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1 A bill to be entitled
2 An act relating to brownfields; amending s. 212.08,
3 F.S.; revising the definition of the term "housing
4 project" for the purpose of tax exemptions relating to
5 building materials used in redevelopment projects;
6 authorizing tax exemptions for the substantial
7 rehabilitation of affordable housing in a designated
8 brownfield area; amending s. 376.78, F.S.; revising
9 legislative intent with regard to community
10 revitalization in certain areas; amending s. 376.80,
11 F.S.; revising procedures for designation of
12 brownfield areas by local governments; authorizing
13 local governments to use a term other than "brownfield
14 area" when naming such areas; amending s. 376.82,
15 F.S.; providing relief of liability for property
16 damages for entities that execute and implement
17 certain brownfield site rehabilitation agreements;
18 providing for retroactive application of such
19 liability relief to certain causes of action;
20 providing for applicability; providing an effective
21 date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraph (o) of subsection (5) of section
26 212.08, Florida Statutes, is amended to read:

27 212.08 Sales, rental, use, consumption, distribution, and
28 storage tax; specified exemptions.—The sale at retail, the

29 rental, the use, the consumption, the distribution, and the
 30 storage to be used or consumed in this state of the following
 31 are hereby specifically exempt from the tax imposed by this
 32 chapter.

33 (5) EXEMPTIONS; ACCOUNT OF USE.—

34 (o) Building materials in redevelopment projects.—

35 1. As used in this paragraph, the term:

36 a. "Building materials" means tangible personal property
 37 that becomes a component part of a housing project or a mixed-
 38 use project.

39 b. "Housing project" means:

40 (I) The conversion of an existing manufacturing or
 41 industrial building to housing units in an urban high-crime
 42 area, enterprise zone, empowerment zone, Front Porch Community,
 43 designated brownfield area, or urban infill area and in which
 44 the developer agrees to set aside at least 20 percent of the
 45 housing units in the project for low-income and moderate-income
 46 persons; or

47 (II) The construction or substantial rehabilitation of
 48 affordable housing in a designated brownfield area ~~of affordable~~
 49 ~~housing~~ for persons described in s. 420.0004(9), (11), (12), or
 50 (17) or in s. 159.603(7).

51 c. "Mixed-use project" means the conversion of an existing
 52 manufacturing or industrial building to mixed-use units that
 53 include artists' studios, art and entertainment services, or
 54 other compatible uses. A mixed-use project must be located in an
 55 urban high-crime area, enterprise zone, empowerment zone, Front
 56 Porch Community, designated brownfield area, or urban infill

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57 | area, and the developer must agree to set aside at least 20
58 | percent of the square footage of the project for low-income and
59 | moderate-income housing.

60 | d. "Substantially completed" has the same meaning as
61 | provided in s. 192.042(1).

62 | 2. Building materials used in the construction of a
63 | housing project or mixed-use project or in the substantial
64 | rehabilitation of affordable housing in a designated brownfield
65 | area for persons described in s. 420.0004(9), (11), (12), or
66 | (17) or in s. 159.603(7) are exempt from the tax imposed by this
67 | chapter upon an affirmative showing to the satisfaction of the
68 | department that the requirements of this paragraph have been
69 | met. This exemption inures to the owner through a refund of
70 | previously paid taxes. To receive this refund, the owner must
71 | file an application under oath with the department which
72 | includes:

73 | a. The name and address of the owner.

74 | b. The address and assessment roll parcel number of the
75 | project for which a refund is sought.

76 | c. A copy of the building permit issued for the project.

77 | d. A certification by the local building code inspector
78 | that the project is substantially completed.

79 | e. A sworn statement, under penalty of perjury, from the
80 | general contractor licensed in this state with whom the owner
81 | contracted to construct the project, which statement lists the
82 | building materials used in the construction of the project and
83 | the actual cost thereof, and the amount of sales tax paid on
84 | these materials. If a general contractor was not used, the owner

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85 shall provide this information in a sworn statement, under
86 penalty of perjury. Copies of invoices evidencing payment of
87 sales tax must be attached to the sworn statement.

88 3. An application for a refund under this paragraph must
89 be submitted to the department within 6 months after the date
90 the project is deemed to be substantially completed by the local
91 building code inspector. Within 30 working days after receipt of
92 the application, the department shall determine if it meets the
93 requirements of this paragraph. A refund approved pursuant to
94 this paragraph shall be made within 30 days after formal
95 approval of the application by the department.

96 4. The department shall establish by rule an application
97 form and criteria for establishing eligibility for exemption
98 under this paragraph.

99 5. The exemption shall apply to purchases of materials on
100 or after July 1, 2000.

101 Section 2. Subsection (8) of section 376.78, Florida
102 Statutes, is amended to read:

103 376.78 Legislative intent.—The Legislature finds and
104 declares the following:

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

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113 socioeconomic factors. Brownfields redevelopment, properly done,
114 can be a significant element in community revitalization,
115 especially within community redevelopment areas, empowerment
116 zones, closed military bases, or designated brownfield pilot
117 project areas.

118 Section 3. Subsections (1) and (2) of section 376.80,
119 Florida Statutes, are amended, and subsection (12) is added to
120 that section, to read:

121 376.80 Brownfield program administration process.—

122 (1) (a) The local government with jurisdiction over a
123 proposed brownfield area shall designate such area pursuant to
124 this section.

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

126 1. The jurisdictional local government, except as provided
127 in paragraph (2) (c), the designation criteria under paragraph
128 (2) (a) apply.

129 2. Any person, other than a governmental entity,
130 including, but not limited to, individuals, corporations,
131 partnerships, limited liability companies, community-based
132 organizations, or not-for-profit corporations, the designation
133 criteria under paragraph (2) (b) apply.

134 (c) The following provisions apply to all proposed
135 brownfield area designations:

136 1. A local government with jurisdiction over the
137 brownfield area must notify the department of its decision to
138 designate a brownfield area for rehabilitation for the purposes
139 of ss. 376.77–376.86. The notification must include a resolution
140 adopted~~7~~ by the local government body. The local government

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141 shall notify the department of the designation within 30 days
142 after adoption of the resolution.

143 2. The brownfield area designation must be carried out by
144 a resolution adopted by the jurisdictional local government, to
145 which includes ~~is attached~~ a map adequate to clearly delineate
146 exactly which parcels are to be included in the brownfield area
147 or alternatively a less-detailed map accompanied by a detailed
148 legal description of the brownfield area. The resolution shall
149 be adopted pursuant to the procedures and requirements of the
150 local government in effect at the time of the proposed
151 designation, except as otherwise provided in this section.

152 3. If a property owner within the area proposed for
153 designation by the local government requests in writing to have
154 his or her property removed from the proposed designation, the
155 local government shall grant the request. ~~For municipalities,~~
156 ~~the governing body shall adopt the resolution in accordance with~~
157 ~~the procedures outlined in s. 166.041, except that the notice~~
158 ~~for the public hearings on the proposed resolution must be in~~
159 ~~the form established in s. 166.041(3)(c)2. For counties, the~~
160 ~~governing body shall adopt the resolution in accordance with the~~
161 ~~procedures outlined in s. 125.66, except that the notice for the~~
162 ~~public hearings on the proposed resolution shall be in the form~~
163 ~~established in s. 125.66(4)(b)2.~~

164 (d) Compliance with the following provisions is required
165 before designation of a proposed brownfield area under paragraph
166 (2) (a) or paragraph (2) (b):

167 1. Before any public hearings that may be required
168 pursuant to the resolution adoption requirements of the local

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169 government in effect at the time of the proposed designation,
170 the local government or the person proposing the designation
171 must convene and conduct at least one community public meeting
172 as close as reasonably practicable to the proposed brownfield
173 area to provide an opportunity for public input on the size of
174 the area, the objectives for rehabilitation, job opportunities,
175 anticipated economic developments, consideration of neighborhood
176 residents' concerns, and other relevant local concerns.

177 2. Notice of the community public meeting must be
178 published in a newspaper of general circulation in the local
179 area of the proposed brownfield area. The notice must be at
180 least 16 square inches in size and must also be published in at
181 least one local community bulletin or other local publication.

182 3. Notice of the community public meeting must be posted
183 in at least one readily visible location within the proposed
184 brownfield area.

185 4. Announcement of the proposed designation must be made
186 at a previously conducted meeting of the local governing body.

187 (2) (a) If a local government proposes to designate a
188 brownfield area that is outside a community redevelopment area
189 ~~areas~~, enterprise zone zones, empowerment zone zones, closed
190 military base bases, or designated brownfield pilot project area
191 ~~areas~~, the local government shall provide notice, adopt the
192 resolution, and conduct the community public meeting and conduct
193 any required the public hearings pursuant to in accordance with
194 ~~the requirements of subsection (1), except at least one of the~~
195 ~~required public hearings shall be conducted as close as~~
196 ~~reasonably practicable to the area to be designated to provide~~

197 ~~an opportunity for public input on the size of the area, the~~
 198 ~~objectives for rehabilitation, job opportunities and economic~~
 199 ~~developments anticipated, neighborhood residents'~~
 200 ~~considerations, and other relevant local concerns. Notice of the~~
 201 ~~public hearing must be made in a newspaper of general~~
 202 ~~circulation in the area and the notice must be at least 16~~
 203 ~~square inches in size, must be in ethnic newspapers or local~~
 204 ~~community bulletins, must be posted in the affected area, and~~
 205 ~~must be announced at a scheduled meeting of the local governing~~
 206 ~~body before the actual public hearing. At a public hearing to~~
 207 ~~designate the proposed brownfield area In determining the areas~~
 208 ~~to be designated, the local government must consider:~~

- 209 1. Whether the brownfield area warrants economic
- 210 development and has a reasonable potential for such activities;
- 211 2. Whether the proposed area to be designated represents a
- 212 reasonably focused approach and is not overly large in
- 213 geographic coverage;
- 214 3. Whether the area has potential to interest the private
- 215 sector in participating in rehabilitation; and
- 216 4. Whether the area contains sites or parts of sites
- 217 suitable for limited recreational open space, cultural, or
- 218 historical preservation purposes.

219 (b) For designation of a brownfield area that is proposed
 220 by a person other than the local government, the a local
 221 government with jurisdiction over the proposed brownfield area
 222 shall adopt a resolution to designate the a brownfield area
 223 pursuant to subsection (1), if, at the public hearing to adopt
 224 the resolution, the person establishes under the provisions of

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225 | ~~this act provided~~ that:

226 | 1. A person who owns or controls a potential brownfield
227 | site is requesting the designation and has agreed to
228 | rehabilitate and redevelop the brownfield site;

229 | 2. The rehabilitation and redevelopment of the proposed
230 | brownfield site will result in economic productivity of the
231 | area, along with the creation of at least 5 new permanent jobs
232 | at the brownfield site that are full-time equivalent positions
233 | not associated with the implementation of the brownfield site
234 | rehabilitation agreement and that are not associated with
235 | redevelopment project demolition or construction activities
236 | pursuant to the redevelopment of the proposed brownfield site or
237 | area. However, the job creation requirement do ~~shall~~ not apply
238 | to the rehabilitation and redevelopment of a brownfield site
239 | that will provide affordable housing as defined in s. 420.0004
240 | or the creation of recreational areas, conservation areas, or
241 | parks;

242 | 3. The redevelopment of the proposed brownfield site is
243 | consistent with the local comprehensive plan and is a
244 | permissible use under the applicable local land development
245 | regulations;

246 | 4. Notice of the proposed rehabilitation of the brownfield
247 | area has been provided to neighbors and nearby residents of the
248 | proposed area to be designated pursuant to subsection (1), and
249 | the person proposing the area for designation has afforded to
250 | those receiving notice the opportunity for comments and
251 | suggestions about rehabilitation. Notice pursuant to this
252 | subparagraph must be made in a newspaper of general circulation

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253 | in the area, at least 16 square inches in size, and the notice
254 | must be posted in the affected area; and

255 | 5. The person proposing the area for designation has
256 | provided reasonable assurance that he or she has sufficient
257 | financial resources to implement and complete the rehabilitation
258 | agreement and redevelopment of the brownfield site.

259 | (c) Paragraphs (a) and (b) do not apply to a proposed
260 | brownfield area if the local government proposes to designate
261 | the brownfield area inside a community redevelopment area,
262 | enterprise zone, empowerment zone, closed military base, or
263 | designated brownfield pilot project area and the local
264 | government complies with paragraph (1)(c).

265 | (d)~~(e)~~ The designation of a brownfield area and the
266 | identification of a person responsible for brownfield site
267 | rehabilitation simply entitles the identified person to
268 | negotiate a brownfield site rehabilitation agreement with the
269 | department or approved local pollution control program.

270 | (12) A local government that designates a brownfield area
271 | pursuant to this section is not required to use the term
272 | "brownfield area" within the name of the brownfield area
273 | proposed for designation by the local government.

274 | Section 4. Paragraphs (a) and (b) of subsection (2) of
275 | section 376.82, Florida Statutes, are amended to read:

276 | 376.82 Eligibility criteria and liability protection.—

277 | (2) LIABILITY PROTECTION.—

278 | (a) Any person, including his or her successors and
279 | assigns, who executes and implements to successful completion a
280 | brownfield site rehabilitation agreement, shall be relieved of:

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

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

285 3. Liability for claims of any person for property
 286 damages, including, but not limited to, diminished value of real
 287 property or improvements; lost or delayed rent, sale, or use of
 288 real property or improvements; or stigma to real property or
 289 improvements caused by contamination addressed by a brownfield
 290 site rehabilitation agreement. Notwithstanding any other
 291 provision of this chapter, this subparagraph applies to causes
 292 of action accruing on or after July 1, 2013, and applies
 293 retroactivity to causes of action accruing before July 1, 2013,
 294 for which a lawsuit has not been filed before July 1, 2013.

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

302 Section 5. This act shall take effect July 1, 2013.