

By Senator Altman

16-00492A-13

2013554

1 A bill to be entitled
2 An act relating to brownfield areas; amending s.
3 212.08, F.S.; modifying definitions; amending s.
4 376.78, F.S.; identifying areas in which brownfield
5 redevelopment may be especially effective; amending s.
6 376.80, F.S.; requiring a local government to comply
7 with certain provisions when designating brownfield
8 areas; providing procedures for adopting a resolution;
9 providing that a property owner may request that his
10 or her property be removed from the proposed
11 designation before adoption of a resolution; providing
12 notification requirements and procedures for public
13 notice; requiring a local government to designate a
14 brownfield area if certain criteria are met; amending
15 s. 376.82, F.S.; narrowing the liability of a person
16 who successfully completes a brownfield site
17 rehabilitation agreement; providing for retroactive
18 application; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Paragraph (o) of subsection (5) of section
23 212.08, Florida Statutes, is amended to read:

24 212.08 Sales, rental, use, consumption, distribution, and
25 storage tax; specified exemptions.—The sale at retail, the
26 rental, the use, the consumption, the distribution, and the
27 storage to be used or consumed in this state of the following
28 are hereby specifically exempt from the tax imposed by this
29 chapter.

16-00492A-13

2013554

30 (5) EXEMPTIONS; ACCOUNT OF USE.—

31 (o) *Building materials in redevelopment projects.*—

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

33 a. "Building materials" means tangible personal property
34 that becomes a component part of a housing project or a mixed-
35 use project.

36 b. "Housing project" means:

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

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

48 c. "Mixed-use project" means the conversion of an existing
49 manufacturing or industrial building to mixed-use units that
50 include artists' studios, art and entertainment services, or
51 other compatible uses. A mixed-use project must be located in an
52 urban high-crime area, enterprise zone, empowerment zone, Front
53 Porch Community, designated brownfield area, or urban infill
54 area, and the developer must agree to set aside at least 20
55 percent of the square footage of the project for low-income and
56 moderate-income housing.

57 d. "Substantially completed" has the same meaning as
58 provided in s. 192.042(1).

16-00492A-13

2013554__

59 2. Building materials used in the construction of a housing
60 project or mixed-use project, or in the substantial
61 rehabilitation of affordable housing as described in paragraph
62 (1) (b), are exempt from the tax imposed by this chapter upon an
63 affirmative showing to the satisfaction of the department that
64 the requirements of this paragraph have been met. This exemption
65 inures to the owner through a refund of previously paid taxes.
66 To receive this refund, the owner must file an application under
67 oath with the department which includes:

- 68 a. The name and address of the owner.
69 b. The address and assessment roll parcel number of the
70 project for which a refund is sought.
71 c. A copy of the building permit issued for the project.
72 d. A certification by the local building code inspector
73 that the project is substantially completed.
74 e. A sworn statement, under penalty of perjury, from the
75 general contractor licensed in this state with whom the owner
76 contracted to construct the project, ~~which statement~~ lists the
77 building materials used in the construction of the project and
78 the actual cost thereof, and the amount of sales tax paid on
79 these materials. If a general contractor was not used, the owner
80 shall provide this information in a sworn statement, under
81 penalty of perjury. Copies of invoices evidencing payment of
82 sales tax must be attached to the sworn statement.

83 3. An application for a refund under this paragraph must be
84 submitted to the department within 6 months after the date the
85 project is deemed by the local building code inspector to be
86 substantially completed ~~by the local building code inspector~~.
87 Within 30 working days after receipt of the application, the

16-00492A-13

2013554

88 department shall determine if it meets the requirements of this
89 paragraph. A refund must ~~approved pursuant to this paragraph~~
90 ~~shall~~ be made within 30 days after formal approval of the refund
91 application by the department.

92 4. The department shall establish by rule an application
93 form and criteria for establishing eligibility for exemption
94 under this paragraph.

95 5. The exemption applies ~~shall apply~~ to purchases of
96 materials on or after July 1, 2000.

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

99 376.78 Legislative intent.—The Legislature finds and
100 declares the following:

101 (8) The existence of brownfields within a community may
102 contribute to, or may be a symptom of, overall community
103 decline, including issues of human disease and illness, crime,
104 educational and employment opportunities, and infrastructure
105 decay. The environment is an important element of the quality of
106 life in any community, along with economic opportunity,
107 educational achievement, access to health care, housing quality
108 and availability, provision of governmental services, and other
109 socioeconomic factors. Brownfields redevelopment, properly done,
110 can be a significant element in community revitalization,
111 especially within community redevelopment areas, empowerment
112 zones, closed military bases, or designated brownfield pilot
113 project areas.

114 Section 3. Subsections (1) and (2) of section 376.80,
115 Florida Statutes, are amended to read:

116 376.80 Brownfield program administration process.—

16-00492A-13

2013554

117 (1) If a proposed brownfield area is to be designated as ~~A~~
118 ~~local government with jurisdiction over the brownfield area must~~
119 ~~notify the department of its decision to designate a brownfield~~
120 ~~area for rehabilitation for the purposes of ss. 376.77-376.86,~~
121 the designation must be effectuated by a resolution adopted at a
122 public hearing held by the local government that has
123 jurisdiction over the area. The resolution must include a map
124 that clearly delineates the parcels that are included in the
125 brownfield area or, alternatively, a less-detailed map
126 accompanied by a detailed legal description of the brownfield
127 area. The resolution must be adopted in accordance with the
128 resolution adoption procedures and requirements of the local
129 government in effect at the time of the proposal.

130 (a) Before conducting a public hearing that may be required
131 under the resolution adoption procedures of the local
132 government, the local government or the person proposing the
133 designation must convene and conduct at least one community
134 forum as geographically close as reasonably practicable to the
135 proposed brownfield area in order to provide an opportunity for
136 public input on the size of the area, the objectives for
137 rehabilitation, job opportunities, anticipated economic
138 development, the concerns of neighborhood residents, and other
139 relevant concerns.

140 (b) An announcement of the public hearing must be made at
141 the prior community forum.

142 (c) Notice of the public hearing on the resolution must be:
143 1. At least 16 square inches in size;
144 2. Published in a newspaper of general circulation in the
145 proposed brownfield area and in at least one local bulletin or

16-00492A-13

2013554

146 other community publication; and

147 3. Posted at one or more readily visible locations within
148 the proposed brownfield area.

149 (d) If a property owner within the area proposed for
150 designation makes a written request to have his or her property
151 removed from the proposed designation before adoption of the
152 resolution, the local government shall grant the request. The
153 ~~notification must include a resolution, by the local government~~
154 ~~body, to which is attached a map adequate to clearly delineate~~
155 ~~exactly which parcels are to be included in the brownfield area~~
156 ~~or alternatively a less-detailed map accompanied by a detailed~~
157 ~~legal description of the brownfield area. If a property owner~~
158 ~~within the area proposed for designation by the local government~~
159 ~~requests in writing to have his or her property removed from the~~
160 ~~proposed designation, the local government shall grant the~~
161 ~~request. For municipalities, the governing body shall adopt the~~
162 ~~resolution in accordance with the procedures outlined in s.~~
163 ~~166.041, except that the notice for the public hearings on the~~
164 ~~proposed resolution must be in the form established in s.~~
165 ~~166.041(3)(c)2. For counties, the governing body shall adopt the~~
166 ~~resolution in accordance with the procedures outlined in s.~~
167 ~~125.66, except that the notice for the public hearings on the~~
168 ~~proposed resolution shall be in the form established in s.~~
169 ~~125.66(4)(b)2.~~

170 (e) The local government with jurisdiction over the
171 brownfield area shall notify the department of the adopted
172 resolution within 30 days after such adoption.

173 (2)(a) If the brownfield area designation is proposed by:

174 (a) A local government that has jurisdiction over the area

16-00492A-13

2013554

175 and the area is located within an existing community
176 redevelopment area, enterprise zone, empowerment zone, closed
177 military base, or designated brownfield pilot project, the local
178 government is exempt from paragraphs (a)-(c) of subsection (1).
179 Local governments that propose designation of a brownfield area
180 pursuant to this paragraph or paragraph (b) are not required to
181 use the term "brownfield area" within the name of the area
182 proposed for designation.

183 (b) The ~~a local government proposes to designate a~~
184 ~~brownfield area that has jurisdiction over the area and the area~~
185 ~~is outside a community redevelopment area areas, enterprise zone~~
186 ~~zones, empowerment zone zones, closed military base bases, or~~
187 ~~designated brownfield pilot project area areas, the local~~
188 ~~government may designate the brownfield area shall adopt the~~
189 ~~resolution and conduct the public hearings in accordance with~~
190 ~~the requirements of subsection (1), except at least one of the~~
191 ~~required public hearings shall be conducted as close as~~
192 ~~reasonably practicable to the area to be designated to provide~~
193 ~~an opportunity for public input on the size of the area, the~~
194 ~~objectives for rehabilitation, job opportunities and economic~~
195 ~~developments anticipated, neighborhood residents'~~
196 ~~considerations, and other relevant local concerns. Notice of the~~
197 ~~public hearing must be made in a newspaper of general~~
198 ~~circulation in the area and the notice must be at least 16~~
199 ~~square inches in size, must be in ethnic newspapers or local~~
200 ~~community bulletins, must be posted in the affected area, and~~
201 ~~must be announced at a scheduled meeting of the local governing~~
202 ~~body before the actual public hearing. However, at the public~~
203 hearing to adopt the resolution to designate the proposed

16-00492A-13

2013554

204 brownfield area ~~In determining the areas to be designated,~~ the
205 local government must consider:

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

208 2. Whether the proposed area to be designated represents a
209 reasonably focused approach and is not overly large in
210 geographic coverage;

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

213 4. Whether the area contains sites or parts of sites
214 suitable for limited recreational open space or for cultural
215 or historical preservation purposes.

216 (c) Any person other than a governmental entity, including,
217 but not limited to, individuals, corporations, partnerships,
218 limited liability companies, community-based organizations, or
219 not-for-profit corporations, the

220 ~~(b) A local government that has jurisdiction over the~~
221 proposed brownfield area shall adopt a resolution to designate a
222 brownfield area in accordance with subsection (1) if the person
223 requesting the designation meets the following criteria at the
224 public hearing held to adopt the resolution ~~under the provisions~~
225 ~~of this act provided that:~~

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

230 2. The rehabilitation and redevelopment of the proposed
231 brownfield site will result in economic productivity of the
232 area, including ~~along with~~ the creation of at least five ~~5~~ new

16-00492A-13

2013554

233 permanent jobs at the brownfield site which ~~that~~ are full-time
234 equivalent positions not associated with the implementation of
235 the brownfield site rehabilitation agreement and which ~~that~~ are
236 not associated with redevelopment project demolition or
237 construction activities pursuant to the redevelopment of the
238 proposed brownfield site or area. However, the job creation
239 requirement does ~~shall~~ not apply to the rehabilitation and
240 redevelopment of a brownfield site which ~~that~~ will provide
241 affordable housing as defined in s. 420.0004 or the creation of
242 recreational areas, conservation areas, or parks;

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

247 4. In accordance with subsection (1), notice of the
248 proposed rehabilitation of the brownfield area has been
249 provided, by the convening of a community forum or other means,
250 to neighbors and nearby residents of the proposed area to be
251 designated, and the person proposing the area for designation
252 has afforded to those receiving notice the opportunity for
253 comments and suggestions about rehabilitation. ~~Notice pursuant~~
254 ~~to this subparagraph must be made in a newspaper of general~~
255 ~~circulation in the area, at least 16 square inches in size, and~~
256 ~~the notice must be posted in the affected area; and~~

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

261

16-00492A-13

2013554

262 ~~(e)~~ The designation of a brownfield area and the identification
263 of a person responsible for brownfield site rehabilitation under
264 this subsection simply entitles the identified person to
265 negotiate a brownfield site rehabilitation agreement with the
266 department or approved local pollution control program.

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

269 376.82 Eligibility criteria and liability protection.—

270 (2) LIABILITY PROTECTION.—

271 (a) Any person, including his or her successors and
272 assigns, who executes and implements to successful completion a
273 brownfield site rehabilitation agreement, is ~~shall be~~ relieved
274 of:

275 1. Further liability for remediation of the contaminated
276 site or sites to the state and to third parties; and of

277 2. Liability in contribution to any other party who has or
278 may incur cleanup liability for the contaminated site or sites;
279 and—

280 3. Liability for claims of any person for property damage,
281 including diminished value of real property or improvements;
282 lost or delayed rent, sale, or use of real property or
283 improvements; or stigma to real property or improvements caused
284 by contamination addressed by a brownfield site rehabilitation
285 agreement. Notwithstanding any other provision of this chapter,
286 this subparagraph applies to causes of action accruing on or
287 after July 1, 2013, and applies retroactively to causes of
288 action accruing before July 1, 2013, for which a lawsuit has not
289 been filed before July 1, 2013.

290 (b) This section does ~~shall~~ not limit ~~be construed as a~~

16-00492A-13

2013554__

291 ~~limitation on~~ the right of a third party other than the state to
292 pursue an action for damages to persons ~~property or person~~;
293 however, that ~~such an~~ action may not compel site rehabilitation
294 in excess of that required in the approved brownfield site
295 rehabilitation agreement or otherwise required by the department
296 or approved local pollution control program.

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