

By Senator Altman

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1 A bill to be entitled
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 by local governments; providing
7 procedures for adoption of a resolution; providing
8 requirements for notice and public hearings;
9 authorizing local governments to use a term other than
10 "brownfield area" when naming such areas; amending s.
11 376.82, F.S.; providing an exemption from liability
12 for property damages for entities that execute and
13 implement certain brownfield site rehabilitation
14 agreements; providing for applicability; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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

21 376.78 Legislative intent.—The Legislature finds and
22 declares the following:

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

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30 and availability, provision of governmental services, and other
31 socioeconomic factors. Brownfields redevelopment, properly done,
32 can be a significant element in community revitalization,
33 especially within community redevelopment areas, enterprise
34 zones, empowerment zones, closed military bases, or designated
35 brownfield pilot project areas.

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

39 376.80 Brownfield program administration process.—

40 (1) The following general procedures apply to brownfield
41 designations:

42 (a) The local government with jurisdiction over a proposed
43 brownfield area shall designate such area pursuant to this
44 section.

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

46 1. The jurisdictional local government, the designation
47 criteria under paragraph (2) (a) apply unless the local
48 government proposes to designate a brownfield area within a
49 specified redevelopment area as provided in paragraph (2) (b).

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

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

57 1. Notification to the department following adoption.—A
58 local government with jurisdiction over the brownfield area must

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59 notify the department, and, if applicable, the local pollution
60 control program under s. 403.182, of its decision to designate a
61 brownfield area for rehabilitation for the purposes of ss.
62 376.77-376.86. The notification must include a resolution
63 adopted, by the local government body. The local government
64 shall notify the department and, if applicable, the local
65 pollution control program under s. 403.182, of the designation
66 within 30 days after adoption of the resolution.

67 2. Resolution adoption.—The brownfield area designation
68 must be carried out by a resolution adopted by the
69 jurisdictional local government, to which includes is attached a
70 map adequate to clearly delineate exactly which parcels are to
71 be included in the brownfield area or alternatively a less-
72 detailed map accompanied by a detailed legal description of the
73 brownfield area. For municipalities, the governing body shall
74 adopt the resolution in accordance with the procedures outlined
75 in s. 166.041, except that the notice for the public hearings on
76 the proposed resolution must be in the form established in s.
77 166.041(3)(c)2. For counties, the governing body shall adopt the
78 resolution in accordance with the procedures outlined in s.
79 125.66, except that the notice for the public hearings on the
80 proposed resolution must be in the form established in s.
81 125.66(4)(b).

82 3. Right to be removed from proposed brownfield area.—If a
83 property owner within the area proposed for designation by the
84 local government requests in writing to have his or her property
85 removed from the proposed designation, the local government
86 shall grant the request. For municipalities, the governing body
87 shall adopt the resolution in accordance with the procedures

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88 ~~outlined in s. 166.041, except that the notice for the public~~
89 ~~hearings on the proposed resolution must be in the form~~
90 ~~established in s. 166.041(3)(c)2. For counties, the governing~~
91 ~~body shall adopt the resolution in accordance with the~~
92 ~~procedures outlined in s. 125.66, except that the notice for the~~
93 ~~public hearings on the proposed resolution shall be in the form~~
94 ~~established in s. 125.66(4)(b)2.~~

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

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

107 b. Notice of the public hearing must be made in a newspaper
108 of general circulation in the area, and the notice must be at
109 least 16 square inches in size, must be published in ethnic
110 newspapers or local community bulletins, must be posted in the
111 affected area, and must be announced at a scheduled meeting of
112 the local governing body before the actual public hearing.

113 (2)(a) Local government-proposed brownfield area
114 designation outside specified redevelopment areas.—If a local
115 government proposes to designate a brownfield area that is
116 outside a community redevelopment area areas, enterprise zone

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

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

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

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

162 1. A person who owns or controls a potential brownfield
163 site is requesting the designation and has agreed to
164 rehabilitate and redevelop the brownfield site.†

165 2. The rehabilitation and redevelopment of the proposed
166 brownfield site will result in economic productivity of the
167 area, along with the creation of at least 5 new permanent jobs
168 at the brownfield site that are full-time equivalent positions
169 not associated with the implementation of the brownfield site
170 rehabilitation agreement and that are not associated with
171 redevelopment project demolition or construction activities
172 pursuant to the redevelopment of the proposed brownfield site or
173 area. However, the job creation requirement does ~~shall~~ not apply
174 to the rehabilitation and redevelopment of a brownfield site

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175 that will provide affordable housing as defined in s. 420.0004
176 or the creation of recreational areas, conservation areas, or
177 parks.~~†~~

178 3. The redevelopment of the proposed brownfield site is
179 consistent with the local comprehensive plan and is a
180 permissible use under the applicable local land development
181 regulations.~~†~~

182 4. Notice of the proposed rehabilitation of the brownfield
183 area has been provided to neighbors and nearby residents of the
184 proposed area to be designated pursuant to paragraph (1)(c), and
185 the person proposing the area for designation has afforded to
186 those receiving notice the opportunity for comments and
187 suggestions about rehabilitation. Notice pursuant to this
188 subparagraph must be made in a newspaper of general circulation
189 in the area, at least 16 square inches in size, and the notice
190 must be posted in the affected area.~~†~~~~and~~

191 5. The person proposing the area for designation has
192 provided reasonable assurance that he or she has sufficient
193 financial resources to implement and complete the rehabilitation
194 agreement and redevelopment of the brownfield site.

195 (d)(e) Negotiation of brownfield site rehabilitation
196 agreement.—The designation of a brownfield area and the
197 identification of a person responsible for brownfield site
198 rehabilitation simply entitles the identified person to
199 negotiate a brownfield site rehabilitation agreement with the
200 department or approved local pollution control program.

201 (12) A local government that designates a brownfield area
202 pursuant to this section is not required to use the term
203 "brownfield area" within the name of the brownfield area

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204 proposed for designation by the local government.

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

207 376.82 Eligibility criteria and liability protection.—

208 (2) LIABILITY PROTECTION.—

209 (a) Any person, including his or her successors and
210 assigns, who executes and implements to successful completion a
211 brownfield site rehabilitation agreement, is ~~shall be~~ relieved
212 of:

213 1. Further liability for remediation of the contaminated
214 site or sites to the state and to third parties. ~~and of~~

215 2. Liability in contribution to any other party who has or
216 may incur cleanup liability for the contaminated site or sites.

217 3. Liability for claims of any person for property damage,
218 including, but not limited to, diminished value of real property
219 or improvements; lost or delayed rent, sale, or use of real
220 property or improvements; or stigma to real property or
221 improvements caused by contamination addressed by a brownfield
222 site rehabilitation agreement. Notwithstanding any other
223 provision of this chapter, this subparagraph applies to causes
224 of action accruing on or after July 1, 2014. This subparagraph
225 does not apply to a person who commits fraud in demonstrating
226 site conditions or completing site rehabilitation of a property
227 subject to a brownfield site rehabilitation agreement or who
228 exacerbates contamination of a property subject to a brownfield
229 site rehabilitation agreement in violation of applicable laws,
230 which causes property damages.

231 (b) This section does not limit ~~shall not be construed as a~~
232 ~~limitation on~~ the right of a third party other than the state to

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233 pursue an action for damages to persons for bodily harm ~~property~~
234 ~~or person~~; however, such an action may not compel site
235 rehabilitation in excess of that required in the approved
236 brownfield site rehabilitation agreement or otherwise required
237 by the department or approved local pollution control program.

238 Section 4. This act shall take effect July 1, 2014.