

By the Committees on Judiciary; and Environmental Preservation and Conservation; and Senator Altman

590-03543-14

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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 damage 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 procedures for the public
76 hearings on the proposed resolution must be in the form
77 established in s. 166.041(3)(c)2. For counties, the governing
78 body shall adopt the resolution in accordance with the
79 procedures outlined in s. 125.66, except that the procedures for
80 the public hearings on the proposed resolution must be in the
81 form established in s. 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 a public hearing must be made in a newspaper
108 of general circulation in the area, must be made in ethnic
109 newspapers or local community bulletins, must be posted in the
110 affected area, and must be announced at a scheduled meeting of
111 the local governing body before the actual public hearing.

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

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

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

145 (b) Local government-proposed brownfield area designation

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

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

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

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

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175 or the creation of recreational areas, conservation areas, or
176 parks.~~†~~

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

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

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

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

200 (12) A local government that designates a brownfield area
201 pursuant to this section is not required to use the term
202 “brownfield area” within the name of the brownfield area
203 designated by the local government.

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

206 376.82 Eligibility criteria and liability protection.—

207 (2) LIABILITY PROTECTION.—

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

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

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

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

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233 (b) This section does not limit ~~shall not be construed as a~~
234 ~~limitation on~~ the right of a third party other than the state to
235 pursue an action for damages to persons for bodily harm ~~property~~
236 ~~or person~~; however, such an action may not compel site
237 rehabilitation in excess of that required in the approved
238 brownfield site rehabilitation agreement or otherwise required
239 by the department or approved local pollution control program.

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