

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1121 2nd Edition
SHORT TITLE: Brownfields Property Reuse Act
SPONSOR(S): Committee Substitute

FISCAL IMPACT

Yes () No () No Estimate Available (X)

FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01 FY 2001-02

REVENUES See assumptions and methodology

EXPENDITURES: Revenues from fees to be used to offset cost of administering program
(See assumptions and methodology)

POSITIONS: None

**PRINCIPAL DEPARTMENT(S) &
PROGRAM(S) AFFECTED:** Department of Environment Health and Natural Resources, Division
of Waste Management

EFFECTIVE DATE: Effective July 1, 1997.

BILL SUMMARY:

Adds new Part 5 (the Brownfields Property Reuse Act) to Article 9 of G.S. Chapter 130A, relating to brownfields property or sites (defined as abandoned, idled, or underused property at which expansion or redevelopment is hindered by actual or possible environmental contamination and that is or may be subject to state or federal remediation requirements). Provides for "brownfields agreements" between a prospective developer and the Department of Environment, Health, and Natural Resources, that (1) provide for cleanup, remediation, or other activities at brownfield property, (2) ensure the property is made and kept safe for its actual use, and (3) provide liability protection for persons consistent with the act. Developer that enters into and complies with such an agreement is not liable for remediation of areas of contaminants identified in the agreement except as specified in the agreement, as long as its activities conducted on the property do not increase the risk of harm to the public health or the environment. The protection also extends to persons under the developer's direction or control, any future owner, a person who develops or occupies the property, a successor or assign of any person with such protection, and any lender or fiduciary that provides financing for remediation or redevelopment of the property. Specifies that a person who conducts an environmental assessment or transaction screen on property is not a person responsible for remediation. Specifies exclusive circumstances under which a prospective developer who complete requirements of an agreement may be required to undertake additional remediation.

Requires developer who desires to enter into a brownfields agreement to notify the public and the community in which the property is located of the planned remediation and redevelopment activities and to submit a notice of intent to redevelop brownfields property to the DEHNR. Specifies required content of the notice. If the DEHNR approves the notice, the developer must provide a copy to all local governments having jurisdiction over the property and publish a summary of it in a newspaper serving the area. DEHNR must publish notice of the approval in the North Carolina Register. After both publications, a public comment period of at least 60 days must follow. Requires DEHNR, before entering into an agreement, to take into account community and local government views and comments. A decision by DEHNR not to enter a brownfields agreement is reviewable under the contested case provisions of the Administrative Procedure Act.

Requires the preparation, approval by the DEHNR, and filing with the register of deeds of a “Notice of Brownfields Property” by a purchaser of a brownfields property that is not otherwise noted in the chain of title as a property on which contaminants are located. Requires register of deeds to record such notice and index it in the grantor index under names of owners and name of person conducting redevelopment of the property. Requires that any instrument of transfer contain in the description section a statement that the property has been classified and, if appropriate, cleaned up, as a brownfields property. Sets out procedure whereby Secretary of Environment, Health, and Natural Resources may cancel a notice of brownfields property.

Provides that a person who knowingly provides false information about a property’s eligibility or omits or falsifies required information is guilty of a class I felony, which may include a fine of \$50,000 per violation, each day a violation occurs being a separate violation.

Provides that use of brownfields property and any deed restrictions used as part of a redevelopment plan may not be inconsistent with local land development controls adopted under Article 19 of G.S. Chapter 160A or Article 18 of G.S. Chapter 153A. Specifies other laws and rights that the act is not intended to affect. Requires DEHNR, beginning Oct. 1, 1997, to conduct and submit to the Environmental Review Commission an evaluation of the effectiveness of the act concurrently with every report on the Inactive Waste Sites program.

Creates the Brownfields Study Commission, consisting of six members—three appointed by the Speaker and three by the President Pro Tempore — representing specified groups or communities. Directs Secretary of Environment, Health and Natural Resources to designate one employee of the department as an ex officio member. Requires the Commission to meet at least monthly and to report to the 1998 General Assembly and the Environmental Review Commission, no later than the first day the General Assembly convenes. Appropriates from General Fund to the General Assembly \$50,000 for 1997-98 for costs of the Commission’s work.¹

House committee substitute makes the following changes to 1st edition. The committee substitute makes numerous clarifying changes and the following substantive changes: (1) deletes provisions making certain acts and omissions related to brownfields agreements a class I felony; (2) deletes provisions establishing the Brownfields Study Commission; (3) deletes appropriation provisions; (4) creates Brownfields Property Reuse Act Implementation Account as nonreverting, interest-bearing account in Office of State Treasurer (account will consist of fees, appropriations, and other revenues related to brownfields agreements and will be used to defray part of cost of implementing the act) and (5) makes act effective when it becomes law (was, July 1, 1997).²

ASSUMPTIONS AND METHODOLOGY:

Revenues

¹ *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Volume 1997, Number 47, April 21, 1997.

² *Daily Bulletin*, Institute of Government, UNC-Chapel Hill, Volume 1997, Number 61, May 14, 1997.

The amount of revenue collected from the fees imposed in this act is not known. It is expected that some revenue will be generated from the \$1,000 proposal fee and the \$500 final report fee, but the actual number of developers choosing to develop in a brownfield in a single year is not known.

Expenditures

Since the actual number of developers seeking an agreement with the Department of Environment, Health, and Natural Resources to develop a brownfield is unknown, the department is unable to estimate the cost of implementing this act. The legislation allows the use of receipts generated from the proposal and the final report fees to be used to offset any administrative costs incurred by the department. In addition, the bill requires the department to implement the requirements of this act from funds available to the department from General Fund appropriations or other sources.

Because the legislation is permissive with respect to departmental agreements with prospective developers, the department is not necessarily required to enter into an agreement, and therefore incur costs for which funds are not available. The first year the program is in effect, the department anticipates covering the costs of the brownfields property reuse program on a case by case basis, using any fees generated from development proposals and existing staff from the Inactive Hazardous Sites program in the Division of Waste Management.

After the initial year, the department expects to have a better idea of the total budget requirements for the program. If a large number of developers decide to seek brownfield agreements, then full-time program staff will be required, likely to include one or two technical staff persons (classified as environmental engineers, specialists or technicians) and an attorney to handle the negotiations and legal aspects of the agreements. Should additional staff be required, the department does not believe the receipts generated from proposal and final report fees will be sufficient to offset the total cost of the program.

FISCAL RESEARCH DIVISION

733-4910

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DATE: June 2, 1997



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