

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**SESSION LAW 2005-462
SENATE BILL 629**

AN ACT TO PROVIDE FOR THE REDEVELOPMENT OF CERTAIN
MANUFACTURING DISTRICTS.

The General Assembly of North Carolina enacts:

SECTION 1. Manufacturing redevelopment districts: legislative findings.

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

- (1) Economic development in the State will be served by providing an opportunity to restart production in manufacturing facilities designed for targeted industries such as photographic materials, digital inkjet products, digital photographic applications, and other photographic printing technology, thereby providing employment opportunities for the residents of North Carolina.
- (2) When an existing facility can be modified to meet the needs of the new industry and thereby preserve and create jobs, it is in the public interest to provide a mechanism for these modifications to occur.
- (3) Economically distressed counties continue to lose manufacturing jobs, and the General Assembly must act to create new jobs for citizens residing in those counties.
- (4) The health and safety of the citizens of North Carolina will be served through the assessment and remediation of known and unknown environmental conditions at manufacturing facilities.
- (5) The public interest will be served by State acquisition of title to real property located within significant State property holdings after manufacturing operations have permanently ceased, remediation has been completed, and the buildings associated with the manufacturing operation have been removed.
- (6) The public interest of the State will be served by encouraging owners of idle manufacturing facilities to transfer ownership in property in order to make it possible for new operators to restart production at these facilities.

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

SECTION 2. Manufacturing redevelopment districts: purpose.

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

SECTION 3. Manufacturing redevelopment districts: establishment; criteria.

(a) A manufacturing redevelopment district may be established on any parcel or tract of land or on any combination of contiguous parcels or tracts of land as provided in this section. To establish a manufacturing redevelopment district, the new operator of the manufacturing facilities located within the boundaries of the district shall certify to the Secretary of State that the district meets all of the criteria set out in this section. The certification shall describe the boundaries of the district by metes and bounds and shall set out the specific financial mechanism that guarantees completion of the assessment and remediation program as required under subdivision (b)(8) of this section. This certification shall constitute prima facie evidence that these criteria have been met. The district shall be considered to be established as a manufacturing redevelopment district on the date the certification is filed. Once established, a manufacturing redevelopment district shall continue to exist until title to the real property comprising the district is transferred to the State as provided in Section 7 of this act.

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

- (1) The real property is located in a county that is economically distressed. For purposes of this subdivision, a county shall be considered economically distressed if, as of the date of the most recent annual assessment by county officials, all of the following apply:
 - a. The average weekly wage in the county is less than five hundred twenty-five dollars (\$525.00) per person.
 - b. The percentage of unemployed workers is greater than six percent (6%).
 - c. The percentage of citizens who are at or below the federal poverty level, as determined by the most recent federal decennial census, is greater than nine percent (9%).
- (2) All of the real property comprising the district is a privately owned in-holding of 50 acres or more within a State forest of 10,000 acres or more.
- (3) The district contains a manufacturing facility that has been out of production for two years or more.
- (4) Failure to restart the manufacturing facility would result in a permanently lost opportunity to create 50 or more jobs.
- (5) The manufacturing facility has a total square footage of 500 square feet or more.
- (6) The new operator of the manufacturing facility guarantees investment of at least five million dollars (\$5,000,000) in the manufacturing

facility within 12 months following the creation of the manufacturing redevelopment district and guarantees employment of at least 50 persons.

- (7) The new operator of the facility has done all of the following:
 - a. Accepted responsibility for all requirements of this act.
 - b. Accepted responsibility for assessment and remediation of known and unknown environmental conditions on the property that comprises the manufacturing redevelopment district in accordance with this act and other applicable environmental laws, regulations, and rules.
 - c. Agreed to assume all other liabilities as provided in Section 5 of this act.
 - d. Agreed to remove all buildings in the manufacturing redevelopment district when the new operator permanently ceases manufacturing operations.
 - e. Agreed to comply with other requirements of Section 7 of this act.
- (8) The new operator provides financial assurance, acceptable to the Department of Environment and Natural Resources, for the fulfillment of the requirements set out in Section 3(b)(7)b of this act. Such financial assurance shall include a prefunded escrow account or other financing mechanism, in an amount not less than five million dollars (\$5,000,000), that runs in favor of the State in the event of a default. The establishment of the prefunded account shall not relieve the new operator of its obligation to comply with applicable laws in assessing and remediating the manufacturing facility. The Department of Environment and Natural Resources shall: (i) review the financial assurance contemplated by this act in light of reasonably available financial assurance and guaranteed remediation products and in light of known and reasonably anticipated unknown environmental conditions at the manufacturing redevelopment district, and (ii) complete its review of the financial assurance within 30 days of receipt by the Department of a request for such review by the new operator accompanied by a description of the financial assurance. The requirement that the financial assurance is acceptable to the Department shall be waived if the Department does not complete its review within such 30 day period.
- (9) The owner of the real property has entered into an agreement to transfer the real property to be used as the manufacturing redevelopment district to a local government entity. This local government entity has, in turn, entered into an agreement to transfer the real property comprising the district to the new operator under a condition that when manufacturing operations permanently cease, the

new operator will comply with the requirements of Section 7 of this act.

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

(a) No person who owned or had an interest in any real property within a manufacturing redevelopment district at any time prior to the establishment of the district shall be liable to any private or third party for civil claims arising out of the presence of oil, a hazardous substance, or a hazardous waste on the real property if the cause of action arose after transfer of the property to the new operator under this act, regardless of when the oil, hazardous substance, or hazardous waste was brought to or discovered at the site. The qualified immunity provided by this section shall attach at the time that the new operator submits its certification to the Secretary of State pursuant to Section 3(a) of this act or at the time that the real property comprising the manufacturing redevelopment district is transferred to the new operator, whichever occurs later. The qualified immunity provided by this section is with respect to any theory of legal liability, including, but not limited to, any claim of negligence, nuisance, or trespass, or arising under other common law principles, or arising under any State statute or rule, including, but not limited to, Article 9 of Chapter 130A of the General Statutes, Articles 21 and 21A of Chapter 143 of the General Statutes, and rules adopted pursuant to those Articles. The qualified immunity provided by this section shall continue in effect after the termination of the manufacturing redevelopment district.

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

SECTION 5. Manufacturing redevelopment districts: assignment of liability.

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

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

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

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

(a) The local government entity to which the real property comprising the manufacturing redevelopment district is transferred pursuant to Section 3(b)(9) of this act shall accept title to the real property and shall immediately transfer such title to the new operator. The consideration for the transfer by the local government entity of title to the new operator shall be the creation of jobs and economic opportunities that will result from restarting manufacturing operations on the real property.

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

- (1) Demolish and remove all buildings in the manufacturing redevelopment district.
- (2) Perform any additional assessment and remediation required by the Department of Environment and Natural Resources in accordance with applicable environmental laws.
- (3) Tender transfer of title to all of the land constituting the manufacturing redevelopment district to the State of North Carolina upon completion of any such assessment and remediation.

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

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

SECTION 8. Effective date. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 23rd day of August, 2005.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

This bill having been presented to the Governor for his signature on the 24th day of August, 2005 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law.

This 3rd day of October, 2005

s/ Patrick T. Buffkin
Enrolling Clerk