Economic Development & Tourism Subcommittee

Wednesday, March 6, 2013
2:00 PM – 3:00 PM
12 HOB

Meeting Packet

Will Weatherford
Speaker

Carlos Trujillo
Chair

The Florida House of Representatives

Economic Development and Tourism Subcommittee

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Meeting Agenda
Wednesday, March 6, 2013
Room 12, House Office Building
2:00 p.m. – 3:00 p.m.

I. **Call to Order**

II. **Roll Call**

III. **Welcome and Opening Remarks**

IV. **HB 537 – Growth Management**

V. **HB 515 – New Markets Development Program**

VI. **HB 555 – Tourist Development Tax**

VII. **HB 589 – State Poet Laureate**

VIII. **PCS HB 415 – Brownfields**

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 515 New Markets Development Program
SPONSOR(S): Oliva
TIED BILLS: **IDEN./SIM. BILLS:** SB 98

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Duncan	West
2) Finance & Tax Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 515 increases the total amount of tax credits available to be allocated for the New Markets Development Program from $163.8 million to $263.8 million and increases the amount of tax credits that the state may award in a single fiscal year from $33.6 million to $53.6 million.

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

The Revenue Estimating Conference has not determined the fiscal impact to the state as a result of this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Federal New Markets Tax Credit[1]

Created by Congress in 2000, the Federal New Markets Tax Credit (NMTC) Program[2] permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the U. S. Department of Treasury.[3] To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

Since the Federal NMTC Program's inception, the CDFI Fund has made 664 awards allocating a total of $33 billion in tax credit authority to CDEs through a competitive application process.[4]

How Florida's New Markets Development Program Works

Mirrored after the federal program, Florida's New Markets Development Program, established by the Legislature in 2009,[5] encourages "capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that qualified low-income community investments in qualified active low-income community businesses to create and retain jobs."[6]

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups.

DEO is also authorized to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified

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[1] Federal New Markets Tax Credit Program, Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited February 14, 2013).

[2] The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000.

[3] The Community Development Financial Institutions Fund is the entity within the U.S. Department of Treasury that administers the federal New Markets Tax Credit Program. The CDFI Fund was created for the purpose of promoting economic development through investment in and assistance to community development financial institutions. U.S. Department of Treasury, Community Development Financial Institutions Fund, About the CDFI Fund, http://cdfifund.gov/who_we_are/about_us.asp (last visited February 14, 2013).

[4] *See supra* note 1.

[5] Chapter 2009-50, L.O.F.

[6] Section 288.912, F.S.

equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:[7]

- Audited financial statements;
- The industries for the investments;
- The counties investments were made in;
- The number of jobs created; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.[8]

Tax Credits

The New Markets Tax Credit Program (NMTC) allows a tax credit to be taken against the corporate income tax found in s. 220.11, F. S. or the insurance premium tax found in s. 624.509, F.S. This credit may be claimed after the investment has been made and held for a minimum of two years. Therefore, no credit can be claimed in the first two years. In year three the credit is worth seven percent of the investment, and from the fourth year through the seventh year the credit is worth eight percent.

As in the federal program, over seven years this credit totals 39 percent of the total investment. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over seven years. In addition to the tax credits that are received, the investor also has the potential to receive benefit from the results of the investment and eventual return of their principal.

Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.[9] The program has a cap of $163.8 million on the total of tax credits allowed to be allocated to all investments or $33.6 million in tax credits in a single state fiscal year.[10] The transfer or sale of tax credits is not permitted; however, a tax credit may travel with the purchase of an investment to a new owner.[11]

Effect of Proposed Changes

The bill increases the total amount of tax credits available to be allocated for the New Markets Development Program from $163.8 million to $263.8 million and increases the amount of tax credits that the state may award in a single fiscal year from $33.6 million to $53.6 million.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.914, F.S., to increase the total amount of tax credits available to be allocated for the New Markets Development Program from $163.8 million to $263.8 million and increase the amount of tax credits that the state may award in a single fiscal year from $33.6 million to $53.6 million.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

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[7] *See* s. 288.9918, F.S.

[8] *See* s. 288.9920, F.S.

[9] Section 15, ch. 2009-50, L.O.F.

[10] Section 288.914(3)(c), F.S. *See* s. 16, ch. 2012-32, L.O.F.

[11] *See* s. 288.9916(2), F.S.

1. Revenues:

   The Revenue Estimating Conference has not determined the fiscal impact to the state as a result of this bill.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the New Markets Development Program encourages private sector capital investment in rural and urban low-income communities, the private sector and the communities where such investments are made will benefit.

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

A bill to be entitled

An act relating to the New Markets Development Program; amending s. 288.9914, F.S.; revising limitations on qualified investments that may be approved by the Department of Economic Opportunity under the program; providing an effective date.

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

Section 1. Paragraph (c) of subsection (3) of section 288.9914, Florida Statutes, is amended to read:

288.9914 Certification of qualified investments; investment issuance reporting.—

(3) REVIEW.—

(c) The department may not approve a cumulative amount of qualified investments that may result in the claim of more than $263.8 ~~$163.8~~ million in tax credits during the existence of the program or more than $53.6 ~~$33.6~~ million in tax credits in a single state fiscal year. However, the potential for a taxpayer to carry forward an unused tax credit may not be considered in calculating the annual limit.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 537 Growth Management
SPONSOR(S): Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** 528

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Flegiel MF	West PW
2) Local & Federal Affairs Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

House Bill 537 amends Section 163.3167, Florida Statutes, to prohibit local government initiative or referendum processes for land use amendments, except for those processes in effect as of June 1, 2011, that specifically authorize voting on land use amendments.

The bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Initiatives and Referenda on Land Use Changes

In 2006, voters in St. Pete Beach amended the city's charter to require voter referendums on all future changes to comprehensive plans, redevelopment plans and building height regulations.[1] This process, often called "Hometown Democracy," caused delay in the local development process.[2] In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67% 'no' vote on Amendment 4.[3] Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions.[4]

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." One of the bill's provisions prohibited local governments from adopting initiative or referendum processes for development orders, comprehensive plan amendments, or map amendments (collectively "land use amendments").[5]

At the time, very few local governments had a land use referendum or initiative process in place.[6] One of the affected governments, The Town of Yankeetown (Yankeetown), had a charter provision which specifically authorized a referendum vote on comprehensive plan amendments affecting more than five parcels of land. Following the enactment of HB 7207 (2011), Yankeetown filed a complaint in the Leon County Circuit Court against the Department of Community Affairs (DCA), now the Department of Economic Opportunity (DEO), stating its desire to maintain its charter provision.[7]

In September 2011, DCA and Yankeetown reached a proposed settlement agreement contingent upon the Legislature passing, and the Governor signing into law, a proposed amendment to the Community Planning Act.[8] The bill was designed to allow charter provisions like Yankeetown's to remain valid. The bill was intended to have a very limited impact, protecting only those charter provisions that: 1) were in effect as of June 1, 2011, and 2) specifically authorized referendum or initiative votes on land use amendments affecting more than 5 parcels of land.[9] The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 (2012) into law on April 6, 2012.[10]

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[1] "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 19, 2010. Retrieved from: http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/ (2/25/13).

[2] Id.

[3] See: November 2, 2010 General Election Official Results provided by the Florida Department of State. Retrieved from: https://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE= (2/26/13).

[4] See: 2011 Municipal Election Results provided by the Pinellas County Supervisor of Elections. Retrieved from: http://www.votepinellas.com/index.php?id=1789 (2/26/13).

[5] See: "The Community Planning Act," s.7, ch. 2011-139, *Laws of Florida*. 2011 CS/HB 7207.

[6] Longboat Key, Key West, Miami Beach and the Town of Yankeetown.

[7] See: *Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, Case No. 37 2011 CA 002036 (Fla. 2d Cir. Ct. 2011). The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in Article III, s. 6 of the Florida Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The city of St. Pete Beach also filed a motion to intervene as a defendant in the case, on the same side as the state.

[8] Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011 CA 002036 (9/28/2011).

[9] S. 1, ch. 2012-99, *Laws of Florida*. 2012 CS/HB 7081.

[10] Id.

CS/HB 7081 (2012) left open the possibility for an interpretation that extended the exception to all general referendum and initiative provisions in effect as of June 1, 2011, and not merely referendum and initiative provisions specifically authorizing a vote on land use amendments.

In October 2012, the Palm Beach County Circuit Court ruled that CS/HB 7081 (2012) extended the exception to all general referendum and initiative provisions in effect as of June 1, 2011.[11] Based on the court ruling, all cities and counties with a referendum or initiative provision as of June 1, 2011, could hold a vote on land use amendments affecting more than 5 parcels of land, contrary to the intent of the 2011 and 2012 legislation which sought to restrict these voting mechanisms.

Effect of Proposed Changes

HB 537 seeks to narrow the current interpretation of s. 163.3167(8), F.S., to reflect what was intended by CS/HB 7081 (2012), while preserving the purpose of the 2011 Community Planning Act. HB 537 will prohibit cities and counties from holding an initiative or referendum vote on land use amendments, unless they had a specific initiative or referendum process in place as of June 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3167, F.S., to limit the use of initiative or referendum processes for land use amendments to specified local governments.

Section 2: Provides that the Act takes effect upon becoming a law.

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:

   There could be cost savings for local governments by limiting the number special elections and the number of issues presented to voters in general and special elections.[12]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Removes potential impediments to developers seeking land use permit changes.

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[11] *City of Boca Raton v. Kennedy, et. al.*, 15th Judicial Circuit, Case # 2012 CA 009962MB (Order denying plaintiff, City of Boca Raton's and Intervener/Co-Plaintiff, Archstone Palmetto Park, LLC's Motions for Summary Judgment and granting Defendants' Motion for Summary Judgment. J. Chernow Brown, Oct. 16, 2012.)

[12] Complete Financial Information Statement on Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans. Office of Economic & Demographic Research. Retrieved from: http://edr.state.fl.us/Content/constitutional-amendments/2010Ballot/LandUse/LandUseInformationStatement.cfm (2/26/13).

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 action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of 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

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; revising and providing for the applicability of provisions that prohibit an initiative or referendum process for development orders and local comprehensive plan amendments and map amendments; providing that such initiative or referendum process commenced or completed on or after a specified date is void; providing an exception for initiative or referendum process specifically authorized by local government charter provision in effect as of such date for certain local comprehensive plan amendments and map amendments; providing an effective date.

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

Section 1. Subsection (8) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(8) An initiative or referendum process for ~~in regard to~~ any development order or ~~in regard to~~ any local comprehensive plan amendment or map amendment is prohibited, and any such initiative or referendum process commenced or completed on or after June 1, 2011, is void. However, this prohibition does not apply to any local government charter provision that was in effect as of June 1, 2011, and specifically authorizes such ~~for an~~ initiative or referendum process for any ~~in regard to~~

~~development orders or in regard to~~ local comprehensive plan amendment ~~amendments~~ or map amendment that affects more than five parcels of land ~~amendments may be retained and implemented~~. For purposes of this subsection, an initiative or referendum process is not specifically authorized if it applies without regard to the number of parcels of land affected by the local comprehensive plan amendment or map amendment.

Section 2. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Development & Tourism Subcommittee

Representative Moraitis offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (8) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(8)(a) An initiative or referendum process in regard to any development order ~~or in regard to any local comprehensive plan amendment or map amendment~~ is prohibited. ~~However, any local government charter provision that was in effect as of June 1, 2011, for an initiative or referendum process in regard to~~

~~development orders or in regard to local comprehensive plan amendments or map amendments, may be retained and implemented.~~

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited. However, an initiative or referendum process in regard to any local comprehensive plan amendment or map amendment that affects more than five parcels of land is allowed if it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011; a general local government charter provision for an initiative or referendum process is not sufficient.

(c) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan or map amendment, except as specifically and narrowly permitted in subsection (b) with regard to local comprehensive plan or map amendments that affect more than five parcels of land. Therefore, the prohibition on initiative and referendum stated in subsections (a) and (b) is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process that has been commenced or completed thereafter is hereby deemed null and void and of no legal force and effect.

Section 2. This act shall take effect upon becoming a law.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; providing that an initiative or referendum process for any development order is prohibited; providing that an initiative or referendum process for any local comprehensive plan amendments and map amendments is prohibited; providing an exception for initiative or referendum process specifically authorized by local government charter provision in effect as of such date for certain local comprehensive plan amendments and map amendments; providing that certain charter provisions for an initiative or referendum process is not sufficient; providing legislative intent; providing that certain prohibitions apply retroactively; providing an effective date.

HB 555

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 555 Tourist Development Tax
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Collins DC	West RW
2) Finance & Tax Subcommittee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill permits counties to use the tax revenues from the existing tourist development tax for purposes related to aquariums owned by not-for-profit organizations including the acquisition, construction, maintenance, or promotion of such aquariums.

The bill has no fiscal impact on state or local funds.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tourist Development Tax

Section 125.0104, F.S., authorizes five separate tourist development taxes on transient rental transactions. Depending on a county's eligibility to levy, the tax rate varies from a minimum of 3 percent to a maximum of 6 percent. The levies may be authorized by vote of the county's governing authority or referendum approval. The revenues generated by the tax may be used in various ways to promote tourism, including capital construction of tourism-related facilities. The authorized uses of each local option tax vary according to the particular levy.

The tourist development tax may be levied at the rate of 1 or 2 percent. All 67 counties are eligible to levy this tax, and currently 62 levy this tax – all at 2 percent. Calhoun, Hardee, Lafayette, Liberty and Union counties do not levy any tourist development taxes. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

An additional tourist development tax of 1 percent may be levied by counties who have previously levied a tourist development tax at the 1 or 2 percent rate for at least 3 years. Currently 45 counties levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used to service debt or refinance facilities receiving funding from a previously levied tourist development tax unless approved by an extraordinary vote of the governing board. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

A professional sports franchise facility tax may be levied up to an additional 1 percent. Currently 36 counties levy this additional tax, and all 67 counties are eligible to levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.

An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax. Out of 36 counties that levy a professional sports facility tax, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.

A high tourism impact tax may be levied at an additional 1 percent. Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.

Local option tourist taxes are significant revenue sources to Florida's county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion. Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, auditoriums, aquariums and museums that are publically owned and operated within the area that the tax is levied. Museums that are publicly owned and operated by not-for-profit organizations may also receive funding. Tax revenues may also be used to promote zoos.

Florida Aquariums

Visit Florida's website lists over 25 attractions in the category of "aquarium," including the Key West Aquarium, the Miami Seaquarium, the Mote Marine Laboratory and Aquarium in Sarasota, the Florida Aquarium in Tampa, and the Florida's Gulfarium in Fort Walton Beach.

Proposed Changes

The bill permits counties to use the tax revenues from the tourist development tax for purposes related to aquariums owned and operated by not-for-profit organizations, including the acquisition, construction, maintenance, or promotion of such aquariums.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0104, F.S., to include aquariums owned by not-for-profit organizations as an eligible use of the tourism development tax.

Section 2: 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:
None.

D. FISCAL COMMENTS:
None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the tourist development tax; amending s. 125.0104, F.S.; clarifying that the proceeds of the tax may be used for the benefit of certain museums or aquariums; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) and subsection (7) of section 125.0104, Florida Statutes, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums, or museums or aquariums~~, or museums~~ that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied. Tax revenues received pursuant to this section may also be used for promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to

the public. However, these purposes may be implemented through service contracts and leases with lessees that have ~~with~~ sufficient expertise or financial capability to operate such facilities;

2. To promote and advertise tourism in this state ~~the State of Florida~~ and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must ~~shall~~ have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or

4. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized

shore protection project may not be used or loaned for any other purpose. In counties of fewer ~~less~~ than 100,000 population, up to ~~no more than~~ 10 percent of the revenues from the tourist development tax may be used for beach park facilities.

(7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS. ~~Anything in this section to the contrary~~ Notwithstanding any other provision of this section, if the plan for tourist development approved by the governing board of the county, as amended ~~from time to time~~ pursuant to paragraph (4)(d), includes the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or museum ~~that is publicly owned and operated or owned and operated by a not-for-profit organization~~, the county ordinance levying and imposing the tax ~~shall~~ automatically expires ~~expire~~ upon the later of:

(a) The retirement of all bonds issued by the county for financing the same; or

(b) The expiration of any agreement by the county for the operation or maintenance, or both, of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or museum. However, this does not ~~nothing herein shall~~ preclude that county from amending the ordinance extending the tax to the extent that the board of the county determines to be necessary to provide funds ~~with which~~ to operate, maintain, repair, or renew and replace a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or museum or from enacting an

ordinance that takes ~~which shall take~~ effect without referendum approval, unless the original referendum required ordinance expiration, pursuant to the provisions of this section reimposing a tourist development tax, upon or following the expiration of the previous ordinance.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 589 State Poet Laureate
SPONSOR(S): Raulerson and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee		Tecler AT	West PW
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The position of State Poet Laureate was created by governor's proclamation in 1928, but is not addressed in Florida Statutes. HB 589 creates the position of State Poet Laureate in law and provides requirements for the selection, terms of service, and duties of the State Poet Laureate.

The bill assigns the Florida Council on Arts and Culture, housed within the Department of State, certain responsibilities relating to the nomination process and the promotion of poetry. The bill also grants the Department of State rulemaking authority for implementation of provisions relating to the State Poet Laureate.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

History of Poet Laureates

The title of poet laureate is derived from the laurels with which the ancient Greeks traditionally crowned their most celebrated poets.[1] The title was not designated on a continuous basis until 1688 when the position of Poet Laureate was created within the English Crown.[2] In the United States, poet laureates participate in ceremonial events and seek to raise a greater appreciation of the reading and writing of poetry. California became the first state to designate a poet laureate in 1919.[3] The first official Poet Laureate of the United States was appointed by the Librarian of Congress in 1937.[4]

State Poet Laureates

Currently, 44 states designate a state poet laureate or an equivalent position.[5] However, not all states designate the position in statutory law. Duties of such poets laureate vary, but all involve the promotion of reading, writing, and poetry appreciation.[6] Whether the poet laureate receives compensation or holds a term-limited or lifetime appointment also varies from state to state.[7]

Florida's Poet Laureate

In 1928, the position of Poet Laureate of the State of Florida was established by governor's proclamation.[8] The position is a lifetime appointment and occupants serve without compensation. A total of three poet laureates have been appointed since the inception of the position.[9] The most recent occupant, Edmund Skellings of West Melbourne, passed away on August 19, 2012.[10] Current statutory law does not contain provisions relating to a state poet laureate.

Department of State

The Department of State is responsible for corporate filings and certain public records. The Department also oversees of the election process and preserves Florida's historical and cultural heritage for the benefit of future generations. The Division of Cultural Affairs, housed within Department of State, is Florida's legislatively-designated state arts agency. The Division connects cultural funding opportunities and services to Florida's citizens and visitors.

Florida Council on Arts and Culture[11]

The Florida Council on Arts and Culture is a 12 member advisory body within the Department of State. The Council promotes Florida's cultural heritage, fosters the study and presentation of art and culture, and encourages public participation in cultural activities. Further, the Council advises the Secretary of State in matters pertaining to programs and grants administered by the Division of Cultural Affairs. The

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[1] The Origins of the Post, The official website of the British Monarchy, http://www.royal.gov.uk/TheRoyalHousehold/OfficialRoyalposts/PoetLaureate.aspx. Last visited February 20, 2013.
[2] *Id.*
[3] U.S. State Poet Laureate, Frequently Asked Questions, http://www.loc.gov/rr/main/poets/faq.html, Last visited February 20, 2013.
[4] The position was renamed Poet Laureate Consultant in Poetry in 1985 and codified as 2 U.S.C. § 177 (2010 Edition).
[5] Current State Poets Laureate, Library of Congress, http://www.loc.gov/rr/main/poets/current.html. Last visited February 20, 2013
[6] Department of State bill analysis for HB 1479 (2012). On file with Economic Development & Tourism Subcommittee.
[7] *Id.*
[8] U.S. State Poets Laureate, Florida, Library of Congress, http://www.loc.gov/rr/main/poets/florida.html, Last visited February 20, 2013.
[9] Florida's Poet Laureate, Florida Division of Cultural Affairs, http://www.florida-arts.org/programs/poetlaureate/. Last visited February 20, 2013.
[10] Mr. Skellings was appointed by Governor Graham in 1980, after a competition and selection by an anonymous national panel. *See Id.*
[11] Section 265.285, F.S.

Council also reviews applications for grants related to the acquisition, renovation, or construction of cultural facilities as provided in s. 265.701, F.S.

Effect of Proposed Changes

The bill creates the position of State Poet Laureate within the Department of State and provides requirements for the selection, terms of service, and duties of the position. The bill assigns the nominations process for the State Poet Laureate to the Florida Council on Arts and Culture. The bill also expands the duties of the Council to include the promotion of poetry and related activities.

Selection Process

The bill directs the Florida Council on Arts and Culture to accept nominations for State Poet Laureate and recommend at least two nominees to the Secretary of State. Each nominee must be a permanent Florida resident and public literary poet with significant standing inside and outside the state. A nominee must also be willing and able to perform the duties of the State Poet Laureate. The Secretary of State must submit a nominee, from among the nominees recommended by the Council, to the Governor for appointment. The Department of State is authorized to establish procedures for the selection process.

Terms of Service

The bill provides for the State Poet Laureate to serve for a term of 4 years without compensation. Further, the bill requires vacancies for an expired term to be filled in the same manner as the original appointment. The bill also authorizes the designation of Florida's previous poet laureates, and poet laureates that complete their term after the effective date of this bill, as State Poet Laureate Emeritus or Emerita.

Duties

The Department of State is authorized to establish duties for the State Poet Laureate. Such duties may include performing readings of poetry authored by the occupant and engaging in outreach activities for the benefit of schools and communities.

The bill authorizes the department to adopt rules to implement the provisions of the bill.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 265.285, F.S., revising the duties of Florida Council on Arts and Culture to include accepting nominations for State Poet Laureate, recommending nominees for State Poet Laureate, and promoting poetry related activities.

Section 2: Creates s. 265.2863, F.S., codifying the appointment of a State Poet Laureate; providing requirements for the selection, terms of service, and duties of the position; providing rulemaking authority.

Section 3: Providing 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 2 provides rulemaking authority to the Department of State to implement s. 265.2863, F.S. The construction of the bill appears to necessitate the adoption of rules related to the selection process and the duties of the State Poet Laureate.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a process by which a State Poet Laureate may be removed from the position for reasons such as misconduct; however, this could be addressed by the Department of State during the rulemaking process.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the State Poet Laureate; amending s. 265.285, F.S.; assigning duties to the Florida Council on Arts and Culture relating to the promotion of poetry and recommendations for the appointment of the State Poet Laureate; creating s. 265.2863, F.S.; creating the honorary position of State Poet Laureate within the Department of State; establishing procedures for the acceptance of nominations, the qualifications and recommendation of nominees, and the appointment of the State Poet Laureate; providing terms and the process for filling vacancies; specifying that any former poet laureate becomes a State Poet Laureate Emeritus or State Poet Laureate Emerita; providing that the State Poet Laureate, the State Poet Laureate Emeritus and the State Poet Laureate Emerita shall serve without compensation; authorizing the department to adopt rules; providing an effective date.

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

Section 1. Present paragraph (g) of subsection (2) of section 265.285, Florida Statutes, is redesignated as paragraph (h), and a new paragraph (g) is added to that subsection, to read:

265.285 Florida Council on Arts and Culture; membership, duties.—

(2) The council shall:

(g) Promote the reading, writing, and appreciation of poetry throughout the state and accept nominations and recommend nominees for appointment as the State Poet Laureate under s. 265.2863.

Section 2. Section 265.2863, Florida Statutes, is created to read:

265.2863 State Poet Laureate.—

(1) The honorary position of State Poet Laureate is created within the Department of State.

(2)(a) The Florida Council on Arts and Culture, in accordance with procedures adopted by the department, shall accept nominations for appointment as the State Poet Laureate. The council shall solicit nominations from a broad array of literary sources and members of the public.

(b) The council shall recommend to the Secretary of State at least two nominees for appointment as the State Poet Laureate, each of whom must be:

1. A permanent resident of the state;

2. A public literary poet who has significant standing inside and outside of the state; and

3. Willing and physically able to perform the duties of the State Poet Laureate as prescribed by the department, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry, as requested.

(c) The Secretary of State shall, from among the nominees

recommended by the council, submit a nominee to the Governor. The Governor shall appoint the State Poet Laureate.

(3) The State Poet Laureate shall serve a term of 4 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(4) Each of the state's poets laureate appointed before the effective date of this section and each State Poet Laureate appointed under this section, upon the appointment of his or her successor, shall be designated a State Poet Laureate Emeritus or State Poet Laureate Emerita in recognition of his or her service to the state.

(5) The State Poet Laureate and each State Poet Laureate Emeritus or State Poet Laureate Emerita shall serve without compensation.

(6) The department may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 589 (2013)

Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Development & Tourism Subcommittee

Representative Raulerson offered the following:

Amendment

Remove lines 44-58 and insert:

(b) The council shall recommend to the Secretary of State at least five nominees for appointment as the State Poet Laureate, each of whom must be:

1. A permanent resident of the state;

2. A public literary poet who has significant standing inside and outside of the state; and

3. Willing and physically able to perform the duties of the State Poet Laureate as prescribed by the department, which may include, but are not limited to, engaging in outreach and mentoring for the benefit of schools and communities throughout the state and performing readings of his or her own poetry, as requested.

(c) The Secretary of State shall, from among the nominees recommended by the council, submit three nominees to the

Amendment No.1

Governor, who shall appoint one nominee as the State Poet Laureate.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 415 Brownfield Areas
SPONSOR(S): Economic Development & Tourism Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Development & Tourism Subcommittee		Duncan	West

SUMMARY ANALYSIS

The Proposed Committee Substitute (PCS) for HB 415 revises the provisions relating to the process for designating brownfield areas and specifies 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. The PCS also clarifies the requirements that apply to all proposed brownfield area designations, whether proposed by a local government or a person other than a governmental entity and 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. 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 PCS 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. The liability protection applies to causes of action accruing on or after July 1, 2013. The PCS 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 PCS provides an effective date of July 1, 2013.

The Revenue Estimating Conference has not determined the fiscal impact the PCS may have on state or local funds.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Brownfields

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.[1] 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,[2] also known as the "Brownfields Amendments." 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[3] when the Legislature enacted the Brownfields Redevelopment Act[4] (Act) to provide incentives for the private sector to redevelop abandoned or underused real property, the development of 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.[5]

A "brownfield area" is a contiguous area of one or brownfield sites, some of which may not be contaminated, and which has been designated by local government resolution. Such 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.[6]

Brownfield Designation and Administration

The designation of a brownfield area may be initiated in one of two ways:[7]

- By a local government to encourage redevelopment of an area of specific interest to the community.
- By a person[8] with a redevelopment plan in mind.

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.[9]

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[1] U.S. Environmental Protection Agency, Brownfields and Land Revitalization, Community Reinvestment Fact Sheet, http://www.epa.gov/swerosps/bf/laws/cra.htm (last visited February 20, 2013).
[2] Public Law No. 107-118, 115 stat. 2356.
[3] Chapter 97-277, L.O.F.
[4] Sections 376.77 – 376.86, F.S., are known as the "Brownfields Redevelopment Act."
[5] Section s. 376.86, F.S.
[6] Section 376.79(4), F.S. "Brownfield sites" are real property, the expansion, redevelopment, or reuse of which may be complicated by actual or perceived environmental contamination. Section 376.79(3), F.S.
[7] *See* s. 376.80, F.S.
[8] "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.
[9] Section 376.80(1), F.S.

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.[10]

In determining the area to be designated, the local government must consider:[11]

- 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.

A local government designates a brownfield area under the following conditions:[12]

- 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 agreement[13] 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 permittable 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.

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.[14]

Public Notice Requirements

The Brownfields Act establishes public notice requirements for local governments to follow when a brownfield area has been proposed for designation. Municipalities are required to adopt a resolution in accordance with the procedures under the Municipal Home Rule Powers Act[15] and counties are required to adopt a resolution in accordance with the county government provisions of the state statute.

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[10] Section 376.80(2), F.S.
[11] Section 376.80(2)(a), F.S.
[12] Section 376.80(2)(b), F.S.
[13] *See* s. 376.80(5), F.S., for the contents of a brownfield site agreement.
[14] Section 376.80(2)(c), F.S.
[15] Chapter 166, F.S., is known as the Municipal Home Rule Powers Act. Section 166.011, F.S.

For municipalities,[16] 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.[17] The legislative intent is that whenever possible, the advertisement appears in a newspaper that is published less 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.[18]
    - 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 online[19] notice.

For counties,[20] it is unclear as to whether the notice for the 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. 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.[21] Thus, there is an error in the statutory cross-reference under the Act.

The provisions of the Act relating to the designation of a brownfield area 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 proposed within one of these areas. 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 and liability protection

[16] Section 166.041(3)(c)2., F.S.
[17] *See* ch. 50, F.S.
[18] *See* s. 166.041(3)(c)2., F.S.
[19] *See* s. 50.0211, relating to internet website publication.
[20] *See* s. 125.66(4)(b)2., F.S.
[21] *See* ss. 376.80(1), F.S., and 125.66(4)(b), F.S.

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. Certain specified sites are not eligible for the program. Those sites include brownfield sites that are subject to an ongoing formal judicial or administrative enforcement action or corrective action pursuant to federal authority, or sites that 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.[22]

A person who executes and successfully completes a brownfield site agreement is relieved of further liability for remediation of the contaminated sites or 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. The eligibility and liability provisions of the Act may not be construed as a limitation on the right of a third party other than the state to pursue an action for damages to property or a person; 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.[23]

If a state or local government has acquired a contaminated site within a brownfield area, 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 at the brownfield site.[24] 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.[25]

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.[26]

Effect of Proposed Changes

Legislative Intent

The Proposed Committee Substitute (PCS) specifies that brownfields redevelopment, 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 PCS revises the provisions relating to the process for designating brownfield areas and clarifies 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.

The PCS also clarifies that the following requirements apply to all proposed brownfield area designations, 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 the Department of Environmental Protection (DEP) of its decision to designate a brownfield area for rehabilitation. The PCS 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 PCS adds the requirement that the resolution must be adopted pursuant to the procedures and requirements of the local government in effect at the time of the proposed designation.

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[22] Section 376.82(1)(b), F.S,
[23] Section 376.82(2) (a) and (b), F.S.
[24] Section 376.82(2)(h), F.S.
[25] Section 376.82(2)(i), F.S.
[26] *See* s. 376.82(4), F.S.

As provided in current law, municipalities and counties are required to adopt the resolution in accordance with the procedures in chapters 166 and 125, F.S., respectively. In the same manner as municipalities, the PCS 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, it is clear that counties must hold two advertised public hearings and when the hearings must be held.

The PCS maintains the requirement that the local government or person proposing the designation to convene and 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 PCS specifies that this public hearing must occur prior to the designation of the proposed brownfield area.

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, adopt a resolution, and conduct any required public hearings. The PCS specifies the public hearings, conditions, and criteria 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 PCS provides that a local government that a 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 PCS 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. The liability protection applies to causes of action accruing on or after July 1, 2013. This provision expands the protections provided to the person responsible for the brownfield site rehabilitation and may encourage participation in the brownfield program. However, those property owners who are impacted by contamination addressed by a brownfield site rehabilitation agreement may be limited in the ability to seek relief. The PCS 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., and creates subsection (12) of s. 376.80, F.S., relating to the brownfield program administration process, to revise the provisions relating to the process for designating brownfield areas and clarify 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. A new subsection provides that a local government that a 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 implement to successful completion a brownfield site rehabilitation agreement. The liability protection applies to

causes of action accruing on or after July 1, 2013. The PCS 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:

   The Revenue Estimating Conference has not determined the fiscal impact the PCS may have on state or local funds.

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

A bill to be entitled

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 by local governments; authorizing local governments to use a term other than "brownfield area" when naming such areas; amending s. 376.82, F.S.; providing relief of liability for property damages for entities that execute and implement certain brownfield site rehabilitation agreements; providing for 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) (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, except as provided in paragraph (2)(c), the designation criteria under paragraph (2)(a) apply.

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)(b) apply.

(c) The following provisions apply to all proposed brownfield area designations:

1. A local government with jurisdiction over the brownfield area must notify the department 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 of the designation within 30 days after adoption of the resolution.

2. 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. The resolution shall be adopted pursuant to the procedures and requirements of the local government in effect at the time of the proposed designation, except as otherwise provided in this section.

3. 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.

4. 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~~.

(d) Compliance with the following provisions is required before designation of a proposed brownfield area under paragraph (2)(a) or paragraph (2)(b):

1. 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.

2. 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.

(2)(a) 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 ~~in accordance with the requirements of~~ subsection (1)~~, 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) For designation of a brownfield area that is proposed by a person other than the local government, the ~~A~~ local government with jurisdiction over the proposed brownfield area shall adopt a resolution to designate the ~~a~~ brownfield area pursuant to subsection (1), if, at the public hearing to adopt the resolution, the person establishes ~~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 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 permittable 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 subsection (1), 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.

(c) Paragraphs (a) and (b) do 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).

(d) ~~(c)~~ 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 proposed for designation 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, 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 any person 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 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, 2013.

(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, 2013.