POLLED OUT OF COMMITTEE

MAJORITY FAVORABLE

April 18, 2017

**H. 3653**

Introduced by Reps. Forrester, Yow, Loftis, Henegan, Spires, Anderson, Burns, V.S. Moss, Crawford, Hamilton, Felder, Norman, Anthony, Chumley, Erickson, Gagnon, Hayes, Henderson, Hosey, Jefferson, S. Rivers, Ryhal, Sandifer, Thayer, Willis, Atkinson, Alexander, West, Hixon, Murphy, Arrington, Bennett and Crosby

S. Printed 4/18/17--S.

Read the first time March 29, 2017.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 3653) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 24 to Title 31 so as to provide the operations or expansions of manufacturing and industrial facilities may, etc., respectfully

**REPORT:**

Has polled the Bill out majority favorable.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on February 2, 2017**

**State Expenditure**

This bill creates a new chapter in Title 31 regarding nuisance suits for manufacturing and industrial property. Manufacturing or industrial facilities are defined as any facility that operates under North American Industry Classification System codes 31-33 and 48-49 including, but not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment used for manufacturing, processing, distribution, warehousing, and technology intensive operations. A manufacturing or industrial facility, or expansion of such a facility, may not be found to be a public or private nuisance if it is operating pursuant to the issuance of requisite licenses, permits, certifications, or authorizations under applicable federal and state environmental law and commenced operations before a change in the land use in the vicinity of the manufacturing or industrial facility.

Additionally, a manufacturing or industrial facility is protected pursuant to the provisions of this section may reasonably expand its operation or facilities without losing its protected status if all county, municipal, state, and federal environmental codes, laws, or regulations are met by the manufacturing or industrial operation. Once the protected status is acquired, it is assignable, alienable, and inheritable, and may not be waived by the temporary cessation of operation or by diminishing the size of the operation. Further, a city, county, taxing district, or other political subdivision may not adopt an ordinance or resolution that declares a manufacturing or industrial facility, or an expansion of such a facility that is operated in accordance with this chapter to be a nuisance, nor may a zoning ordinance that requires abatement or forces the closure of a manufacturing or industrial facility be adopted. Such an ordinance is void and has no force or effect. This bill does not apply to any nuisance complaint or lawsuit commenced within one year of the effective date of this bill.

**South Carolina Judicial Department.** The department indicates the curtailing of nuisance lawsuits may lead to fewer nuisance lawsuits being filed in Common Pleas court. However, there is no data readily available on the number of nuisance lawsuits filed. Therefore, the bill’s expenditure impact on general fund expenditures for the Judicial Department is undetermined. There is no expenditure impact on other funds or federal funds.

**Local Expenditure**

The Revenue and Fiscal Affairs Office contacted twenty-three county governments and the Municipal Association of South Carolina regarding the impact of the bill. Three counties and two municipalities responded. Clarendon and Lancaster Counties reported this bill will have no fiscal impact since they received only a few nuisance complaints against manufacturing and industrial facilities combined. Florence County stated they have not received nuisance complaints related to manufacturing or industrial sites, and this bill will have no fiscal impact. Bluffton and Hartsville stated there would be no fiscal impact.

The bill is not expected to impact local government expenditures for the three counties and two municipalities who responded. However, the overall impact statewide is undetermined given the limited number of responses and lack of data regarding nuisance lawsuits and complaints statewide.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 24 TO TITLE 31 SO AS TO PROVIDE THE OPERATIONS OR EXPANSIONS OF MANUFACTURING AND INDUSTRIAL FACILITIES MAY NOT BE CONSIDERED PUBLIC OR PRIVATE NUISANCES IN CERTAIN CIRCUMSTANCES, TO PROVIDE RELATED FINDINGS, TO EXPLICITLY PROHIBIT LOCAL GOVERNMENTS FROM ENACTING ORDINANCES TO THE CONTRARY, TO DEFINE NECESSARY TERMINOLOGY, TO PROVIDE THAT THE PROVISIONS OF THIS ACT MAY NOT BE CONSTRUED TO MODIFY STATUTORY EMINENT DOMAIN LAWS OR ENVIRONMENTAL LAWS, AND TO PROVIDE THE PROVISIONS OF THIS ACT DO NOT APPLY TO NUISANCE ACTIONS COMMENCED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS CHAPTER.

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 Manufacturing and Industrial Uses of Real Property

Section 31‑24‑110. The General Assembly finds that manufacturing and industrial operations are a vital part of the economy of South Carolina, 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. The General Assembly recognizes that, when nonindustrial land uses extend into industrial areas, manufacturing or industrial facilities may become the subject of nuisance suits despite having located first in time. As a result, such facilities may be forced to cease operations or may be discouraged from making investments or improvements to their facilities. It is the intent of the General Assembly to reduce the loss to the State of its manufacturing and industrial resources by limiting the circumstances under which a manufacturing or industrial facility may be deemed to be a nuisance when such plaintiffs came to the nuisance, and it is the General Assembly’s intent to generally codify the common law defense of ‘coming to the nuisance’ to promote economic development.

Section 31‑24‑120. For purposes of this chapter, ‘manufacturing or industrial facility’ means any facility that operates under North American Industry Classification System codes 31-33 (Manufacturing) and 48-49 (Transportation and Warehousing), including, but not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment used for manufacturing, processing, distribution, warehousing, and technology intensive operations.

Section 31‑24‑130. (A) A manufacturing or industrial facility, or expansion of such a facility, may not be found to be a public or private nuisance by reason of the operation of that facility if the manufacturing or industrial facility:

(1) is operating pursuant to the issuance of requisite licenses, permits, certifications, or authorizations under applicable federal and state environmental law; and

(2) commenced operations before a change in the land use in the vicinity of the manufacturing or industrial facility.

(B) A manufacturing or industrial facility protected pursuant to the provisions of this section may reasonably expand its operation or facilities without losing its protected status if all county, municipal, state, and federal environmental codes, laws, or regulations are met by the manufacturing or industrial operation. This protected status of a manufacturing or industrial facility, once acquired:

(1) is assignable, alienable, and inheritable; and

(2) may not be waived by the temporary cessation of operation or by diminishing the size of the operation.

Section 31‑24‑140. A city, county, taxing district, or other political subdivision of this State may not adopt an ordinance or resolution that declares a manufacturing or industrial facility, or an expansion of such a facility, that is operated in accordance with this chapter to be a nuisance, nor may a zoning ordinance that requires abatement or forces the closure of a manufacturing or industrial facility be adopted. Such an ordinance is void and has no force or effect.

Section 31‑24‑150. The provisions of this chapter may not be construed to modify a provision of existing statutory eminent domain or environmental law.

Section 31‑24‑160. The provisions of this chapter do not apply to nuisance actions commenced within one year after the effective date of this chapter, but no nuisance actions may be commenced on or after one year after the effective date of this act.”

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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