

HB 1177

2010

1 A bill to be entitled
2 An act relating to brownfields development; amending s.
3 163.3180, F.S.; authorizing waiver of certain concurrency
4 requirements for certain brownfield sites; authorizing
5 designation of certain brownfield areas as transportation
6 concurrency exception areas; providing for exempting
7 certain brownfield areas from concurrency requirements for
8 transportation facilities; exempting certain developments
9 in certain brownfield areas from compliance with
10 concurrency requirements under certain circumstances;
11 amending s. 212.08, F.S.; expanding the definition of
12 "mixed-use project" applicable to a building materials tax
13 exemption; amending s. 220.1845, F.S.; providing
14 requirements for claiming certain site rehabilitation
15 costs in applications for a contaminated site
16 rehabilitation tax credit; amending s. 288.107, F.S.;
17 revising a definition; revising criteria for an eligible
18 business for purposes of brownfield redevelopment bonus
19 refunds; amending s. 376.30781, F.S.; providing
20 requirements for claiming certain site rehabilitation
21 costs in applications for a brownfield site rehabilitation
22 tax credit; amending s. 376.85, F.S.; specifying
23 additional requirements for an annual report to the
24 Legislature; amending s. 403.1835, F.S.; specifying
25 criteria for deeming certain brownfield site projects as
26 eliminating public health hazards for certain purposes;
27 amending s. 403.8532, F.S.; expanding the types of
28 projects given consideration under a priority system for

Page 1 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1177-00

HB 1177

2010

29 | certain loans under the Florida Safe Drinking Water Act;
 30 | providing an effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Paragraph (c) of subsection (4) and paragraphs
 35 | (b) and (c) of subsection (5) of section 163.3180, Florida
 36 | Statutes, are amended, and subsection (18) is added to that
 37 | section, to read:

38 | 163.3180 Concurrency.—

39 | (4)

40 | (c) The concurrency requirement, except as it relates to
 41 | transportation facilities and public schools, as implemented in
 42 | local government comprehensive plans, may be waived by a local
 43 | government for urban infill and redevelopment areas designated
 44 | pursuant to s. 163.2517 and for brownfield sites subject to a
 45 | brownfield site rehabilitation agreement under s. 376.80 if such
 46 | a waiver does not endanger public health or safety as defined by
 47 | the local government in its local government comprehensive plan.
 48 | The waiver shall be adopted as a plan amendment pursuant to the
 49 | process set forth in s. 163.3187(3)(a). A local government may
 50 | grant a concurrency exception pursuant to subsection (5) for
 51 | transportation facilities located within these urban infill and
 52 | redevelopment areas.

53 | (5)

54 | (b)1. The following are transportation concurrency
 55 | exception areas:

56 | a. A municipality that qualifies as a dense urban land

57 | area under s. 163.3164;

58 | b. An urban service area under s. 163.3164 that has been
59 | adopted into the local comprehensive plan and is located within
60 | a county that qualifies as a dense urban land area under s.
61 | 163.3164; and

62 | c. A county, including the municipalities located therein,
63 | which has a population of at least 900,000 and qualifies as a
64 | dense urban land area under s. 163.3164, but does not have an
65 | urban service area designated in the local comprehensive plan.

66 | 2. A municipality that does not qualify as a dense urban
67 | land area pursuant to s. 163.3164 may designate in its local
68 | comprehensive plan the following areas as transportation
69 | concurrency exception areas:

70 | a. Urban infill as defined in s. 163.3164;

71 | b. Community redevelopment areas as defined in s. 163.340;

72 | c. Downtown revitalization areas as defined in s.
73 | 163.3164;

74 | d. Urban infill and redevelopment under s. 163.2517; or

75 | e. Urban service areas as defined in s. 163.3164 or areas
76 | within a designated urban service boundary under s.
77 | 163.3177(14).

78 | f. Brownfield areas designated under s. 376.80.

79 | 3. A county that does not qualify as a dense urban land
80 | area pursuant to s. 163.3164 may designate in its local
81 | comprehensive plan the following areas as transportation
82 | concurrency exception areas:

83 | a. Urban infill as defined in s. 163.3164;

84 | b. Urban infill and redevelopment under s. 163.2517; or

HB 1177

2010

85 c. Urban service areas as defined in s. 163.3164.

86 d. Brownfield areas designated under s. 376.80.

87 4. A local government that has a transportation
88 concurrency exception area designated pursuant to subparagraph
89 1., subparagraph 2., or subparagraph 3. shall, within 2 years
90 after the designated area becomes exempt, adopt into its local
91 comprehensive plan land use and transportation strategies to
92 support and fund mobility within the exception area, including
93 alternative modes of transportation. Local governments are
94 encouraged to adopt complementary land use and transportation
95 strategies that reflect the region's shared vision for its
96 future. If the state land planning agency finds insufficient
97 cause for the failure to adopt into its comprehensive plan land
98 use and transportation strategies to support and fund mobility
99 within the designated exception area after 2 years, it shall
100 submit the finding to the Administration Commission, which may
101 impose any of the sanctions set forth in s. 163.3184(11)(a) and
102 (b) against the local government.

103 5. Transportation concurrency exception areas designated
104 pursuant to subparagraph 1., subparagraph 2., or subparagraph 3.
105 do not apply to designated transportation concurrency districts
106 located within a county that has a population of at least 1.5
107 million, has implemented and uses a transportation-related
108 concurrency assessment to support alternative modes of
109 transportation, including, but not limited to, mass transit, and
110 does not levy transportation impact fees within the concurrency
111 district.

112 6. Transportation concurrency exception areas designated

HB 1177

2010

113 | under subparagraph 1., subparagraph 2., or subparagraph 3. do
114 | not apply in any county that has exempted more than 40 percent
115 | of the area inside the urban service area from transportation
116 | concurrency for the purpose of urban infill.

117 | 7. A local government that does not have a transportation
118 | concurrency exception area designated pursuant to subparagraph
119 | 1., subparagraph 2., or subparagraph 3. may grant an exception
120 | from the concurrency requirement for transportation facilities
121 | if the proposed development is otherwise consistent with the
122 | adopted local government comprehensive plan and is a project
123 | that promotes public transportation or is located within an area
124 | designated in the comprehensive plan for:

125 | a. Urban infill development;
126 | b. Urban redevelopment;
127 | c. Downtown revitalization;
128 | d. Urban infill and redevelopment under s. 163.2517; or
129 | e. An urban service area specifically designated as a
130 | transportation concurrency exception area which includes lands
131 | appropriate for compact, contiguous urban development, which
132 | does not exceed the amount of land needed to accommodate the
133 | projected population growth at densities consistent with the
134 | adopted comprehensive plan within the 10-year planning period,
135 | and which is served or is planned to be served with public
136 | facilities and services as provided by the capital improvements
137 | element.

138 | f. Brownfield areas designated under s. 376.80.

139 | (c) The Legislature also finds that developments located
140 | within urban infill, urban redevelopment, urban service, or

HB 1177

2010

141 | downtown revitalization areas, ~~or~~ areas designated as urban
 142 | infill and redevelopment areas under s. 163.2517, and brownfield
 143 | areas designated under s. 376.80, which pose only special part-
 144 | time demands on the transportation system, are exempt from the
 145 | concurrency requirement for transportation facilities. A special
 146 | part-time demand is one that does not have more than 200
 147 | scheduled events during any calendar year and does not affect
 148 | the 100 highest traffic volume hours.

149 | (18) For any brownfield area designated pursuant to s.
 150 | 376.80 not otherwise exempt from concurrency requirements, after
 151 | a development located in such brownfield area has been deemed to
 152 | satisfy concurrency requirements, the development shall not be
 153 | required to take any further action to maintain compliance with
 154 | concurrency requirements, provided the development is subject to
 155 | a brownfield site rehabilitation agreement and remains in
 156 | compliance with all requirements of such agreement and the
 157 | density, intensity, and uses approved for the development do not
 158 | change.

159 | Section 2. Paragraph (o) of subsection (5) of section
 160 | 212.08, Florida Statutes, is amended to read:

161 | 212.08 Sales, rental, use, consumption, distribution, and
 162 | storage tax; specified exemptions.—The sale at retail, the
 163 | rental, the use, the consumption, the distribution, and the
 164 | storage to be used or consumed in this state of the following
 165 | are hereby specifically exempt from the tax imposed by this
 166 | chapter.

167 | (5) EXEMPTIONS; ACCOUNT OF USE.—

168 | (o) Building materials in redevelopment projects.—

- 169 1. As used in this paragraph, the term:
- 170 a. "Building materials" means tangible personal property
- 171 that becomes a component part of a housing project or a mixed-
- 172 use project.
- 173 b. "Housing project" means the conversion of an existing
- 174 manufacturing or industrial building to housing units in an
- 175 urban high-crime area, enterprise zone, empowerment zone, Front
- 176 Porch Community, designated brownfield area, or urban infill
- 177 area and in which the developer agrees to set aside at least 20
- 178 percent of the housing units in the project for low-income and
- 179 moderate-income persons or the construction in a designated
- 180 brownfield area of affordable housing for persons described in
- 181 s. 420.0004(8), (10), (11), or (15) or in s. 159.603(7).
- 182 c. "Mixed-use project" means the conversion of an existing
- 183 manufacturing or industrial building to mixed-use units that
- 184 include artists' studios, art and entertainment services, or
- 185 other compatible uses. A mixed-use project must be located in an
- 186 urban high-crime area, enterprise zone, empowerment zone, Front
- 187 Porch Community, designated brownfield area, or urban infill
- 188 area, and the developer must agree to set aside at least 20
- 189 percent of the square footage of the project for low-income and
- 190 moderate-income housing. Notwithstanding this sub-subparagraph,
- 191 a mixed-use project may also mean the construction in a
- 192 designated brownfield area of mixed-use units that include
- 193 residential, commercial, or other compatible or permitted uses.
- 194 d. "Substantially completed" has the same meaning as
- 195 provided in s. 192.042(1).
- 196 2. Building materials used in the construction of a

HB 1177

2010

197 housing project or mixed-use project are exempt from the tax
198 imposed by this chapter upon an affirmative showing to the
199 satisfaction of the department that the requirements of this
200 paragraph have been met. This exemption inures to the owner
201 through a refund of previously paid taxes. To receive this
202 refund, the owner must file an application under oath with the
203 department which includes:

- 204 a. The name and address of the owner.
- 205 b. The address and assessment roll parcel number of the
206 project for which a refund is sought.
- 207 c. A copy of the building permit issued for the project.
- 208 d. A certification by the local building code inspector
209 that the project is substantially completed.
- 210 e. A sworn statement, under penalty of perjury, from the
211 general contractor licensed in this state with whom the owner
212 contracted to construct the project, which statement lists the
213 building materials used in the construction of the project and
214 the actual cost thereof, and the amount of sales tax paid on
215 these materials. If a general contractor was not used, the owner
216 shall provide this information in a sworn statement, under
217 penalty of perjury. Copies of invoices evidencing payment of
218 sales tax must be attached to the sworn statement.
- 219 3. An application for a refund under this paragraph must
220 be submitted to the department within 6 months after the date
221 the project is deemed to be substantially completed by the local
222 building code inspector. Within 30 working days after receipt of
223 the application, the department shall determine if it meets the
224 requirements of this paragraph. A refund approved pursuant to

HB 1177

2010

225 | this paragraph shall be made within 30 days after formal
 226 | approval of the application by the department.

227 | 4. The department shall establish by rule an application
 228 | form and criteria for establishing eligibility for exemption
 229 | under this paragraph.

230 | 5. The exemption shall apply to purchases of materials on
 231 | or after July 1, 2000.

232 | Section 3. Subsection (4) is added to section 220.1845,
 233 | Florida Statutes, to read:

234 | 220.1845 Contaminated site rehabilitation tax credit.—

235 | (4) APPLICATION FOR CREDIT.—As provided in s.
 236 | 376.30781(2), and notwithstanding any other provision of this
 237 | section, any tax credit application may claim annual site
 238 | rehabilitation costs pursuant to this section or s. 376.30781
 239 | for site rehabilitation costs incurred in the calendar year
 240 | prior to submission of the application, provided such costs are
 241 | paid in the calendar year in which the site rehabilitation
 242 | activities were performed or were paid prior to the submission
 243 | of the application by January 31 of the year in which the
 244 | application is submitted.

245 | Section 4. Paragraph (e) of subsection (1) and paragraphs
 246 | (a) and (b) of subsection (3) of section 288.107, Florida
 247 | Statutes, are amended to read:

248 | 288.107 Brownfield redevelopment bonus refunds.—

249 | (1) DEFINITIONS.—As used in this section:

250 | (e) "Eligible business" means:

251 | 1. A qualified target industry business as defined in s.
 252 | 288.106(1)(o); or

253 2. A business that can demonstrate a fixed capital
 254 investment of at least \$2 million in brownfield areas, including
 255 mixed-use business ~~activities, including~~ multiunit housing,
 256 commercial, retail, and industrial activities, or a business
 257 that can demonstrate a fixed capital investment of at least
 258 \$500,000 and creates between 5 and 50 jobs in mixed-use
 259 business, multiunit housing, commercial, retail, or industrial
 260 activities in brownfield areas, or at least \$500,000 on a
 261 brownfield site subject to a ~~in~~ brownfield site rehabilitation
 262 agreement areas that do not require site cleanup, and that which
 263 provides benefits to its employees.

264 (3) CRITERIA.—The minimum criteria for participation in
 265 the brownfield redevelopment bonus refund are:

266 (a) The creation of at least 5 ~~10~~ new full-time permanent
 267 jobs. Such jobs shall not include construction or site
 268 rehabilitation jobs associated with the implementation of a
 269 brownfield site agreement as described in s. 376.80(5).

270 (b) The completion of a fixed capital investment of at
 271 least \$2 million in brownfield areas, including mixed-use
 272 business ~~activities, including~~ multiunit housing, commercial,
 273 retail, and industrial activities in brownfield areas, or a
 274 business that can demonstrate a fixed capital investment of at
 275 least \$500,000 and creates between 5 and 50 jobs in mixed-use
 276 business, multiunit housing, commercial, retail, or industrial
 277 activities in brownfield areas or at least \$500,000 on a ~~in~~
 278 brownfield site subject to a brownfield site rehabilitation
 279 agreement areas that do not require site cleanup, by an eligible
 280 business applying for a refund under paragraph (2) (b) that which

HB 1177

2010

281 provides benefits to its employees.

282 Section 5. Subsection (2) of section 376.30781, Florida
283 Statutes, is amended to read:

284 376.30781 Tax credits for rehabilitation of drycleaning-
285 solvent-contaminated sites and brownfield sites in designated
286 brownfield areas; application process; rulemaking authority;
287 revocation authority.—

288 (2) Notwithstanding the requirements of subsection (5),
289 tax credits allowed pursuant to s. 220.1845 are available for
290 site rehabilitation or solid waste removal conducted during the
291 calendar year in which the applicable voluntary cleanup
292 agreement or brownfield site rehabilitation agreement is
293 executed, even if the site rehabilitation or solid waste removal
294 is conducted prior to the execution of that agreement or the
295 designation of the brownfield area. Notwithstanding any other
296 provision of this section, any tax credit application claiming
297 annual brownfield site rehabilitation costs pursuant to this
298 section for such costs incurred in the calendar year prior to
299 submission of the application may claim such costs in the
300 application, provided such costs are paid in the calendar year
301 in which the brownfield site rehabilitation activities were
302 performed or were paid prior to the submission of the
303 application by January 31 of the year in which the application
304 is submitted.

305 Section 6. Section 376.85, Florida Statutes, is amended to
306 read:

307 376.85 Annual report.—The Department of Environmental
308 Protection shall prepare and submit ~~an annual report~~ to the

HB 1177

2010

309 President of the Senate and the Speaker of the House of
 310 Representatives by February 1 of each year a report that
 311 ~~Legislature, beginning in December 1998, which~~ shall include,
 312 but is not ~~be~~ limited to, the number, size, and locations of
 313 brownfield sites that have been remediated under the provisions
 314 of this act, ~~that~~ are currently under rehabilitation pursuant
 315 to a negotiated site rehabilitation agreement with the
 316 department or a delegated local program, ~~where~~ alternative
 317 cleanup target levels have been established pursuant to s.
 318 376.81(1)(g)3., ~~and,~~ where engineering and institutional
 319 control strategies are being employed as conditions of a "no
 320 further action order" to maintain the protections provided in s.
 321 376.81(1)(g)1. and 2. Based upon such information, the report
 322 shall also include recommendations for potential improvements to
 323 the brownfield program established under ss. 376.77-376.86 in
 324 order to achieve the legislative intent and goals and objectives
 325 set forth in s. 376.78.

326 Section 7. Subsection (12) is added to section 403.1835,
 327 Florida Statutes, to read:

328 403.1835 Water pollution control financial assistance.—

329 (12) For purposes of determining priority under subsection
 330 (7), eligible projects located within a brownfield site with an
 331 executed brownfield site rehabilitation agreement under s.
 332 376.80 shall be deemed to eliminate public health hazards if the
 333 project:

334 (a) Removes, mitigates, or prevents adverse effects on
 335 surface water or groundwater arising out of or caused by

HB 1177

2010

336 contamination located on, migrating from, or in the brownfield
337 site; or

338 (b) Improves surface water management facilities or
339 infrastructure and facilitates remediation or redevelopment of
340 the brownfield site.

341 Section 8. Paragraph (a) of subsection (9) of section
342 403.8532, Florida Statutes, is amended to read:

343 403.8532 Drinking water state revolving loan fund; use;
344 rules.—

345 (9) The department is authorized to make rules necessary
346 to carry out the purposes of this section and the federal Safe
347 Drinking Water Act, as amended. Such rules shall:

348 (a) Set forth a priority system for loans based on public
349 health considerations, compliance with state and federal
350 requirements relating to public drinking water systems, and
351 affordability. The priority system shall give special
352 consideration to the following:

353 1. Projects that provide for the development of
354 alternative drinking water supply projects and management
355 techniques in areas where existing source waters are limited or
356 threatened by saltwater intrusion, excessive drawdowns,
357 contamination, or other problems;

358 2. Projects that provide for a dependable, sustainable
359 supply of drinking water and that are not otherwise financially
360 feasible; and

361 3. Projects that contribute to the sustainability of
362 regional water sources.

363 4. Projects that are related to or otherwise encourage the

HB 1177

2010

364 remediation or redevelopment of a brownfield site with an
365 executed brownfield site rehabilitation agreement under s.
366 376.80.

367 Section 9. This act shall take effect July 1, 2010.