

By the Committees on Community Affairs; and Environmental Preservation and Conservation; and Senator Altman

578-03484-13

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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 relief of liability for  
12 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:

18  
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, except if the local  
48 government proposes to designate as a brownfield area 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 department following adoption.—A local  
58 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. The resolution shall be adopted pursuant to the  
74 procedures and requirements of the local government in effect at  
75 the time of the proposed designation, except as otherwise  
76 provided in this section.

77 3. Right to be removed from proposed brownfield area.—If a  
78 property owner within the area proposed for designation by the  
79 local government requests in writing to have his or her property  
80 removed from the proposed designation, the local government  
81 shall grant the request. For municipalities, the governing body  
82 shall adopt the resolution in accordance with the procedures  
83 outlined in s. 166.041, except that the notice for the public  
84 hearings on the proposed resolution must be in the form  
85 established in s. 166.041(3)(c)2. For counties, the governing  
86 body shall adopt the resolution in accordance with the  
87 procedures outlined in s. 125.66, except that the notice for the

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88 ~~public hearings on the proposed resolution shall be in the form~~  
89 ~~established in s. 125.66(4)(b)2.~~

90 4. Notice and public hearing requirements.—Compliance with  
91 the following provisions is required before designation of a  
92 proposed brownfield area under paragraph (2)(a) or paragraph  
93 (2)(c):

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

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

107 (2)(a) Local government-proposed brownfield area  
108 designation outside specified redevelopment areas.—If a local  
109 government proposes to designate a brownfield area that is  
110 outside a community redevelopment ~~area~~ ~~areas~~, enterprise zone  
111 ~~zones~~, empowerment zone ~~zones~~, closed military base ~~bases~~, or  
112 designated brownfield pilot project area ~~areas~~, the local  
113 government shall provide notice, adopt the resolution, and  
114 conduct ~~the~~ public hearings pursuant to paragraph in accordance  
115 ~~with the requirements of subsection (1)(c).~~ At a public hearing  
116 to designate the proposed brownfield area, ~~except at least one~~

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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. In determining the areas~~  
129 ~~to be designated, the local government must consider:~~

130 1. Whether the brownfield area warrants economic  
131 development and has a reasonable potential for such activities;

132 2. Whether the proposed area to be designated represents a  
133 reasonably focused approach and is not overly large in  
134 geographic coverage;

135 3. Whether the area has potential to interest the private  
136 sector in participating in rehabilitation; and

137 4. Whether the area contains sites or parts of sites  
138 suitable for limited recreational open space, cultural, or  
139 historical preservation purposes.

140 (b) Local government-proposed brownfield area designation  
141 within specified redevelopment areas.-Paragraph (a) does not  
142 apply to a proposed brownfield area if the local government  
143 proposes to designate the brownfield area inside a community  
144 redevelopment area, enterprise zone, empowerment zone, closed  
145 military base, or designated brownfield pilot project area and

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146 the local government complies with paragraph (1)(c).

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

156 1. A person who owns or controls a potential brownfield  
157 site is requesting the designation and has agreed to  
158 rehabilitate and redevelop the brownfield site.†

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

172 3. The redevelopment of the proposed brownfield site is  
173 consistent with the local comprehensive plan and is a  
174 permittable use under the applicable local land development

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175 regulations.~~†~~

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

185 5. The person proposing the area for designation has  
186 provided reasonable assurance that he or she has sufficient  
187 financial resources to implement and complete the rehabilitation  
188 agreement and redevelopment of the brownfield site.

189 (d) ~~(e)~~ Negotiation of brownfield site rehabilitation  
190 agreement.—The designation of a brownfield area and the  
191 identification of a person responsible for brownfield site  
192 rehabilitation simply entitles the identified person to  
193 negotiate a brownfield site rehabilitation agreement with the  
194 department or approved local pollution control program.

195 (12) A local government that designates a brownfield area  
196 pursuant to this section is not required to use the term  
197 "brownfield area" within the name of the brownfield area  
198 proposed for designation by the local government.

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

201 376.82 Eligibility criteria and liability protection.—

202 (2) LIABILITY PROTECTION.—

203 (a) Any person, including his or her successors and

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204 assigns, who executes and implements to successful completion a  
205 brownfield site rehabilitation agreement, shall be relieved of:

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

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

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

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

225 Section 4. This act shall take effect July 1, 2013.