

CHAPTER 2014-114

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 325

An act relating to brownfields; amending s. 376.78, F.S.; revising legislative intent with regard to community revitalization in certain areas; amending s. 376.80, F.S.; revising procedures for designation of brownfield areas; authorizing local governments to use a term other than “brownfield area” when naming such areas; amending s. 376.82, F.S.; providing certain liability protection against claims of property damages; providing applicability; providing an effective date.

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

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

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

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

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

376.80 Brownfield program administration process.—

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

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

(b) For a brownfield area designation proposed by:

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

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

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

1. Notification to department following adoption.—A local government with jurisdiction over the brownfield area must notify the department, and, if applicable, the local pollution control program under s. 403.182, of its decision to designate a brownfield area for rehabilitation for the purposes of ss. 376.77-376.86. The notification must include a resolution adopted, by the local government body. The local government shall notify the department, and, if applicable, the local pollution control program under s. 403.182, of the designation within 30 days after adoption of the resolution.

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

3. Right to be removed from proposed brownfield area.—If a property owner within the area proposed for designation by the local government requests in writing to have his or her property removed from the proposed designation, the local government shall grant the request. For municipalities, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 166.041, except that the notice for the public hearings on the proposed resolution must be in the form established in s. 166.041(3)(c)2. For counties, the governing body shall adopt the resolution in accordance with the procedures outlined in s. 125.66, except that the notice for the public hearings on the proposed resolution shall be in the form established in s. 125.66(4)(b)2.

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

a. At least one of the required public hearings shall be conducted as closely as is reasonably practicable to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for

rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns.

b. Notice of a public hearing must be made in a newspaper of general circulation in the area, must be made in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing.

~~(2)(a) Local government-proposed brownfield area designation outside specified redevelopment areas.—If a local government proposes to designate a brownfield area that is outside a community redevelopment area areas, enterprise zone zones, empowerment zone zones, closed military base bases, or designated brownfield pilot project area areas, the local government shall provide notice, adopt the resolution, and conduct the public hearings pursuant to paragraph in accordance with the requirements of subsection (1)(c), except at least one of the required public hearings shall be conducted as close as reasonably practicable to the area to be designated to provide an opportunity for public input on the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other relevant local concerns. Notice of the public hearing must be made in a newspaper of general circulation in the area and the notice must be at least 16 square inches in size, must be in ethnic newspapers or local community bulletins, must be posted in the affected area, and must be announced at a scheduled meeting of the local governing body before the actual public hearing. At a public hearing to designate the proposed brownfield area In determining the areas to be designated, the local government must consider:~~

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

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

~~(c)(b) Brownfield area designation proposed by persons other than a governmental entity.—For designation of a brownfield area that is proposed~~

by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the a brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following under the provisions of this act provided that:

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

2. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area. However, the job creation requirement does shall not apply to the rehabilitation and redevelopment of a brownfield site that will provide affordable housing as defined in s. 420.0004 or the creation of recreational areas, conservation areas, or parks.;

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

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

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

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

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

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

376.82 Eligibility criteria and liability protection.—

(2) LIABILITY PROTECTION.—

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

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

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

3. Liability for claims of property damages, including, but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by contamination addressed by a brownfield site rehabilitation agreement. Notwithstanding any other provision of this chapter, this subparagraph applies to causes of action accruing on or after July 1, 2014. This subparagraph does not apply to a person who discharges contaminants on property subject to a brownfield site rehabilitation agreement, who commits fraud in demonstrating site conditions or completing site rehabilitation of a property subject to a brownfield site rehabilitation agreement, or who exacerbates contamination of a property subject to a brownfield site rehabilitation agreement in violation of applicable laws which causes property damages.

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

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

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.