~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 18, 2013

**H. 3925**

Introduced by Rep. Hardwick

S. Printed 4/18/13--H.

Read the first time April 11, 2013.

**THE COMMITTEE ON AGRICULTURE, NATURAL**

**RESOURCES AND ENVIRONMENTAL AFFAIRS**

To whom was referred a Bill (H. 3925) to amend Section 48‑1‑90, as amended, Code of Laws of South Carolina, 1976, relating to prohibiting the discharge of pollutants into the environment and remedies, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

NELSON L. HARDWICK for Committee.

**A** **BILL**

TO AMEND SECTION 48‑1‑90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROHIBITING THE DISCHARGE OF POLLUTANTS INTO THE ENVIRONMENT AND REMEDIES FOR VIOLATIONS, SO AS TO CLARIFY PERSONS WHO MAY FILE A PETITION WITH THE DEPARTMENT DO NOT INCLUDE CERTAIN AGENCIES AND DEPARTMENTS OF THE STATE AND TO PROVIDE THAT ANY DECISION OF THE DEPARTMENT WITH RESPECT TO THE TYPE OF REVIEW OBTAINED IS NOT SUBJECT TO JUDICIAL REVIEW; TO AMEND SECTION 48‑1‑250, AS AMENDED, RELATING TO WHOM BENEFITS FROM CAUSES OF ACTION RESULTING FROM POLLUTION VIOLATIONS INURE, SO AS TO PROVIDE THAT NOTWITHSTANDING ANY OTHER PROVISION OF LAW NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT; AND TO AMEND SECTION 6 OF ACT 198 OF 2012, RELATING TO THE SAVINGS CLAUSE, SO AS TO PROVIDE THAT THE SAVINGS CLAUSE OF ACT 198 OF 2012 APPLIES ONLY TO CASES FILED BEFORE JUNE 6, 2012, AND TO ANY FEDERAL PROJECT FOR WHICH A FINAL ENVIRONMENTAL IMPACT STATEMENT WAS ISSUED PRIOR TO JUNE 6, 2012, BUT NO RECORD OF DECISION WAS ISSUED PRIOR TO JUNE 6, 2012.

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

SECTION 1. It is the intent of the General Assembly that no private right of action exists under the Pollution Control Act, as contained in Chapter 1, Title 48. Except as set forth in Section 48‑1‑90(A)(4), no claim or cause of action alleging a violation of the act may be filed in a court or administrative tribunal by any person other than the department or an agency, commission, department, or political subdivision of the State on or after June 6, 2012.

SECTION 2. Section 48‑1‑90(A)(4) of the 1976 Code, as last amended by Act 198 of 2012, is further amended to read:

“(4) ~~A~~ Any person, other than the department or an agency, commission, department, or political subdivision of the State, asserting that a person is in violation of this section must first petition the department in writing for a declaratory ruling as to the applicability of a specific, existing regulatory program to a proposed or existing discharge into the environment, provided that the proposed or existing discharge is not exempt or excluded from permitting as ~~is~~ set forth in subsection (A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must issue, within sixty days after receipt of such petition, ~~issu~~e a declaratory ruling as to the applicability of such program to such discharge. If the department determines a permit is required under such program and that no exception or exclusion exists~~,~~ including, but not limited to, the exceptions set forth in subsection (A)(2), the department must issue a declaration requiring the submission of an application to permit such discharge pursuant to the applicable permitting program. If the department further determines that immediate action is necessary to protect the public health or property due to such unpermitted discharge, the department may further declare the existence of an emergency and order such action as the department deems necessary to address the emergency. Any person to whom such emergency order is directed may apply directly to the Administrative Law Court for relief and must be afforded a hearing within forty‑eight hours. Regardless of whether a hearing is held, the department must revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court. Any decision of the department with respect to which review could have been, but was not, obtained under this item is not subject to judicial review in any civil or criminal proceeding. Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.”

SECTION 3. Section 48‑1‑250 of the 1976 Code, as last amended by Act 198 of 2012, is further amended to read:

“Section 48‑1‑250. ~~No~~ Notwithstanding any other provision of law, no private cause of action is created by or exists pursuant to this chapter. A determination by the department that pollution exists or a violation of a prohibition contained in this chapter has occurred, whether or not actionable by the State, creates no presumption of law or fact inuring to or for the benefit of a person other than the State.”

SECTION 4. SECTION 6 of Act 198 of 2012 is amended to read:

“SECTION 6. The repeal or amendment by this act of any law or any other provision contained in this act, whether temporary or permanent or civil or criminal, does not affect pending actions~~, rights, duties, liabilities, or rights~~ and does not amend or repeal any provisions of the South Carolina Pollution Control Act for any federal project for which a final Environmental Impact Statement has been issued but no subsequent record of decision has been issued as of ~~the date of this enactment~~ June 6, 2012, and for any such project, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this act. ~~After the effective date of this act~~ On and after June 6, 2012, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending ~~or vested right,~~ civil action, ~~special proceeding,~~ criminal prosecution, or appeal existing as of the effective date of this act~~, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws or other provisions contained in this act~~.”

SECTION 5. 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 , 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 6. This act takes effect upon approval by the Governor.

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