

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 629*
Judiciary II Committee Substitute Adopted 5/31/05
House Committee Substitute Favorable 7/27/05

Short Title: Manufacturing Redevelopment Districts.

(Public)

Sponsors:

Referred to:

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE REDEVELOPMENT OF CERTAIN
3 MANUFACTURING DISTRICTS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1. Manufacturing redevelopment districts: legislative**
6 **findings.**

7 (a) The General Assembly of North Carolina makes the following findings
8 regarding the need for manufacturing redevelopment districts:

9 (1) Economic development in the State will be served by providing an
10 opportunity to restart production in manufacturing facilities designed
11 for targeted industries such as photographic materials, digital inkjet
12 products, digital photographic applications, and other photographic
13 printing technology, thereby providing employment opportunities for
14 the residents of North Carolina.

15 (2) When an existing facility can be modified to meet the needs of the new
16 industry and thereby preserve and create jobs, it is in the public interest
17 to provide a mechanism for these modifications to occur.

18 (3) Economically distressed counties continue to lose manufacturing jobs,
19 and the General Assembly must act to create new jobs for citizens
20 residing in those counties.

21 (4) The health and safety of the citizens of North Carolina will be served
22 through the assessment and remediation of known and unknown
23 environmental conditions at manufacturing facilities.

24 (5) The public interest will be served by State acquisition of title to real
25 property located within significant State property holdings after
26 manufacturing operations have permanently ceased, remediation has
27 been completed, and the buildings associated with the manufacturing
28 operation have been removed.

1 (6) The public interest of the State will be served by encouraging owners
2 of idle manufacturing facilities to transfer ownership in property in
3 order to make it possible for new operators to restart production at
4 these facilities.

5 (b) For purposes of this act, a new operator is an entity that proposes to
6 restart operations at a manufacturing facility located within a manufacturing
7 redevelopment district created under this act.

8 **SECTION 2. Manufacturing redevelopment districts: purpose.**

9 A manufacturing redevelopment district shall be established to provide
10 manufacturing, research and development, and related service and support jobs to
11 citizens of the State while ensuring the remediation of known and unknown
12 environmental conditions at manufacturing facilities.

13 **SECTION 3. Manufacturing redevelopment districts: establishment;
14 criteria.**

15 (a) A manufacturing redevelopment district may be established on any
16 parcel or tract of land or on any combination of contiguous parcels or tracts of land as
17 provided in this section. To establish a manufacturing redevelopment district, the new
18 operator of the manufacturing facilities located within the boundaries of the district shall
19 certify to the Secretary of State that the district meets all of the criteria set out in this
20 section. The certification shall describe the boundaries of the district by metes and
21 bounds and shall set out the specific financial mechanism that guarantees completion of
22 the assessment and remediation program as required under subdivision (8) of subsection
23 (b) of this section. A parcel or tract of land shall be established as a manufacturing
24 redevelopment district on the date the Secretary of State certifies that all of the criteria
25 set out in this section have been met. The new operator shall meet all criteria set out in
26 this section, and the Secretary shall make the determination of certification within six
27 months of the date of transfer of the real property to the local government entity. Once
28 established, a manufacturing redevelopment district shall continue to exist until title to
29 the real property comprising the district is transferred to the State as provided in Section
30 7 of this act.

31 (b) A manufacturing redevelopment district may be established only if all
32 of the following criteria are met at the time the district is to be established:

33 (1) The real property is located in a county that is economically distressed.
34 For purposes of this subdivision, a county shall be considered
35 economically distressed if, as of the date of the most recent annual
36 assessment by county officials, all of the following apply:

37 a. The average weekly wage in the county is less than five
38 hundred twenty-five dollars (\$525.00) per person.

39 b. The percentage of unemployed workers is greater than six
40 percent (6%).

41 c. The percentage of citizens who are at or below the federal
42 poverty level, as determined by the most recent federal
43 decennial census, is greater than nine percent (9%).

- 1 (2) All of the real property comprising the district is a privately owned
2 in-holding of 50 acres or more within a State forest of 10,000 acres or
3 more.
- 4 (3) The district contains a manufacturing facility that has been out of
5 production for two years or more.
- 6 (4) Failure to restart the manufacturing facility would result in a
7 permanent lost opportunity to create 50 or more jobs.
- 8 (5) The manufacturing facility has a total square footage of 500 square
9 feet or more.
- 10 (6) The new operator of the manufacturing facility guarantees investment
11 of at least five million dollars (\$5,000,000) in the manufacturing
12 facility within 12 months following the creation of the manufacturing
13 redevelopment district and guarantees employment of at least 50
14 persons.
- 15 (7) The new operator of the facility has done all of the following:
- 16 a. Accepted responsibility for all requirements of this act.
- 17 b. Accepted responsibility for assessment and remediation of
18 known and unknown environmental conditions on the property
19 that comprises the manufacturing redevelopment district in a
20 manner satisfactory to the Department of Environment and
21 Natural Resources and in accordance with this act and other
22 applicable environmental laws, regulations, and rules.
- 23 c. Agreed to assume all other liabilities as provided in Section 5 of
24 this act.
- 25 d. Agreed to remove all buildings in the manufacturing
26 redevelopment district when the new operator permanently
27 ceases manufacturing operations.
- 28 e. Agreed to comply with other requirements of Section 7 of this
29 act.
- 30 (8) The new operator guarantees through a bond, insurance, or a sufficient
31 corporate guarantee, fulfillment of all of the requirements set out in
32 subdivision (7) of this subsection. As part of this guarantee, the new
33 operator shall provide a financial assurance program that must be
34 certified by the Department of Environment and Natural Resources,
35 including an assessment and remediation program that is prefunded by
36 means of an escrow account or similar financial mechanism. Any
37 escrow account or similar financial mechanism shall run in favor of the
38 State in the event of a default and shall be in an amount of not less
39 than five million dollars (\$5,000,000). The new operator shall also
40 provide any additional financial assurance that may be required by the
41 Department of Environment and Natural Resources pursuant to federal
42 and State laws, regulations, or rules.
- 43 (9) The owner of the real property has entered into an agreement to
44 transfer the real property to be used as the manufacturing

1 redevelopment district to a local government entity. This local
2 government entity has, in turn, entered into an agreement to transfer
3 the real property comprising the district to the new operator under a
4 condition that when manufacturing operations permanently cease, the
5 new operator will remove all of the buildings and complete
6 remediation of all remaining contamination and then transfer title to
7 the property to the State, as provided in Section 7 of this act.

8 **SECTION 4. Manufacturing redevelopment districts: qualified**
9 **immunity for third-party claims; enforcement of environmental requirements.**

10 (a) No person who owned or had an interest in any real property within a
11 manufacturing redevelopment district at any time prior to the establishment of the
12 district shall be liable to any private or third party for civil claims arising out of the
13 presence of oil, a hazardous substance, or a hazardous waste on the real property if the
14 cause of action arose after transfer of the property to the new operator under this act,
15 regardless of when the oil, hazardous substance, or hazardous waste was brought to or
16 discovered at the site. The qualified immunity provided by this section shall attach at
17 the time that the Secretary of State certifies the manufacturing redevelopment district or
18 at the time that the real property comprising the manufacturing redevelopment district is
19 transferred either directly or indirectly to the new operator, whichever occurs later. The
20 qualified immunity provided by this section is with respect to any theory of legal
21 liability, including, but not limited to, any claim of negligence, nuisance, or trespass, or
22 arising under other common law principles, or arising under any State statute or rule,
23 including, but not limited to, Article 9 of Chapter 130A of the General Statutes, Articles
24 21 and 21A of Chapter 143 of the General Statutes, and rules adopted pursuant to those
25 Articles. The qualified immunity provided by this section shall continue in effect after
26 the termination of the manufacturing redevelopment district.

27 (b) Nothing in this act shall be construed to prevent the State from
28 enforcing remediation standards, monitoring, or compliance requirements specifically
29 required by the United States Environmental Protection Agency to be enforced by the
30 State as a condition to receiving and retaining federal funds or program approval,
31 authorization, or delegation.

32 **SECTION 5. Manufacturing redevelopment districts: assignment of**
33 **liability.**

34 In addition to any liability under any provision of law, the new operator of the
35 manufacturing redevelopment district or its successor in interest shall be liable for all
36 claims for which any prior owner has been granted qualified immunity by Section 4 of
37 this act. This assignment of liability shall continue in effect after the termination of the
38 manufacturing redevelopment district. The new operator or its successor in interest shall
39 have all rights, claims, and defenses that are or would have been available to any prior
40 owner with respect to claims for which the prior owner has been granted qualified
41 immunity.

42 **SECTION 6. Manufacturing redevelopment districts: transfer of**
43 **property to a subsequent manufacturer.**

1 The new operator or its successor in interest shall not transfer the property
2 comprising the manufacturing redevelopment district to any person, including without
3 limitation any corporate affiliate of the new operator, until the Secretary of State
4 certifies that the person has met all of the requirements applicable to a new operator
5 under subdivisions 7 through 9 of subsection (b) of Section 3 of this act.

6 **SECTION 7. Manufacturing redevelopment districts: donation and**
7 **transfer of the district; transfer to the State.**

8 (a) The local government entity to which the real property comprising the
9 manufacturing redevelopment district is transferred pursuant to subdivision (9) of
10 subsection (b) of Section 3 of this act shall accept title to the real property and shall
11 immediately transfer such title to the new operator.

12 (b) When the new operator or its successor in interest permanently ceases
13 manufacturing operations at the facility within the manufacturing redevelopment
14 district, it shall expeditiously do all of the following:

15 (1) Demolish and remove all buildings in the manufacturing
16 redevelopment district.

17 (2) Perform any additional assessment and remediation required by the
18 Department of Environment and Natural Resources.

19 (3) Tender transfer of title to all of the land constituting the manufacturing
20 redevelopment district to the State of North Carolina upon completion
21 of any assessment and remediation.

22 (c) The State Property Office shall accept donation of the property for
23 allocation to the contiguous State forest upon demonstration that all buildings have been
24 removed and remediation completed to the satisfaction of the Secretary of the
25 Department of Environment and Natural Resources in light of the requirements of this
26 section.

27 (d) When the State Property Office accepts donation of the property as
28 provided in subsection (c) of this section, the manufacturing redevelopment district shall
29 terminate.

30 **SECTION 8. Effective date.** This act is effective when it becomes law.