

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 415 Brownfields

SPONSOR(S): Economic Development and Tourism Subcommittee, Hutson

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N, As CS	Duncan	West
2) Local & Federal Affairs Committee		Baker	Rojas
3) Finance & Tax Subcommittee			
4) Economic Affairs Committee			

SUMMARY ANALYSIS

CS/HB 415 revises the provisions relating to the process for designating brownfield areas and specifies the criteria that must be satisfied when a brownfield designation is proposed by a local government, or a person other than a governmental entity, such as an individual, corporation, community-based organization or not-for-profit corporation.

The bill also clarifies the requirements that apply to all proposed brownfield area designations, including those requirements for proposals by a local government or a person other than a governmental entity, and the requirements related to whether an the area to be designated is located inside or outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated pilot project area. Local governments that designate a brownfield area are not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

The bill provides relief from liability for 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 for those who execute and implement to successful completion a brownfield site rehabilitation agreement and their successors. The liability protection applies to causes of action accruing on or after July 1, 2013. The bill also provides that liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm.

The bill provides an effective date of July 1, 2013.

The bill does not have a fiscal impact on state or local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Brownfields

A “brownfield site” is real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination.¹

Furthermore, a “brownfield area” is a contiguous area of one or more brownfield sites, portions of which may not be contaminated, and which has been designated by local government resolution. Brownfield areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones; other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects.²

In 1995, the U.S. Environmental Protection Agency (EPA) initiated a program to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.³

The federal brownfields program was significantly expanded on January 11, 2002, when President Bush signed into law the Small Business Relief and Liability and Brownfields Revitalization Act,⁴ also known as the “Brownfields Amendments.” For example, Sections 221-22 of the Brownfield Amendments included liability exemptions for prospective purchasers, and for owners of contiguous properties who were not a fault in causing the contamination.⁵ The main purpose of this new law was to create incentives for the redevelopment of brownfield properties and Superfund sites and provide grants to assess or cleanup a brownfields property.

Florida followed federal law in 1997 when the Legislature enacted the Brownfields Redevelopment Act⁶ (Act). The Act provided incentives for the private sector to redevelop abandoned or underused real property, which was complicated by real or perceived environmental contamination. The Act provides legislative intent; a brownfield area designation process; environmental cleanup criteria; a program administration process; eligibility criteria and liability protections; and economic and financial incentives. The Act also provides for a Brownfield Areas Loan Guarantee Program, which is limited to certain percentages of the underlying loan.⁷

Brownfield Designation and Administration

The designation of a brownfield area may be initiated in one of two ways:⁸

- By a local government to encourage redevelopment of an area of specific interest to the community.
- By a person⁹ with a redevelopment plan in mind.

¹ Section 376.79(3), F.S.

² See Section 376.79(4), F.S.

³ Brownfields and Land Revitalization, Community Reinvestment Fact Sheet, U.S. Environmental Protection Agency, *available at* <http://www.epa.gov/swerosps/bf/laws/cra.htm> (last visited February 20, 2013).

⁴ Public Law No. 107-118, 115 stat. 2356.

⁵ Summary of the Small Business Liability Relief and Brownfields Revitalization Act, U.S. Environmental Protection Agency, *available at* <http://epa.gov/brownfields/laws/2869sum.htm> (last visited Mar. 12, 2013).

⁶ ch. 97-277, L.O.F.; ss. 376.77 – 376.86, F.S., are known as the “Brownfields Redevelopment Act.”

⁷ Section 376.86, F.S.

⁸ See s. 376.80, F.S.

Designation of a brownfield area must come from the local government through the passage of a local resolution. Once a brownfield area has been designated, the local government must notify the Department of Environmental Protection (DEP) and attach a map that clearly identifies the parcels proposed for designation or a less-detailed map accompanied by a detailed legal description of the brownfield area. If a property owner within the proposed area requests in writing to have his or property removed from the proposed designation, then the local government must grant the request.¹⁰

If a local government proposes to designate a brownfield area that is outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area, the local government must adopt a resolution pursuant to the process established under the Act. At least one of the required public hearings must be conducted as close as reasonably practicable to the area proposed for designation to provide an opportunity for the public to provide input as to the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, neighborhood residents' considerations, and other local issues.¹¹

Required considerations

In determining the area to be designated, the local government must consider:¹²

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

When designation is necessary

A local government must designate a brownfield area under the following conditions:¹³

- The person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate the site.
- The redevelopment and rehabilitation of the proposed brownfield site will result in economic productivity of the area and will create at least 5 new permanent jobs at the brownfield site. The full-time positions must be associated with the implementation of the brownfield site agreement¹⁴ and with the redevelopment project's demolition or construction activities pursuant to the redevelopment of the proposed brownfield site or area.
- 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.
- Notice has been provided to neighbors and nearby residents of the proposed area to be designated and the person proposing the area for designation has provided the neighbors and residents an opportunity to comment and make suggestions about rehabilitation.
- The person proposing the area for designation has provided reasonable assurance that there are sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield area.

⁹ "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity. Section 376.79(14), F.S.

¹⁰ Section 376.80(1), F.S.

¹¹ Section 376.80(2)(a), F.S.

¹² Section 376.80(2)(a), F.S.

¹³ Section 376.80(2)(b), F.S.

¹⁴ See s. 376.80(5), F.S., for the contents of a brownfield site agreement.

The designation of a brownfield area and the identification of a person responsible for brownfield site rehabilitation simply entitle the identified person to negotiate a brownfield site rehabilitation agreement with the DEP or an approved local pollution control program.¹⁵

Public Notice Requirements

The Act also establishes public notice requirements for local governments to follow when designating a brownfield. Municipalities are required to adopt a resolution in accordance with the procedures under the Municipal Home Rule Powers Act¹⁶ and counties are required to adopt a resolution in accordance with the county government provisions of the state statute.¹⁷

For municipalities,¹⁸ the notice for public hearings on the proposed resolution must follow the procedures used when a proposed ordinance changes the permitted, conditional, or prohibited uses within a zoning category, or changes the actual zoning map designation of a parcel or parcels of land of 10 contiguous acres or more, which are as follows:

- Two advertised public hearings on the proposed ordinance, one of which must be held after 5 p.m. on a weekday, unless the local governing body, by a majority plus one vote, elects to conduct that hearing at another time of day.
 - The first public hearing must be held at least seven days after the day that the first advertisement is published.
 - The second hearing must be held at least 10 days after the first hearing and advertised at least five days prior to the public hearing.
- The required advertisements must be no less than 2 columns wide by 10 inches long in a standard size or tabloid size newspaper and the headline must be in a type of at least 18 point.
 - The advertisement must be placed in a newspaper of general paid circulation in the municipality and of general interest and readership in the municipality, not one of limited subject matter.¹⁹ The legislative intent is that whenever possible, the advertisement appears in a newspaper that is published at least than five days a week unless the only newspaper in the municipality is published less than five days a week. The form of the notice is provided.²⁰
 - With the exception of amendments which change the actual list of permitted, conditional, or prohibited uses within a zoning category, the advertisement must contain a geographic location map clearly indicating the area covered by the proposed ordinance. The map must include major street names and must also be included in an online²¹ notice.

For counties,²² it is unclear whether the notice for the public hearings must follow the procedures used when a proposal seeks to change the permitted, conditional, or prohibited uses within a zoning category, or the actual zoning map designation of a parcel or parcels of land of 10 contiguous acres or more. The statutory reference under the Act describes how the required advertisements are to appear in a newspaper of general circulation; however, it does not require counties to hold public hearings.²³ Thus, there is a technical error in the statutory cross-reference under the Act.

¹⁵ Section 376.80(2)(c), F.S.

¹⁶ Section 376.80(1), F.S.; s. 166.011, F.S. (chapter 166, F.S., is known as the Municipal Home Rule Powers Act).

¹⁷ Sections 376.80(1) and 125.66, F.S.

¹⁸ Section 166.041(3)(c)2., F.S.

¹⁹ See ch. 50, F.S.

²⁰ See s. 166.041(3)(c)2., F.S.

²¹ See s. 50.0211, relating to internet website publication.

²² See s. 125.66(4)(b)2., F.S.

²³ See ss. 376.80(1), F.S., and 125.66(4)(b), F.S.

The provisions of the Act relating to the brownfield designation are unclear and may lead to varying interpretations. For example, the Act provides guidance as to the requirements for a local government proposing the designation of a brownfield area outside similar redevelopment areas, such as community redevelopment areas and enterprise zones; however, it does not specifically state what provisions apply when a local government proposes to designate a brownfield area within one of these areas. There are currently no judicial interpretations on the portion of the Act creating this ambiguity.²⁴

It is also unclear as to which provisions apply to proposed brownfield designations whether being proposed by a county, municipality, or a person other than a nongovernmental entity.

Eligibility criteria

A person who has not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, is eligible to participate in the brownfield program.²⁵ However, certain sites are not eligible for the program. Those sites include potential brownfield sites that:

- are subject to an ongoing formal judicial or administrative enforcement or corrective action pursuant to federal authority; or
- have obtained or are required to obtain a hazardous waste operation, storage, or disposal facility permit, unless specifically exempted by a memorandum of agreement with the EPA;²⁶

Protection from contamination remediation liability

A person who executes and complies with the terms of a brownfield rehabilitation agreement is relieved of further liability for remediation of the contaminated sites to the state and to third parties and of liability in contribution to any other party who has or may incur cleanup liability for the contaminated site or sites.²⁷

Until a person successfully completes a rehabilitation agreement, that liability protection may be revoked upon that person's failure to comply with the rehabilitation agreement.²⁸ For those persons who comply with the terms of a rehabilitation agreement, DEP must attempt to negotiate an agreement with the U.S. EPA to forego federal enforcement.²⁹

The eligibility and liability provisions of the Act do not limit the right of a third party other than the state to pursue an action for property damages or personal injury; however, such an action may not compel site rehabilitation beyond that which is required in the approved brownfield site rehabilitation agreement or required by DEP or an approved local pollution control program.³⁰

If a state or local government has acquired a contaminated site within a brownfield area as a gift or by virtue of its operations as a sovereign, it is not liable for implementing site rehabilitation corrective actions, unless the state or local government has caused or contributed to a release of contaminants.³¹ Also, nonprofit conservation organizations, acting for the public interest, which purchase contaminated sites and which did not contribute to the release of contamination on the site also warrant protection from liability.³²

Lenders are afforded certain liability protections to encourage financing of real property in brownfield areas. Essentially, the same liability protections apply to lenders if they have not caused or contributed to a release of a contaminant at the brownfield site.³³

²⁴ *I.e.*, s. 376.80, F.S.

²⁵ Section 376.81(1), F.S.

²⁶ Section 376.82(1)(b), F.S.

²⁷ Section 376.82(2)(a) and (2)(d), F.S.

²⁸ Section 376.80(8), F.S.

²⁹ Section 376.82(2)(g), F.S.

³⁰ Section 376.82(2)(b), F.S.

³¹ Section 376.82(2)(h), F.S.

³² Section 376.82(2)(j), F.S.

³³ *See* s. 376.82(4), F.S.

Effect of Proposed Changes

Legislative Intent

The Committee Substitute (CS) specifies that brownfields redevelopment, when properly done, can be a significant element in community revitalization, especially within community redevelopment areas, empowerment zones, closed military bases, or designated brownfield pilot project areas.

Brownfield Program Administration Process

The bill revises the provisions relating to the process for designating brownfield areas, and clarifies the criteria that must be satisfied when a brownfield area designation is proposed by a local government or a person other than a governmental entity, such as an individual, corporation, community-based organization, or not-for-profit corporation.

The bill also clarifies that the following requirements apply to all brownfield area designations, regardless of whether the area proposed for designation is located inside or outside a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated pilot project area:

- A local government must notify DEP of its decision to designate a brownfield area for rehabilitation. The bill requires the notification to occur within 30 days after the adoption of a resolution by the local governing body.
- The adopted resolution must include a map that clearly identifies the parcels proposed for designation or a less-detailed map accompanied by a detailed legal description of the brownfield area. The bill adds the requirement that the local government must adopt the resolution pursuant to the procedures and requirements of the local government in effect at the time of the proposed designation, unless s. 376.80, F.S., provides otherwise.

Public hearing and notice requirement

As currently provided in s. 376.80, F.S., municipalities and counties are required to adopt the resolution in accordance with the procedures in chs. 166 and 125, F.S., respectively. In the same manner as municipalities, the bill requires counties to notice public hearings in the manner used when a proposed ordinance changes the list of permitted, conditional, or prohibited uses within a zoning category, or changes the zoning map designation of a parcel or parcels of land involving 10 contiguous acres or more. Thus, the bill clarifies that counties must hold two advertised public hearings and when the hearings must be held.

The bill maintains the requirement that the local government or person proposing the designation to conduct at least one public hearing as close as reasonably practicable to the area proposed for designation to give the public an opportunity to provide input as to the size of the area, the objectives for rehabilitation, job opportunities and economic developments anticipated, and neighborhood residents' considerations. The bill specifies that this public hearing must occur prior to the designation of the proposed brownfield area.

The bill clarifies what is required of brownfield designations of land inside certain regions. Currently, the Act provides that when a local government proposes to designate a brownfield area *outside* a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project area the local government must provide notice and hold public hearings. The bill specifies the public hearings, conditions, and criteria that are required when a local government proposes to designate a brownfield area *within* a community redevelopment area, enterprise zone, empowerment zone, closed military base, or designated brownfield pilot project.

The bill provides that a local government that designates a brownfield area is not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

Liability Protection

The liability portion of the bill expands the protections provided to the person responsible for the brownfield site rehabilitation and may encourage participation in the brownfield program.

Specifically, the bill provides relief from liability for 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 for those who execute and comply with the terms of a brownfield site rehabilitation agreement. The liability protection applies to causes of action accruing on or after July 1, 2013. Those property owners who are impacted by contamination addressed by a rehabilitation agreement may also be limited in their ability to seek relief.

The bill also provides that liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm.

B. SECTION DIRECTORY:

Section 1: Amends s. 376.78(8), F.S., relating to legislative intent, to provide that brownfield redevelopment when done properly can be significant element in community revitalization, especially community redevelopment areas, enterprise zones, empowerment zones, closed military bases, and designated brownfield pilot project areas.

Section 2: Amends s. 376.80(1) and (2), F.S., to revise the provisions relating to the process for designating brownfield areas and clarifying the criteria that must be met when a brownfield area designation is proposed by a local government or a person other than a governmental entity such as an individual, corporation, community-based organization, or not-for-profit corporation, and creates subsection (12) of s. 376.80, F.S. A new subsection provides that a local government that designates a brownfield area is not required to use the term "brownfield area" within the name of the brownfield area proposed for designation by the local government.

Section 3: Amends s. 376.82(2), F.S., relating to eligibility criteria and liability protection, to provide relief from liability for property damages caused by contamination for those who execute and comply with the terms of a brownfield site rehabilitation agreement. The liability protection applies to causes of action accruing on or after July 1, 2013. The bill provides that liability protection does not limit the right of a third party other than the state to pursue an action for damages to persons for bodily harm.

Section 4: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals, corporations, community-based organizations, and not-for-profit corporations proposing to designate brownfield areas should benefit from clearer provisions in the Act.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Economic Development and Tourism Subcommittee adopted a proposed committee substitute. This analysis reflects the changes made by that committee substitute.