

A bill to be entitled

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

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

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

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

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

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:

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

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

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:~~

- 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:

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

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



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.