 1997.  
17 Provides legislative intent and definitions. Provides  
18 duties of a local government that designates a brownfield  
19 area for rehabilitation. Provides for notice to the  
20 Department of Environmental Protection and provides for  
21 public hearings. Provides requirements for such  
22 designation. Provides responsibilities of persons  
23 eligible for brownfield rehabilitation. Requires  
24 approval of a Corrective Action Rehabilitation Schedule.  
25 Provides requirements for contractors and site assessment  
26 and cleanup activities. Requires approval of site  
27 assessments, remedial action reports, and completed  
28 tasks, with certain exceptions. Provides consequences of  
29 failure to comply with a rehabilitation agreement.  
30 Specifies the factors and criteria to be used in  
31 directing and supervising rehabilitation of brownfield  
sites. Provides for issuance of a "No Further Action  
Order." Provides that source removal may be required  
under certain conditions. Provides requirements for  
participation in brownfield rehabilitation. Provides  
liability protection for persons who successfully  
complete an approved rehabilitation schedule. Provides  
requirements for issuance of a letter evidencing  
completion of rehabilitation. Authorizes negotiation  
with the United States Environmental Protection Agency  
regarding enforcement. Provides conditions under which  
further remedial action may be required. Provides  
liability protection for certain financial institutions.

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