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2013

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; authorizing
7 local governments to use a term other than "brownfield
8 area" when naming such areas; amending s. 376.82,
9 F.S.; providing relief of liability for property
10 damages for entities that execute and implement
11 certain brownfield site rehabilitation agreements;
12 providing for applicability; providing an effective
13 date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Subsection (8) of section 376.78, Florida
18 Statutes, is amended to read:

19 376.78 Legislative intent.—The Legislature finds and
20 declares the following:

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



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29 socioeconomic factors. Brownfields redevelopment, properly done,
30 can be a significant element in community revitalization,
31 especially within community redevelopment areas, enterprise
32 zones, empowerment zones, closed military bases, or designated
33 brownfield pilot project areas.

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

37 376.80 Brownfield program administration process.—

38 (1) The following general procedures apply to brownfield
39 designations:

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

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

44 1. The jurisdictional local government, the designation
45 criteria under paragraph (2) (a) apply, except if the local
46 government proposes to designate as a brownfield area a
47 specified redevelopment area as provided in paragraph (2) (b).

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

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

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



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

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

80 | 3. Right to be removed from proposed brownfield area.—If a
81 | property owner within the area proposed for designation by the
82 | local government requests in writing to have his or her property
83 | removed from the proposed designation, the local government
84 | shall grant the request. ~~For municipalities, the governing body~~



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

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

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

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

111 (2)(a) Local government-proposed brownfield area
112 designation outside specified redevelopment areas.-If a local



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

- 134 1. Whether the brownfield area warrants economic
135 development and has a reasonable potential for such activities;
- 136 2. Whether the proposed area to be designated represents a
137 reasonably focused approach and is not overly large in
138 geographic coverage;
- 139 3. Whether the area has potential to interest the private
140 sector in participating in rehabilitation; and



141 4. Whether the area contains sites or parts of sites
142 suitable for limited recreational open space, cultural, or
143 historical preservation purposes.

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

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

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

163 2. The rehabilitation and redevelopment of the proposed
164 brownfield site will result in economic productivity of the
165 area, along with the creation of at least 5 new permanent jobs
166 at the brownfield site that are full-time equivalent positions
167 not associated with the implementation of the brownfield site
168 rehabilitation agreement and that are not associated with



169 redevelopment project demolition or construction activities
170 pursuant to the redevelopment of the proposed brownfield site or
171 area. However, the job creation requirement does ~~shall~~ not apply
172 to the rehabilitation and redevelopment of a brownfield site
173 that will provide affordable housing as defined in s. 420.0004
174 or the creation of recreational areas, conservation areas, or
175 parks. ~~†~~

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

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

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

193 (d) ~~(e)~~ Negotiation of brownfield site rehabilitation
194 agreement.—The designation of a brownfield area and the
195 identification of a person responsible for brownfield site
196 rehabilitation simply entitles the identified person to



197 negotiate a brownfield site rehabilitation agreement with the
198 department or approved local pollution control program.

199 (12) A local government that designates a brownfield area
200 pursuant to this section is not required to use the term
201 "brownfield area" within the name of the brownfield area
202 proposed for designation by the local government.

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

205 376.82 Eligibility criteria and liability protection.—

206 (2) LIABILITY PROTECTION.—

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

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

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

214 3. Liability for claims of any person for property
215 damages, including, but not limited to, diminished value of real
216 property or improvements; lost or delayed rent, sale, or use of
217 real property or improvements; or stigma to real property or
218 improvements caused by contamination addressed by a brownfield
219 site rehabilitation agreement. Notwithstanding any other
220 provision of this chapter, this subparagraph applies to causes
221 of action accruing on or after July 1, 2013.

222 (b) This section does not limit ~~shall not be construed as~~
223 ~~a limitation on~~ the right of a third party other than the state
224 to pursue an action for damages to persons for bodily harm



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225 | ~~property or person~~; however, such an action may not compel site
226 | rehabilitation in excess of that required in the approved
227 | brownfield site rehabilitation agreement or otherwise required
228 | by the department or approved local pollution control program.
229 | Section 4. This act shall take effect July 1, 2013.