**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 24 TO TITLE 31 SO AS TO MAKE FINDINGS CONCERNING NUISANCE SUITS RELATED TO EXISTING USES OF REAL PROPERTY; TO DEFINE NECESSARY TERMINOLOGY; TO PROVIDE CRITERIA FOR DETERMINING THE ESTABLISHED DATE OF OPERATION OF AN EXISTING FACILITY; TO PROVIDE AN EXISTING INDUSTRIAL FACILITY IS NOT OR MAY NOT BECOME A PUBLIC OR PRIVATE NUISANCE BY ANY CHANGED CONDITIONS IN OR ABOUT THE LOCALITY OF THE FACILITY; TO PROVIDE AN EXCEPTION FOR NUISANCE CONDITIONS RESULTING FROM THE ILLEGAL OPERATION OF AN EXISTING FACILITY; TO PROVIDE THIS NUISANCE EXEMPTION FOR EXISTING INDUSTRIAL FACILITIES DOES NOT AFFECT OR DEFEAT THE RIGHT OF A PERSON TO RECOVER DAMAGES FOR INJURIES HE SUSTAINED FROM POLLUTION OR OTHER WATER CONDITION CHANGES OF A STREAM OR BECAUSE OF AN OVERFLOW ON HIS LANDS; AND TO PROVIDE MISCELLANEOUS PROVISIONS CONCERNING LOCAL LAWS AND GOVERNMENTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 31 of the 1976 Code is amended by adding:

“CHAPTER 24

Nuisance Suits Related to Existing Uses of Real Property

Section 31‑24‑10. The General Assembly finds that:

(1) The economic well‑being of the citizens of the State is enhanced by responsible development and the retention and growth of industry within the State, and that it is in the best interests of the State to induce the retention, location, expansion, and improvement of manufacturing, processing, distribution, warehousing, and technology intensive projects within the State to promote the public purpose of maintaining existing well‑paying jobs and creating new well‑paying jobs within the State.

(2) The inducement provided in this chapter will facilitate the retention and creation of jobs and will create and maintain consistent sources of tax revenues for the State and its political subdivisions.

(3) The inducement of the retention, location, expansion, and improvement of manufacturing, processing, distribution, warehousing, and technology intensive projects within the State is of paramount importance.

(4) When nonindustrial, nonagricultural land uses extend into rural or industrial areas, existing operations may become the subject of nuisance litigation and as a result existing industrial facilities are: (a) sometimes forced to abandon their operations; and

(b) discouraged from making investments in improvements or adopting new technology or methods.

(5) The abandonment or lack of investment in existing industrial facilities can result in the disruption of communities, unmarketability of property, growth in delinquencies and crime in the area, an abnormal exodus of families and businesses, and increased cost to local governments by requiring additional police and fire services. Abandoned existing industrial facilities may pose safety concerns. A public purpose is served by maintaining existing facilities as productive assets for the communities and result in increased job opportunities.

(6) This chapter is enacted to reduce the loss to the State of existing industrial facilities and future improvements of existing industrial facilities, which industrial facilities are major employers, contribute substantially to the tax base of taxing districts in their locations, and are good corporate citizens by limiting the circumstances under which existing industrial facilities and operations may be considered a nuisance when nonindustrial, nonagricultural land uses expand into areas where industrial facilities or operations are already in existence. This purpose is justified by the stated social desire of preserving and encouraging the maintenance of existing industrial facilities as productive assets of the communities in which they are located.

(7) In order to promote the retention, location, expansion, and improvement of manufacturing, processing, distribution, warehousing and technology intensive projects within the State and to promote the public purpose of maintaining existing, well‑paying jobs and creating new well‑paying jobs within the State, it is the intent of the General Assembly that state law and the regulations of the Department of Health and Environmental Control preempts the entire field of and constitute a complete and integrated regulatory plan for existing industrial facilities as defined in Section 31‑24‑20, thereby precluding any local regulation.

Section 31‑24‑20. For purposes of this chapter, ‘existing industrial facility’ includes, but is not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for manufacturing, processing, distribution, warehousing, and technology intensive operations, including any such facilities which are currently undeveloped but when constructed will be directly affiliated and co‑located with an existing industrial facility and any current or future retail operation co‑located now or in the future on such existing industrial facility whose primary product mix consists of products of the existing industrial facility or its affiliated facilities.

Section 31‑24‑30. For the purposes of this chapter, the established date of operation is the date on which an existing industrial facility commenced operation. If the improvements on the existing industrial facility are expanded subsequently, new improvements are subsequently constructed thereon, or new technology is subsequently adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the existing industrial facility of a previously established date of operation.

Section 31‑24‑40. The provisions of Section 31‑24‑60 do not affect or defeat the right of a person to recover damages for injuries sustained by him because of pollution of, or change in the condition of, the waters of a stream or because of an overflow on his lands.

Section 31‑24‑50. (A) Notwithstanding any local law or ordinance, an existing industrial facility is considered to be in compliance with the local law or ordinance if the facility would otherwise comply with state law or regulations governing the facility or its operations. To the extent an ordinance of a unit of local government makes the operation of an existing industrial facility a nuisance or providing for abatement as a nuisance in derogation of this chapter, then such ordinance is null and void. The provisions of this section do not apply whenever a nuisance results from the illegal operation of an existing industrial facility.

(B) The provisions of this section must not preclude a local governing body from determining whether an industrial use is a permitted use under the local governing body’s land use and zoning authority or such other authority as may be specifically delineated by statute.

(C) Notwithstanding subsection (B), if any use of property is a permitted use, or is approved as a use pursuant to any applicable conditional use, special exception or similar procedure, then local development standards or other ordinances are null and void to the extent they apply to the operation or expansion of existing industrial facilities otherwise permitted by this chapter or the laws of this State.

Section 31‑24‑60. No existing industrial facility is or may become a nuisance, private or public, by any changed conditions in or about the locality of the facility. This section does not apply whenever a nuisance results from the illegal operation of an existing industrial facility.”

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval by the Governor.

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