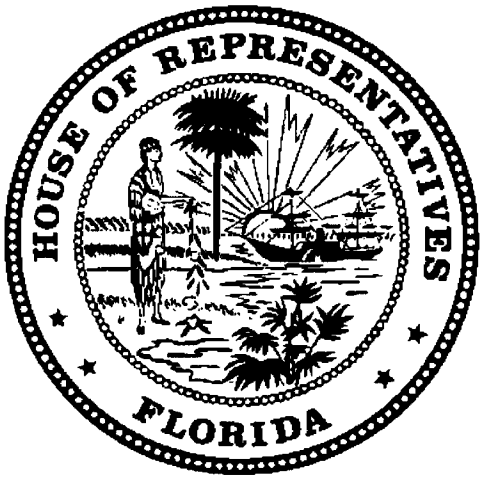

Economic Development & Tourism Subcommittee

Tuesday, February 4, 2014
4:00 p.m. - 5:00 p.m.
12 HOB

Meeting Packet

Will Weatherford
Speaker

Carlos Trujillo
Chair

The Florida House of Representatives

Economic Development and Tourism Subcommittee

Will Weatherford
Speaker

Carlos Trujillo
Chair

Meeting Agenda
Tuesday, February 4, 2014
Room 12, House Office Building
4:00 p.m. – 5:00 p.m.

I. **Call to Order**

II. **Roll Call**

III. **Welcome and Opening Remarks**

IV. **HB 155 – Defense Contracting**

V. **HB 189 – Growth Management**

VI. **HB 231 – Admissions Tax**

VII. **HB 325 – Brownfields**

VIII. **Adjournment**

204 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 922-9381 Fax: (850) 717-4821

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 155 Defense Contracting
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 596

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

SUMMARY ANALYSIS

The bill creates a new economic development tax incentive program to encourage businesses receiving national security-related federal contracts to hire more Florida-based subcontractors. Qualifying businesses may reduce the computation of adjusted federal income used to determine state corporate income tax liability by an amount equal to four percent of each subcontract awarded to a qualifying Florida-based subcontractor. To receive the incentive a business must submit specified documentation regarding qualified subcontract awards to the Department of Economic Opportunity (DEO) who is responsible for certifying applicants.

The bill places caps on the amount of qualified subcontract awards DEO may certify for a single company in a single tax year and on the total amount of qualified subcontract awards the department may certify in a single tax year program-wide.

DEO and the Department of Revenue (DOR) are granted rule-making authority to implement the bill.

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have a negative impact on general revenues of $3.3 million per fiscal year on a recurring basis, and no impact on local government revenues or expenditures.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's Defense Industry

Florida is home to three of ten unified combatant commands and hosts two of only four Navy deep water ports in the country with adjacent airfields, the military's only space launch facility on the east coast, the Marine Corps' only maritime prepositioning facility, and one of only three Navy Fleet Readiness Centers. The state also hosts several critical research, development, testing and evaluation centers. In addition, the Joint Gulf Range Complex connects test and training ranges that extend from Key West to Northwest Florida and across the eastern Gulf of Mexico, and encompasses 180,000 square miles of Department of Defense-controlled airspace.[1]

The defense industry is critical to the state's economy, accounting for 9.4 percent of state gross domestic product in 2011. Defense-related spending, direct and indirect, added up to $73.4 billion in 2011, $12.4 billion of which was allocated for procurements.[2] In 2011, Florida businesses generated $13.6 billion in U.S. Department of Defense (DoD) contract awards, ranking the state 5th in the nation. The state is home to many of the nation's leading defense contractors and a large pool of highly skilled workers and veterans. Florida's top ten defense contractors alone employ more than 28,000 Floridians.[3]

According to the federal government, 111,516 contracts have been awarded to prime contractors by DoD and National Aeronautics and Space Administration (NASA) from federal fiscal year 2012 through the current federal fiscal year for work done in the State of Florida. Combined, these contracts have a total value of over $24 billion. There have been 3,628 subcontracts awarded through those 111,516 contracts, valued at more than $5 billion. Of those, 2,891 subcontracts, valued at $3.9 billion, have been awarded to businesses located in Florida which accounts for 79.7 percent of all subcontracts awarded by prime contractors who have received federal contracts for work to be done in the State of Florida.[4]

Federal Contracting Overview

The typical federal procurement process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing those items, and carrying out an acquisition process. Under most procurement processes an agency posts a solicitation on the Federal Business Opportunities (FedBizOpps) website. Interested businesses prepare their offers in response to the solicitation, and agency personnel evaluate the offers. To be eligible to compete for government contracts a business must first obtain a Data Universal Numbering System (DUNS) number, and register with the System for Award Management (SAM). Many agencies provide assistance and services to potential and existing federal contractors.

Businesses may also serve as subcontractors for other businesses (known as "prime contractors") that have been awarded federal contracts. Most federal agencies typically release information on their websites listing prime contractors that have been awarded federal contracts, which can be a valuable

[1] Enterprise Florida, *Florida Defense Factbook*, January 2013
[2] Enterprise Florida, *Florida Defense Industry Economic Impact Analysis;* January 2013
[3] Enterprise Florida, *Defense and Homeland Security* (can be found at http://www.eflorida.com/Homeland_Security_Defense.aspx?id=9354; last accessed on 1/22/14)
[4] United States Office of Management and Budget, *USASpending.gov*; (can be found at http://usaspending.gov/; last accessed on 1/21/14).

resource for potential subcontractors. Other agencies, including the General Services Administration, Department of Homeland Security, and Small Business Administration provide more specific information regarding subcontracting opportunities with prime contractors on their websites.[5]

Effect of Proposed Changes

The bill creates s. 288.1046, F.S., the Defense Works in Florida Incentive which encourages defense contractors receiving federal contracts to select Florida-based small business subcontractors. This economic development tax incentive provides certified businesses a reduction in their corporate income tax. The bill defines the following terms:

- Florida Prime Contractor – A business entity operating in the state that is awarded a prime contract.
- Florida Small Business Subcontractor – A business entity that maintains its primary place of business in the state, has 250 or fewer employees, is awarded a subcontract from a Florida Prime Contractor, and has no subsidiary or affiliate business relationship to the prime contractor making the award.
- Prime Contract – A contract that is awarded directly from the federal government.
- Qualified Defense Work – A Prime Contract awarded after September 30, 2013 for manufacturing, engineering, construction, distribution, research, development, or other activities related to equipment, supplies, technology, or other goods or services that support national security or space-related activities. Locally sourced work awarded by a military installation is not included in this definition.
- Qualified Subcontract Award – Defense work subcontracted from a Florida Prime Contractor to a Florida Small Business Subcontractor which is executed in the state and meets the requirements of the bill.

The bill allows Florida Prime Contractors awarded a Prime Contract for Qualified Defense Work to reduce its computation of adjusted federal income under s. 220.13, F.S. by an amount equal to four percent of any Qualified Subcontract Award it awards a Florida Small Business Subcontractor. To qualify for the incentive a Florida Prime Contractor must apply to DEO and be certified that it is subject to chapter 220, has been awarded Qualified Defense Work, and has awarded a Qualified Subcontract Award.

Following certification by DEO, a Florida Prime Contractor may claim the incentive by applying separately to DEO for each Qualified Subcontract Award it has made to a Florida Small Business Subcontractor. Each application will contain documentation including copies of contracts, tax records, or employment records. DEO is required to supply the Florida Prime Contractor with a letter of certification for each certified application which may then be used when the business files its taxes beginning in the 2014 tax year. For a multiyear Qualified Subcontract Award DEO will certify the full amount of the award in the year it was awarded, but the Florida Prime Contractor may only claim the incentive in the tax year in which payment was made to the Florida Small Business Subcontractor.

DEO is permitted to certify up to $250 million in aggregate Qualified Subcontract Awards for a single Florida Prime Contractor per tax year, which equals $10 million in reduced taxable income, and would reduce the amount of corporate income tax that would have been paid to the state by $550,000. The bill also includes a cap of $2.5 billion in aggregate Qualified Subcontract Awards totaling $100 million in reduced taxable income and $5.5 million in reduced taxes for all certified applicants in a single tax year.

B. SECTION DIRECTORY:

Section 1: Creates s. 288.1046, F.S., the Defense Works in Florida Incentive, to provide a reduction in the computation of adjusted federal income as used to determine state

[5] L. Elaine Halchin, Congressional Research Service; *Overview of the Federal Procurement Process and Resources;* September 11, 2012.

corporate income tax liability for businesses receiving federal defense contracts who subcontract with certain Florida-based small businesses.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have a negative impact on general revenues of $3.3 million per fiscal year on a recurring basis.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on Florida-based defense industry subcontractors.

D. FISCAL COMMENTS:

DOR corporate income tax returns were examined for six of the largest Florida defense contractors, which represented 28 percent of total defense contracts in Florida. The potential impact of this 28 percent of the market was then extrapolated across the entire industry to arrive at the low estimate. The high estimate assumes 10 entities would be able to subtract $10m (100 percent FL corporate income tax apportionment) from their adjusted federal income which results in an impact of $550,000 per entity. The middle estimate is an average of the high and low estimates.

The Revenue Estimating Impact Conference adopted the middle estimate. In adopting the middle estimate, the conference determined there would be sufficient qualified defense subcontract activity to meet the cap of $100 million in deductions to adjusted federal income, but apportionment to Florida would result in less tax impact than the total $5.5 million tax cap.

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:

DEO and the Department of Revenue may adopt rules to administer this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

All Florida subtractions utilized in the computation of adjusted federal income are listed in s. 220.13(1)(b), F.S. The bill language does not update that section to list the subtraction for Qualified Subcontractor Awards. As a result, there may be uncertainty as to whether or not this subtraction should be included when computing adjusted federal income.

The language on lines 67-69 requires DEO to provide a certification letter to the applicant. However, DEO is not required to provide a copy of the certification letter to DOR.

The bill uses the term "tax year" in several places. Although the statutory changes in the bill are in ch. 288, F.S., the use of the term in the bill relate to corporate income tax under ch. 220, F.S. The term "tax year" is used in certain places in ch. 220, F.S.; however, the term "taxable year" is generally preferred as it is defined in s. 220.03(1)(y), F.S., and is used throughout ch. 220, F.S. The terms "tax year" and "taxable year" generally refer to the year used by a specific business to determine its net income, and generally reflects the period for which a return is made.

The language on lines 71-74 authorizes DEO to certify up to $250 million in aggregate Qualified Subcontractor Awards equaling $10 million in taxable income and $550,000 in reduced taxes per tax year to each qualified applicant. However, the language assumes that each Florida Prime Contractor will have 100% Florida apportionment factor, which may not be the case for a Florida Prime Contractor that engages in commerce in another state besides Florida.

A similar issue exists on lines 75-78, which authorizes DEO to certify up to $2.5 billion in aggregate Qualified Subcontract Awards equaling $100 million in taxable income and $5.5 million in reduced taxes per tax year.

Lines 75-78 of the bill appear intended to provide an aggregate statewide cap on the amount of aggregate Qualified Subcontract Awards that may be certified by DEO. If so, the use of the term "tax year" is problematic, because that term applies to a specific business. The use of a timeframe that is fixed and applies universally (e.g. state fiscal year or calendar year) would provide more certainty to taxpayers and the agencies involved in administering the provisions of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to defense contracting; creating s. 288.1046, F.S.; providing definitions; providing that certain prime contractors may apply to the Department of Economic Opportunity to certify that such contractors may reduce their computation of adjusted federal income by a certain amount when awarded a prime contract; providing requirements to apply for a reduction in computation of income; providing that a prime contractor must apply separately for each qualified subcontract award; providing for required documentation; providing guidelines for the department to certify an award; providing rulemaking authority; providing an effective date.

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

Section 1. Section 288.1046, Florida Statutes, is created to read:

288.1046 Defense Works in Florida Incentive.—

(1) As used in this section, the term:

(a) "Florida prime contractor" means a business entity operating in the state that is awarded a prime contract.

(b) "Florida small business subcontractor" means a business entity that:

1. Maintains its primary place of business in the state.

2. Has 250 or fewer employees.

3. Is awarded a subcontract from a Florida prime

contractor.

4. Has no subsidiary or affiliate business relationship to the prime contractor making the award.

(c) "Prime contract" means a contract that is awarded directly from the Federal Government.

(d) "Qualified defense work" means a prime contract awarded for manufacturing, engineering, construction, distribution, research, development, or other activities related to equipment, supplies, technology, or other goods or services that directly or indirectly support the United States Armed Forces or that can be reasonably determined to support national security, including space related activities. The term does not include work that may only be awarded locally by a military installation. The term also does not include contracts awarded before October 1, 2013.

(e) "Qualified subcontract award" means defense work, in part or in whole, subcontracted from a Florida prime contractor to a Florida small business subcontractor, which is executed in the state and is determined by the department to meet the criteria in paragraphs (a) through (d).

(2) A Florida prime contractor may apply to the department to certify that it may reduce its computation of adjusted federal income under s. 220.13 by an amount equal to 4 percent of the subcontract award if such prime contractor:

(a) Is subject to chapter 220.

(b) Is awarded qualified defense work.

(c) Awards a qualified subcontract award.

(3) A Florida prime contractor may claim the incentive

under subsection (2), and must apply separately to the department, for each qualified subcontract award and provide the department required documentation including, but not limited to, the application for the award and copies of contracts, tax records, or employment records.

(4) The department may establish application, approval, appeal, and accountability processes as necessary. The department may consult with Enterprise Florida, Inc., and the Florida Defense Support Task Force as necessary to administer this section.

(a) The department shall provide a letter certifying a qualified subcontract award to a Florida prime contractor to be used when the business files its taxes. Certifications shall apply beginning in the 2014 tax year.

(b) The department may certify, per each Florida prime contractor applicant per tax year, up to $250 million in aggregate qualified subcontract awards, equaling $10 million in reduced taxable income and $550,000 in reduced taxes.

(c) The department may certify in total, per tax year, up to $2.5 billion in aggregate qualified subcontract awards, equaling $100 million in reduced taxable income and $5.5 million in reduced taxes.

(d) For a multiyear qualified subcontract award:

1. The department shall certify the full amount of the award under paragraphs (b) and (c) in the year it was awarded.

2. The Florida prime contractor may claim the incentive in the tax year in which payment is made to the Florida small business subcontractor.

(5) The department and the Department of Revenue may adopt rules to administer this section.

Section 2. This act shall take effect July 1, 2014.

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 Smith offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of Subsection (1) of 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(b) Subtractions.—

1. There shall be subtracted from such taxable income:

a. The net operating loss deduction allowable for federal income tax purposes under s. 172 of the Internal Revenue Code for the taxable year, except that any net operating loss that is transferred pursuant to s. 220.194(6) may not be deducted by the seller,

b. The net capital loss allowable for federal income tax purposes under s. 1212 of the Internal Revenue Code for the taxable year,

c. The excess charitable contribution deduction allowable for federal income tax purposes under s. 170(d)(2) of the Internal Revenue Code for the taxable year, and

d. The excess contributions deductions allowable for federal income tax purposes under s. 404 of the Internal Revenue Code for the taxable year.

However, a net operating loss and a capital loss shall never be carried back as a deduction to a prior taxable year, but all deductions attributable to such losses shall be deemed net operating loss carryovers and capital loss carryovers, respectively, and treated in the same manner, to the same extent, and for the same time periods as are prescribed for such carryovers in ss. 172 and 1212, respectively, of the Internal Revenue Code.

2. There shall be subtracted from such taxable income any amount to the extent included therein the following:

a. Dividends treated as received from sources without the United States, as determined under s. 862 of the Internal Revenue Code.

b. All amounts included in taxable income under s. 78 or s. 951 of the Internal Revenue Code.

However, as to any amount subtracted under this subparagraph, there shall be added to such taxable income all expenses deducted on the taxpayer's return for the taxable year which are attributable, directly or indirectly, to such subtracted amount. Further, no amount shall be subtracted with respect to dividends paid or deemed paid by a Domestic International Sales Corporation.

3. In computing "adjusted federal income" for taxable years beginning after December 31, 1976, there shall be allowed as a deduction the amount of wages and salaries paid or incurred within this state for the taxable year for which no deduction is allowed pursuant to s. 280C(a) of the Internal Revenue Code (relating to credit for employment of certain new employees).

4. There shall be subtracted from such taxable income any amount of nonbusiness income included therein.

5. There shall be subtracted any amount of taxes of foreign countries allowable as credits for taxable years beginning on or after September 1, 1985, under s. 901 of the Internal Revenue Code to any corporation which derived less than 20 percent of its gross income or loss for its taxable year

ended in 1984 from sources within the United States, as described in s. 861(a)(2)(A) of the Internal Revenue Code, not including credits allowed under ss. 902 and 960 of the Internal Revenue Code, withholding taxes on dividends within the meaning of sub-subparagraph 2.a., and withholding taxes on royalties, interest, technical service fees, and capital gains.

6. There shall be subtracted from such taxable income 4 percent of the amount of the subcontract award certified by the Department of Economic Opportunity pursuant to s. 288.1046.

7~~6~~. Notwithstanding any other provision of this code, except with respect to amounts subtracted pursuant to subparagraphs 1. and 3., any increment of any apportionment factor which is directly related to an increment of gross receipts or income which is deducted, subtracted, or otherwise excluded in determining adjusted federal income shall be excluded from both the numerator and denominator of such apportionment factor. Further, all valuations made for apportionment factor purposes shall be made on a basis consistent with the taxpayer's method of accounting for federal income tax purposes.

Section 2. Section 288.1046, Florida Statutes, is created to read:

288.1046 Defense Works in Florida Incentive.—

(1) As used in this section, the term:

(a) "Florida prime contractor" means a business entity operating in the state that is awarded a prime contract.

(b) "Florida small business subcontractor" means a business entity that:

1. Maintains its primary place of business in the state;

2. Has 250 or fewer employees;

3. Is awarded a subcontract from a Florida prime contractor; and

4. Has no subsidiary or affiliate business relationship to the prime contractor making the award.

(c) "Prime contract" means a contract that is awarded directly from the Federal Government.

(d) "Qualified defense work" means a prime contract awarded for manufacturing, engineering, construction, distribution, research, development, or other activities related to equipment, supplies, technology, or other goods or services that directly or indirectly support the United States Armed Forces or that can be reasonably determined to support national security, including space related activities. The term also does not include contracts awarded before October 1, 2013.

(e) "Qualified subcontract award" means qualified defense work, in part or in whole, subcontracted from a Florida prime contractor to a Florida small business subcontractor, which is executed in the state and is determined by the department to meet the criteria in paragraphs (a) through (d).

(2) A Florida prime contractor may apply to the department to certify that it may reduce its computation of adjusted

federal income under s. 220.13 by an amount equal to 4 percent of the subcontract award if such prime contractor:

(a) Is subject to chapter 220;

(b) Is awarded qualified defense work; and

(c) Awards a qualified subcontract award of at least $250,000.

(3) A Florida prime contractor may claim the incentive under subsection (2) only for taxable years beginning on or after January 1, 2014, and must apply separately to the department, for each qualified subcontract award and provide the department required documentation including, but not limited to, the application for the award and copies of contracts, tax records, or employment records.

(4) The department may establish application, approval, appeal, and accountability processes as necessary. The department may consult with Enterprise Florida, Inc., and the Florida Defense Support Task Force as necessary to administer this section.

(a) Within ten (10) days after certifying a qualified subcontract award, the department shall provide:

1. A letter certifying the award to the applicant; and

2. A copy of the letter certifying the award to the Department of Revenue.

(b) The department may certify, per each Florida prime contractor applicant per calendar year, up to $250 million in

aggregate qualified subcontract awards, up to $10 million in reduced taxable income, and up to $550,000 in reduced taxes.

(c) The department may certify in total, per calendar year, up to $2.5 billion in aggregate qualified subcontract awards, up to $100 million in reduced taxable income, and up to $5.5 million in reduced taxes.

(d) For a multiyear qualified subcontract award:

1. The department shall certify the full amount of the award under paragraphs (b) and (c) in the calendar year it was awarded; and

2. The Florida prime contractor may claim the incentive in the taxable year in which payment is made to the Florida small business subcontractor.

(5) The department and the Department of Revenue may adopt rules to administer this section.

Section 3. This act shall take effect July 1, 2014.

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

Remove everything before the enacting clause and insert: An act relating to defense contracting; amending subsection (1)(b) of s. 220.13, F.S.; providing a subtraction from taxable income; creating s. 288.1046, F.S.; providing that certain prime contractors may apply to the Department of Economic Opportunity to certify that such contractors may reduce their computation of

adjusted federal income by a certain amount when awarded a prime contract; providing requirements to apply for a reduction in computation of income; providing that a prime contractor must apply separately for required documentation; providing guidelines for the department to certify an award; providing rulemaking authority; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 189 Growth Management
SPONSOR(S): Boyd
TIED BILLS: **IDEN./SIM. BILLS:** SB 374

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

SUMMARY ANALYSIS

HB 189 revises the prohibition on initiative and referendum processes for local comprehensive plan amendments or map amendments by removing a provision that allows such initiatives or referendum processes for any local comprehensive plan amendment or map amendment that affects more than five parcels of land under certain conditions.

The bill prohibits initiative or referendum processes for any local comprehensive plan amendment or map amendment, unless the initiative or referendum process is expressly authorized by specific language in a local government charter which was lawful and in effect on June 1, 2011.

The bill is effective upon becoming law.

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

In 2006, voters in the City of 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, a similar proposal with statewide effect appeared on the general election ballot as a proposed amendment to Florida's Constitution. Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote, rejecting Amendment 4.[3] In March 2011, voters in the City of St. Pete Beach repealed the town's Hometown Democracy provisions by 54.18 percent.[4]

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Among other things, the bill prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments in an attempt to provide clarity in local land development processes.[5]

At the time, the Town of Longboat Key, the Town of Yankeetown, and the City of Miami Beach had land use referendum or initiative processes in place.[6] One of these 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.[7] 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.[8]

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.[9] During the 2012 legislative session, the resulting bill, CS/HB 7081, amended s. 163.3167(8), F.S., to allow charter provisions like that of Yankeetown to remain valid. The bill was

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[1] "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 15, 2010. http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/ (last visited Jan. 15, 2014).

[2] *Id.*

[3] Florida Department of State, Division of Elections, November 2, 2010 General Election Official Results. http://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited Jan 15, 2014).

[4] Pinellas County Supervisor of Elections, 2011 Municipal Election Results, St. Pete Beach Charter Amendment 1. http://enr.votepinellas.com/FL/Pinellas/26521/43085/en/vts.html?cid=0116 (last visited Jan. 15, 2014).

[5] Section 7, ch. 2011-139, L.O.F., (HB 7207). part II of ch. 163, F.S., (ss. 163.2511 -163.3253, F.S.) is known as the "The Community Planning Act." Section 163.3161(1), F.S.

[6] Florida Department of Economic Opportunity, Division of Community Development, Email to House Economic Development & Tourism Subcommittee staff (Jan. 22, 2014). Email on file with the subcommittee.

[7] *See Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.,* No. 37 2011-CA-002036 (Fla. 2d Cir. Ct. 2011), Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).

[8] *Id.* The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in s. 6, Art. III, State 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.

[9] Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011 CA 002036 (Sept. 28, 2011). Letter on file with the House Economic Development & Tourism Subcommittee.

intended to have a limited impact, protecting only those local government charter provisions that: 1) were in effect as of June 1, 2011; and 2) authorized an initiative or referendum process for development orders, comprehensive plan amendments, or map amendments.[10] The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 into law on April 6, 2012.[11]

Chapter 2012-99, L.O.F., (CS/HB 7081) left open the possibility for an interpretation that deemed all referendum or initiative provisions in effect as of June 1, 2011, as valid, not merely those specifically related to development orders, comprehensive plan amendments, or map amendments.

In October 2012, the Palm Beach County Circuit Court ruled that CS/HB 7081 (2012) extended the exception to all local government general referendum or initiative charter provisions in effect as of June 1, 2011.[12] The court held that such a general provision encompassed specific land amendments, such as development orders and comprehensive map amendments, despite the charter language not specifically authorizing either. This interpretation was contrary to the intent of the 2011 and 2012 legislation, which sought to restrict those voting mechanisms.

In 2013, the Legislature passed CS/HB 7019[13] and CS/CS/HB 537,[14] which narrowed the interpretation of s. 163.3167(8), F.S., while preserving the intent and purpose of the Community Planning Act. The laws prohibited initiative or referendum processes for any development order, local comprehensive plan amendment, or map amendment. However, if a local government charter specifically authorizes initiative and referendum voting processes for land use amendments and was lawful and in effect June 1, 2011, then such processes are allowed for local comprehensive plan amendments or map amendments affecting more than five parcels of land. Initiative and referendum processes relating to development orders were removed from the exception and were prohibited.

The Town of Longboat Key is one of the few local governments that have a land use referendum or initiative process in its charter. The provision in the Town of Longboat Key charter states, "The present density limitations provided in the existing comprehensive plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key."[15] Thus, the Town of Longboat Key is prohibited from authorizing a referendum vote on local comprehensive plan amendments affecting less than five parcels of land.

Effect of Proposed Changes

The bill revises the prohibition on initiative or referendum processes for local comprehensive plan amendments or map amendments by removing a provision that allows such initiatives or referendum processes for any local comprehensive plan amendment or map amendment that affects more than five parcels of land under certain conditions.

The bill prohibits initiative or referendum processes for any local comprehensive plan amendment or map amendment, unless the initiative or referendum process is expressly authorized by specific language in a local government charter which was lawful and in effect on June 1, 2011. The bill

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[10] Section 1, ch. 2012-99, L.O.F.

[11] CS/HB 7081 became law on April 6, 2012 and was published as ch. 2012-99, L.O.F.

[12] *City of Boca Raton v. Kennedy, et. al.*, Case No. 2012CA009962MB (Fla. 15th Cir. Ct. 2012), 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.

[13] Section 3, ch. 2013-213, L.O.F.

[14] Section 1, ch. 2013-115, L.O.F.

[15] Municode Library, Longboat Key, Florida Code of Ordinances, Codified through Ordinance No. 2013-31, passed Dec. 2, 2013 (Supp. No. 5, Update 3), Longboat Key Charter, Article II, Section 22. Comprehensive plan for town. http://library.municode.com/index.aspx?clientID=14959&statelD=9&statename=Floridahttp://library.municode.com/index.aspx?clientId=14959&stateId=9&stateName=Floridasn.com/http:/library.municode.com/index.aspx?clientId=14959&stateId=9&stateName=Florida (last visited Jan. 22, 2014).

effectively exempts the Town of Longboat Key's charter provision requiring referendum approval of the electors in order to increase the density limitations from the state statutory provision prohibiting such initiative or referendum processes for local comprehensive plan amendments or map amendments.

Additionally, the bill provides that it is the intent of the Legislature that initiative and referendum processes be prohibited in regard to any local comprehensive plan amendment or map amendment, except as narrowly permitted under s. 163.3167(8)(b), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3167(8)(b) and (c), F.S., relating to the scope of the Community Planning Act, to revise the prohibition of initiative or referendum processes for local comprehensive plan amendments or map amendments.

Section 2: Provides an effective date of upon becoming 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 of special elections and the number of issues presented to voters in general and special elections.[16]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill removes potential impediments to developers seeking land use permit changes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[16] Complete Financial Information Statement: Referenda Required for Adoption and Amendment of Local Government Comprehensive Land Use Plans, #05-18. Office of Economic & Demographic Research. http://edr.state.fl.us/Content/constitutional-amendments/2010Ballot/LandUse/LandUseInformationStatement.cfm. (last visited January 27, 2014).

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

None.

A bill to be entitled

An act relating to growth management; amending s. 163.3167, F.S.; revising restrictions on an initiative or referendum process in regard to local comprehensive plan amendments and map amendments; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (8) of section 163.3167, Florida Statutes, are amended to read:

163.3167 Scope of act.—

(8)

(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless~~. 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 amendment or map amendment, except as specifically and narrowly permitted in paragraph (b) ~~with regard to local comprehensive plan amendments that affect more than five parcels of land or map amendments that affect more than five parcels of land~~. Therefore, the prohibition on initiative and referendum stated in paragraphs (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.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231 Admissions Tax
SPONSOR(S): Brodeur and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 330

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

SUMMARY ANALYSIS

Section 212.04, F.S., provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of six percent of the sales price of admission. The section exempts from this tax admission to specified sporting events, including all-star games produced by the National Football League (NFL), Major League Baseball (MLB), National Hockey League (NHL), and National Basketball Association (NBA). In addition, the MLB Home Run Derby, held in conjunction with the MLB All-Star Game, and the Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge, all produced as part of the NBA's All-Star Game festivities, are also exempt from the admissions tax.

The bill adds the Major League Soccer All-Star Game to the list of events exempted from the sales tax on admissions. It also replaces the list of specific NBA All-Star Game-associated events exempted under current law with language that includes all NBA-produced all-star events held at an arena, convention center, municipal facility or other such facility.

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have a negative, but indeterminate impact on state funds, and no impact on local government revenues or expenditures.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Professional Sports in Florida

There are nine major professional sports teams based in Florida covering each of the major professional sports leagues; the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and National Hockey League (NHL). The oldest major professional sports franchise in the state is the Miami Dolphins (NFL). The Dolphins franchise began play in 1966. The newest major professional sports team in the state is the Tampa Bay Rays (MLB) baseball franchise. The Rays franchise began play in 1998. The Miami Marlins (MLB), Tampa Bay Buccaneers (NFL), Jacksonville Jaguars (NFL), Orlando Magic (NBA), Miami Heat (NBA), Tampa Bay Lightning (NHL), and Florida Panthers (NHL) are all based within the state as well. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.[1]

Beginning in 2015, the state will be home to a tenth major professional sports team when the Orlando City Soccer Club begins play as the 21st Major League Soccer (MLS) franchise.[2] MLS is the premier professional soccer organization in the United States, having been launched in 1996 and boasting eight franchises currently valued at over $100 million.[3]

Sales Tax on Admissions

Section 212.04, F.S. provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of six percent. The section exempts from this tax admission to specified sporting events, including:

- NFL's Pro Bowl or Super Bowl.
- Semifinal or championship games for national collegiate tournaments.
- All-star games of the MLB, NBA, or NHL.
- MLB's Home Run Derby (held in conjunction with the MLB All-Star Game).
- NBA's Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge (held in conjunction with the NBA All-Star Game).

Effect of Proposed Changes

The bill amends s. 212.04, F.S. to add the MLS All-Star Game to the list of events exempted from the sales tax on admissions. The bill also replaces the list of specific NBA all-star events exempted from the tax under current law with language that includes all NBA-produced all-star events held at an arena, convention center, municipal facility or other such facility.

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[1] Florida Sports Foundation, *Sports in Florida* http://www.flasports.com/index.php?option=com_content&view=article&id=97&Itemid=211 (last accessed January 14, 2014).
[2] Major League Soccer, *Major League Soccer Names Orlando City SC as 21st Franchise, Set for 2015 Debut,* November 19, 2013; http://www.mlssoccer.com/news/article/2013/11/19/major-league-soccer-names-orlando-city-21st-franchise-set-2015-debut (last accessed January, 2014).
[3] Forbes, *Major League Soccer's Most Valuable Teams* November 20, 2013; http://www.forbes.com/sites/chrissmith/2013/11/20/major-league-soccers-most-valuable-teams/ (last accessed January 14, 2014).

B. SECTION DIRECTORY:

Section 1: Amends s. 212.04(2)(a), F.S., to exempt the Major League Soccer All-Star Game from the admissions tax, and to clarify previously exempted events associated with the National Basketball League All-Star Game.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have a negative, but indeterminate impact on state funds, and no impact on local government revenues or expenditures.

2. Expenditures:

The Department of Revenue estimates that there will be an insignificant operational impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Impact Conference adopted a negative indeterminate impact except for the first year cash, which is zero. If all-star events were to occur within the next five years, the impact for an MLS All-Star Game would be $100,000, while an NBA all-star event would have an impact of $100,000. Neither NBA franchise, nor the recently awarded MLS franchise has been selected to host future all-star events by their respective league governing bodies as of January 2014. Therefore, the estimated impact in indeterminate.

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

None.

A bill to be entitled

An act relating to the admissions tax; amending s. 212.04, F.S.; revising the professional sporting events that are exempt from the admissions tax; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 212.04, Florida Statutes, is amended to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(2)(a) A tax may not be levied on:

1. ~~No tax shall be levied on~~ Admissions to athletic or other events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services programs of the Department of Children and Families ~~Family Services~~, and state correctional institutions if ~~when~~ only student, faculty, or inmate talent is used. However, this exemption does ~~shall~~ not apply to admission to athletic events sponsored by a state university, and the proceeds of the tax collected on such admissions shall be retained and used by each institution to support women's athletics as provided in s. 1006.71(2)(c).

2.~~a. No tax shall be levied on~~ Dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive this exemption, the sponsoring organization must qualify as a not-for-profit entity under ~~the~~

~~provisions of~~ s. 501(c)(3) of the Internal Revenue Code of 1954, as amended.

3.~~b. No tax shall be levied on~~ Admission charges to an event sponsored by a governmental entity, sports authority, or sports commission if ~~when~~ held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility and if ~~when~~ 100 percent of the risk of success or failure lies with the sponsor of the event and 100 percent of the funds at risk for the event belong to the sponsor, and student or faculty talent is not exclusively used. As used in this subparagraph ~~sub-subparagraph~~, the terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts.

4.~~3. No tax shall be levied on~~ An admission paid by a student, or on the student's behalf, to any required place of sport or recreation if the student's participation in the sport or recreational activity is required as a part of a program or activity sponsored by, and under the jurisdiction of, the student's educational institution if~~, provided~~ his or her attendance is as a participant and not as a spectator.

5.~~4. No tax shall be levied on~~ Admissions to the National Football League championship game or Pro Bowl; ~~on~~ admissions to any semifinal game or championship game of a national collegiate tournament; ~~on~~ admissions to a Major League Baseball, Major

League Soccer, National Basketball Association, or National Hockey League all-star game; ~~on~~ admissions to the Major League Baseball Home Run Derby held before the Major League Baseball All-Star Game; or ~~on~~ admissions to ~~the~~ National Basketball Association all-star events produced by the National Basketball Association and held at a facility such as an arena, convention center, or municipal facility ~~Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, or Slam Dunk Challenge~~.

6.~~5.~~ A participation fee or sponsorship fee imposed by a governmental entity as described in s. 212.08(6) for an athletic or recreational program if ~~is exempt when~~ the governmental entity by itself, or in conjunction with an organization exempt under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, sponsors, administers, plans, supervises, directs, and controls the athletic or recreational program.

7.~~6. Also exempt from the tax imposed by this section to the extent provided in this subparagraph are~~ Admissions to live theater, live opera, or live ballet productions in this state which are sponsored by an organization that has received a determination from the Internal Revenue Service that the organization is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, if the organization actively participates in planning and conducting the event, is responsible for the safety and success of the event, is organized for the purpose of sponsoring live theater, live opera, or live ballet productions in this state, has more than 10,000 subscribing members and has among the stated purposes in its charter the promotion of arts education

in the communities ~~which~~ it serves, and will receive at least 20 percent of the net profits, if any, of the events ~~which~~ the organization sponsors and will bear the risk of at least 20 percent of the losses, if any, from the events ~~which~~ it sponsors if the organization employs other persons as agents to provide services in connection with a sponsored event. Before ~~Prior to~~ March 1 of each year, such organization may apply to the department for a certificate of exemption for admissions to such events sponsored in this state by the organization during the immediately following state fiscal year. The application must ~~shall~~ state the total dollar amount of admissions receipts collected by the organization or its agents from such events in this state sponsored by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Such organization shall receive the exemption only to the extent of $1.5 million multiplied by the ratio that such receipts bear to the total of such receipts of all organizations applying for the exemption in such year; however, ~~in no event shall~~ such exemption granted to any organization may not exceed 6 percent of such admissions receipts collected by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Each organization receiving the exemption shall report each month to the department the total admissions receipts collected from such events sponsored by the organization during the preceding month and shall remit to the department an amount equal to 6 percent of such receipts reduced by any amount remaining under the exemption. Tickets for such

events sold by such organizations may ~~shall~~ not reflect the tax otherwise imposed under this section.

8.~~7. Also exempt from the tax imposed by this section are~~ Entry fees for participation in freshwater fishing tournaments.

9.~~8. Also exempt from the tax imposed by this section are~~ Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event.

10.~~9. No tax shall be levied on~~ Admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 325 Brownfields
SPONSOR(S): Stone
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

HB 325 revises the process for designating brownfield areas and specifies the criteria that must be met 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 clarifies the requirements that apply to all local procedures for brownfield area designations, including the notice and hearing requirements and criteria that must be met for brownfield designation proposals.

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 claims of property damage caused by contamination for those who successfully implement a brownfield site rehabilitation agreement. The liability protection applies to causes of action accruing on or after July 1, 2014. The bill also provides the circumstances under which liability protection would not apply and 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, 2014.

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

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 Liability Relief and Brownfields Revitalization Act,[2] also known as the "Brownfields Law." Sections 221-22 of the Brownfield Law included liability exemptions for prospective purchasers, and for owners of contiguous properties who were not a fault in causing the contamination.[3] The main purpose of this 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 Act[4] (Act). The Act is intended to provide incentives for private sector entities to redevelop abandoned or underused real property, which was complicated by real or perceived environmental contamination.[5] Included in the Act was a process for designating brownfield areas, environmental contamination cleanup criteria, eligibility criteria and liability protections, and economic and financial incentives.[6]

As of November 22, 2013, local governments in Florida have adopted 352 resolutions that officially designate brownfield areas and 190 Brownfield Site Rehabilitation Agreements have been executed with entities to rehabilitate brownfield sites.

Brownfield Designation and Administration

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 EPA-designated brownfield pilot projects.[7]

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

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[1] 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 Dec.10, 2013).

[2] Public Law No. 107-118, 115 stat. 2356.

[3] 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 Dec. 10, 2013).

[4] Ch. 97-277, L.O.F.; codified at ss. 376.77 – 376.86, F.S., are known as the "Brownfields Redevelopment Act."

[5] *See* s. 376.78, F.S., relating to legislative intent, and s. 376.79(3), F.S., which defines "brownfield site."

[6] The Brownfields Redevelopment Act authorizes various financial, regulatory, and technical assistance to persons and businesses involved in the redevelopment of brownfields, including the Brownfield Areas Loan Guarantee Program under s. 376.86, F.S. *See* ss. 376.78 – 376.84, F.S.

[7] *See* s. 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.

[8] *See* s. 376.80, F.S.

- by a local government to encourage redevelopment of an area of specific interest to the community; or
- by a person[9] with a plan to rehabilitate and redevelop a brownfield site.

To designate a brownfield area, a local government must pass a local resolution specifying the exact area to be designated. 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 her 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; and
- whether the area contains sites or parts of sites suitable for limited recreational open space, cultural or historical preservation purposes.

Required Conditions

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 five new permanent jobs at the brownfield site. The full-time positions must not be associated with the implementation of the brownfield site agreement[14] or 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;

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[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)1.- 4., F.S.

[13] Section 376.80(2)(b) 1.-5., F.S.

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

- 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; and
- 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 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 Act[16] and counties are required to adopt a resolution in accordance with the county self-government provisions of state law.[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 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 online[21] notice.

[15] Section 376.80(2)(c), F.S. The Brownfields Redevelopment Act defines "local pollution control program" as a local pollution control program that has received delegated authority from DEP under ss. 376.80(9) and 403.182, F.S. Section 376.79(11), F.S.
[16] Section 376.80(1), F.S.; *See* s. 166.041, F.S. Ch. 166, F.S., is known as the Municipal Home Rule Powers Act. Section 166.011, F.S.
[17] Sections 376.80(1). *See* also s. 125.66, F.S., relating to county ordinances.
[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.

For counties,[22] it is unclear whether the notice for the public hearings must follow the procedures used when a proposal seeks zoning changes. The statutory reference under the Act describes how the required advertisements are to appear in a newspaper of general circulation; however, it is unclear if counties are required to hold public hearings.[23] Thus, there appears to be a technical error in the statutory cross-reference under the Act.

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.[24] However, certain sites are not eligible for the program. Those sites include areas 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.[25]

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.[26]

Until a person successfully completes a rehabilitation agreement, liability protection may be revoked upon that person's failure to comply with the rehabilitation agreement.[27] In an effort to secure federal liability protection for those persons willing to undertake remediation responsibility at a brownfield site, DEP must attempt to negotiate an agreement with the EPA to forego federal enforcement of corrective action authority.[28]

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.[29]

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 at the brownfield site.[30] In addition, 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.[31]

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[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.

[24] Section 376.82(1), F.S. Persons who have not caused or contributed to the contamination of a brownfield site on or after July 1, 1997, and who, prior to DEP's approval of a brownfield site rehabilitation agreement, are subject to corrective action or enforcement under state authority established in ch. 376, F.S., or ch. 403, F.S., relating to environmental control, including those persons subject to a pending consent order with the state, are eligible to participate in a brownfield site rehabilitation agreement under certain conditions. *See* s. 376.82(1)(b), F.S.

[25] Section 376.82(1)(a), F.S.

[26] Section 376.82(2)(a) and (2)(d), F.S.

[27] *See* s. 376.80(8), F.S.

[28] *See* s. 376.82(2)(g), F.S.

[29] Section 376.82(2)(b), F.S.

[30] Section 376.82(2)(h), F.S.

[31] Section 376.82(2)(j), F.S.

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.[32]

Effect of Proposed Changes

Legislative Intent

The bill 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 clarifies the requirements that 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 brownfield pilot project area:

- A local government must notify DEP, and if applicable, the local pollution control program[33] within 30 days after the adoption of a resolution by the local governing body of its decision to designate a brownfield area for rehabilitation.
- As required in current law, 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.

Public hearing and notice requirements

The bill clarifies which provisions of the Act relating to the public hearings, conditions, and criteria apply when a local government proposes to designate a brownfield area *within* and *outside* the following redevelopment areas:

- community redevelopment area;
- enterprise zone;
- empowerment zone;
- closed military base; or
- designated brownfield pilot project.

As provided in current law, municipalities and counties are required to adopt the designation resolution in accordance with the procedures in chapters 166 and 125, F.S., respectively. The bill corrects a statutory cross-reference under the Act. By referencing s. 166(4)(b), F.S., 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. In addition, the bill clarifies that counties must also hold two advertised public hearings and states 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

[32] *See* s. 376.82(4), F.S.

[33] *See supra* note 15.

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 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. Specifically, the bill provides relief from liability for claims of property damages, including but not limited to, diminished value of real property or improvements; lost or delayed rent, sale, or use of real property or improvements; or stigma to real property or improvements caused by contamination 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, 2014.

The bill further provides that such liability protection does not apply to a person who fraudulently demonstrates site conditions or fraudulently completes site rehabilitation of a property subject to a brownfield site rehabilitation agreement. Nor does liability protection apply to a person who exacerbates the contamination of a property subject to a brownfield site rehabilitation agreement in violation of applicable laws, and which causes property damage. 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., and creates subsection (12) of s. 376.80, F.S., relating to the brownfield program administration process, to revise 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. A new subsection (12) is added to provide 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 comply with the terms of a brownfield site rehabilitation agreement. The liability protection applies to causes of action accruing on or after July 1, 2014. The bill also provides the circumstances under which liability protection would not apply and 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, 2014.

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:

Local governments, 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:

As drafted, the bill requires multiple formats for providing public notice and does not clearly identify the number of required public hearings that a county must conduct. Multiple formats for public notice and the lack of clarity as to the number of required public hearings may be confusing to local governments and persons other than governmental entities trying to meet the required criteria when proposing to designate brownfield areas under the Brownfields Redevelopment Act.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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; authorizing local governments to use a term other than "brownfield area" when naming such areas; amending s. 376.82, F.S.; providing certain liability protection against claims of property damages; providing 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) The following general procedures apply to brownfield designations:

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

(b) For a brownfield area designation proposed by:

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

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

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

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

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

3. Right to be removed from proposed brownfield area.—If a

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

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

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

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

~~to be designated~~, the local government must consider:

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

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

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

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

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

(c)~~(b)~~ Brownfield area designation proposed by persons other than a governmental entity.—For designation of a brownfield area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the ~~a~~ brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following ~~under~~

~~the provisions of this act provided that~~:

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

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

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a 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 paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and

suggestions about rehabilitation. Notice pursuant to this subparagraph must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice must be posted in the affected area.~~; and~~

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

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

(12) A local government that designates a brownfield area pursuant to this section is not required to use the term "brownfield area" within the name of the brownfield area 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, is ~~shall be~~ relieved of:

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

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

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

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

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

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 Stone offered the following:

Amendment

Remove everything after the enacting clause and insert:

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

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

(8) The existence of brownfields within a community may contribute to, or may be a symptom of, overall community decline, including issues of human disease and illness, crime, educational and employment opportunities, and infrastructure decay. The environment is an important element of quality of life in any community, along with economic opportunity,

educational achievement, access to health care, housing quality and availability, provision of governmental services, and other socioeconomic factors. Brownfields redevelopment, properly done, can be a significant element in community revitalization, especially within community redevelopment areas, enterprise zones, empowerment zones, closed military bases, or designated brownfield pilot project areas.

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

376.80 Brownfield program administration process.—

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

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

(b) For a brownfield area designation proposed by:

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

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

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

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

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

form established in s. 125.66(4)(b).

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

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

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

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

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

~~to be designated~~, the local government must consider:

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

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

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

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

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

(c) ~~(b)~~ Brownfield area designation proposed by persons other than a governmental entity.—For designation of a brownfield area that is proposed by a person other than the local government, the local government with jurisdiction over the proposed brownfield area shall provide notice and adopt a resolution to designate the ~~a~~ brownfield area pursuant to paragraph (1)(c) if, at the public hearing to adopt the resolution, the person establishes all of the following ~~under~~

~~the provisions of this act provided that~~:

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

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

3. The redevelopment of the proposed brownfield site is consistent with the local comprehensive plan and is a 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 paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and

suggestions about rehabilitation. Notice pursuant to this subparagraph ~~must be made in a newspaper of general circulation in the area, at least 16 square inches in size, and the notice~~ must be posted in the affected area.~~; and~~

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

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

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

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

376.82 Eligibility criteria and liability protection.—

(2) LIABILITY PROTECTION.—

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

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

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

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

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

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