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2014 Legislature

1
2 An act relating to brownfields; amending s. 376.78,
3 F.S.; revising legislative intent with regard to
4 community revitalization in certain areas; amending s.
5 376.80, F.S.; revising procedures for designation of
6 brownfield areas; authorizing local governments to use
7 a term other than "brownfield area" when naming such
8 areas; amending s. 376.82, F.S.; providing certain
9 liability protection against claims of property
10 damages; providing applicability; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Subsection (8) of section 376.78, Florida
16 Statutes, is amended to read:

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

19 (8) The existence of brownfields within a community may
20 contribute to, or may be a symptom of, overall community
21 decline, including issues of human disease and illness, crime,
22 educational and employment opportunities, and infrastructure
23 decay. The environment is an important element of quality of
24 life in any community, along with economic opportunity,
25 educational achievement, access to health care, housing quality
26 and availability, provision of governmental services, and other

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

27 socioeconomic factors. Brownfields redevelopment, properly done,
28 can be a significant element in community revitalization,
29 especially within community redevelopment areas, enterprise
30 zones, empowerment zones, closed military bases, or designated
31 brownfield pilot project areas.

32 Section 2. Subsections (1) and (2) of section 376.80,
33 Florida Statutes, are amended, and subsection (12) is added to
34 that section, to read:

35 376.80 Brownfield program administration process.—

36 (1) The following general procedures apply to brownfield
37 designations:

38 (a) The local government with jurisdiction over a proposed
39 brownfield area shall designate such area pursuant to this
40 section.

41 (b) For a brownfield area designation proposed by:

42 1. The jurisdictional local government, the designation
43 criteria under paragraph (2) (a) apply, except if the local
44 government proposes to designate as a brownfield area a
45 specified redevelopment area as provided in paragraph (2) (b).

46 2. Any person, other than a governmental entity,
47 including, but not limited to, individuals, corporations,
48 partnerships, limited liability companies, community-based
49 organizations, or not-for-profit corporations, the designation
50 criteria under paragraph (2) (c) apply.

51 (c) Except as otherwise provided, the following provisions
52 apply to all proposed brownfield area designations:

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

53 1. Notification to department following adoption.—A local
54 government with jurisdiction over the brownfield area must
55 notify the department, and, if applicable, the local pollution
56 control program under s. 403.182, of its decision to designate a
57 brownfield area for rehabilitation for the purposes of ss.
58 376.77–376.86. The notification must include a resolution
59 adopted, by the local government body. The local government
60 shall notify the department, and, if applicable, the local
61 pollution control program under s. 403.182, of the designation
62 within 30 days after adoption of the resolution.

63 2. Resolution adoption.—The brownfield area designation
64 must be carried out by a resolution adopted by the
65 jurisdictional local government, to which includes is attached a
66 map adequate to clearly delineate exactly which parcels are to
67 be included in the brownfield area or alternatively a less-
68 detailed map accompanied by a detailed legal description of the
69 brownfield area. For municipalities, the governing body shall
70 adopt the resolution in accordance with the procedures outlined
71 in s. 166.041, except that the procedures for the public
72 hearings on the proposed resolution must be in the form
73 established in s. 166.041(3)(c)2. For counties, the governing
74 body shall adopt the resolution in accordance with the
75 procedures outlined in s. 125.66, except that the procedures for
76 the public hearings on the proposed resolution shall be in the
77 form established in s. 125.66(4)(b).

78 3. Right to be removed from proposed brownfield area.—If a

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

79 property owner within the area proposed for designation by the
 80 local government requests in writing to have his or her property
 81 removed from the proposed designation, the local government
 82 shall grant the request. ~~For municipalities, the governing body~~
 83 ~~shall adopt the resolution in accordance with the procedures~~
 84 ~~outlined in s. 166.041, except that the notice for the public~~
 85 ~~hearings on the proposed resolution must be in the form~~
 86 ~~established in s. 166.041(3)(c)2. For counties, the governing~~
 87 ~~body shall adopt the resolution in accordance with the~~
 88 ~~procedures outlined in s. 125.66, except that the notice for the~~
 89 ~~public hearings on the proposed resolution shall be in the form~~
 90 ~~established in s. 125.66(4)(b)2.~~

91 4. Notice and public hearing requirements for designation
 92 of a proposed brownfield area outside a redevelopment area or by
 93 a nongovernmental entity.-Compliance with the following
 94 provisions is required before designation of a proposed
 95 brownfield area under paragraph (2)(a) or paragraph (2)(c):

96 a. At least one of the required public hearings shall be
 97 conducted as closely as is reasonably practicable to the area to
 98 be designated to provide an opportunity for public input on the
 99 size of the area, the objectives for rehabilitation, job
 100 opportunities and economic developments anticipated,
 101 neighborhood residents' considerations, and other relevant local
 102 concerns.

103 b. Notice of a public hearing must be made in a newspaper
 104 of general circulation in the area, must be made in ethnic

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

105 newspapers or local community bulletins, must be posted in the
 106 affected area, and must be announced at a scheduled meeting of
 107 the local governing body before the actual public hearing.

108 (2) (a) Local government-proposed brownfield area
 109 designation outside specified redevelopment areas.—If a local
 110 government proposes to designate a brownfield area that is
 111 outside a community redevelopment area areas, enterprise zone
 112 zones, empowerment zone zones, closed military base bases, or
 113 designated brownfield pilot project area areas, the local
 114 government shall provide notice, adopt the resolution, and
 115 conduct ~~the~~ public hearings pursuant to paragraph ~~in accordance~~
 116 ~~with the requirements of subsection (1) (c), except at least one~~
 117 ~~of the required public hearings shall be conducted as close as~~
 118 ~~reasonably practicable to the area to be designated to provide~~
 119 ~~an opportunity for public input on the size of the area, the~~
 120 ~~objectives for rehabilitation, job opportunities and economic~~
 121 ~~developments anticipated, neighborhood residents'~~
 122 ~~considerations, and other relevant local concerns. Notice of the~~
 123 ~~public hearing must be made in a newspaper of general~~
 124 ~~circulation in the area and the notice must be at least 16~~
 125 ~~square inches in size, must be in ethnic newspapers or local~~
 126 ~~community bulletins, must be posted in the affected area, and~~
 127 ~~must be announced at a scheduled meeting of the local governing~~
 128 ~~body before the actual public hearing. At a public hearing to~~
 129 designate the proposed brownfield area ~~In determining the areas~~
 130 ~~to be designated, the local government must consider:~~

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

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

141 (b) Local government-proposed brownfield area designation
 142 within specified redevelopment areas.—Paragraph (a) does not
 143 apply to a proposed brownfield area if the local government
 144 proposes to designate the brownfield area inside a community
 145 redevelopment area, enterprise zone, empowerment zone, closed
 146 military base, or designated brownfield pilot project area and
 147 the local government complies with paragraph (1) (c).

148 (c) ~~(b)~~ Brownfield area designation proposed by persons
 149 other than a governmental entity.—For designation of a
 150 brownfield area that is proposed by a person other than the
 151 local government, the local government with jurisdiction over
 152 the proposed brownfield area shall provide notice and adopt a
 153 resolution to designate the a brownfield area pursuant to
 154 paragraph (1) (c) if, at the public hearing to adopt the
 155 resolution, the person establishes all of the following ~~under~~
 156 the provisions of this act provided that:

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

157 | 1. A person who owns or controls a potential brownfield
158 | site is requesting the designation and has agreed to
159 | rehabilitate and redevelop the brownfield site.†

160 | 2. The rehabilitation and redevelopment of the proposed
161 | brownfield site will result in economic productivity of the
162 | area, along with the creation of at least 5 new permanent jobs
163 | at the brownfield site that are full-time equivalent positions
164 | not associated with the implementation of the brownfield site
165 | rehabilitation agreement and that are not associated with
166 | redevelopment project demolition or construction activities
167 | pursuant to the redevelopment of the proposed brownfield site or
168 | area. However, the job creation requirement does ~~shall~~ not apply
169 | to the rehabilitation and redevelopment of a brownfield site
170 | that will provide affordable housing as defined in s. 420.0004
171 | or the creation of recreational areas, conservation areas, or
172 | parks.†

173 | 3. The redevelopment of the proposed brownfield site is
174 | consistent with the local comprehensive plan and is a
175 | permissible use under the applicable local land development
176 | regulations.†

177 | 4. Notice of the proposed rehabilitation of the brownfield
178 | area has been provided to neighbors and nearby residents of the
179 | proposed area to be designated pursuant to paragraph (1)(c), and
180 | the person proposing the area for designation has afforded to
181 | those receiving notice the opportunity for comments and
182 | suggestions about rehabilitation. Notice pursuant to this

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CS/CS/CS/HB 325

2014 Legislature

183 ~~subparagraph must be made in a newspaper of general circulation~~
 184 ~~in the area, at least 16 square inches in size, and the notice~~
 185 ~~must be posted in the affected area.~~ and

186 5. The person proposing the area for designation has
 187 provided reasonable assurance that he or she has sufficient
 188 financial resources to implement and complete the rehabilitation
 189 agreement and redevelopment of the brownfield site.

190 (d) (e) Negotiation of brownfield site rehabilitation
 191 agreement.—The designation of a brownfield area and the
 192 identification of a person responsible for brownfield site
 193 rehabilitation simply entitles the identified person to
 194 negotiate a brownfield site rehabilitation agreement with the
 195 department or approved local pollution control program.

196 (12) A local government that designates a brownfield area
 197 pursuant to this section is not required to use the term
 198 "brownfield area" within the name of the brownfield area
 199 designated by the local government.

200 Section 3. Paragraphs (a) and (b) of subsection (2) of
 201 section 376.82, Florida Statutes, are amended to read:

202 376.82 Eligibility criteria and liability protection.—

203 (2) LIABILITY PROTECTION.—

204 (a) Any person, including his or her successors and
 205 assigns, who executes and implements to successful completion a
 206 brownfield site rehabilitation agreement, is ~~shall be~~ relieved
 207 of:

208 1. Further liability for remediation of the contaminated

ENROLLED

CS/CS/CS/HB 325

2014 Legislature

209 site or sites to the state and to third parties, ~~and of~~
 210 2. Liability in contribution to any other party who has or
 211 may incur cleanup liability for the contaminated site or sites.
 212 3. Liability for claims of property damages, including,
 213 but not limited to, diminished value of real property or
 214 improvements; lost or delayed rent, sale, or use of real
 215 property or improvements; or stigma to real property or
 216 improvements caused by contamination addressed by a brownfield
 217 site rehabilitation agreement. Notwithstanding any other
 218 provision of this chapter, this subparagraph applies to causes
 219 of action accruing on or after July 1, 2014. This subparagraph
 220 does not apply to a person who discharges contaminants on
 221 property subject to a brownfield site rehabilitation agreement,
 222 who commits fraud in demonstrating site conditions or completing
 223 site rehabilitation of a property subject to a brownfield site
 224 rehabilitation agreement, or who exacerbates contamination of a
 225 property subject to a brownfield site rehabilitation agreement
 226 in violation of applicable laws which causes property damages.
 227 (b) This section does not limit ~~shall not be construed as~~
 228 ~~a limitation on~~ the right of a third party other than the state
 229 to pursue an action for damages to persons for bodily harm
 230 ~~property or person~~; however, such an action may not compel site
 231 rehabilitation in excess of that required in the approved
 232 brownfield site rehabilitation agreement or otherwise required
 233 by the department or approved local pollution control program.
 234 Section 4. This act shall take effect July 1, 2014.