

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 AMENDED

5 May 30, 2012

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## **H. 4654**

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9 Introduced by Reps. Hardwick, Harrell, Loftis, Sandifer, White,  
10 Harrison, Owens, Crosby, Anderson, Bingham, Sottile, Corbin,  
11 Chumley, Forrester, Hearn, Henderson, Lucas, D.C. Moss,  
12 V.S. Moss, Ott, Parker, Southard, Murphy, Clemmons, Hixon,  
13 Knight and Patrick

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15 S. Printed 5/30/12--S.

16 Read the first time March 29, 2012.

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**A BILL**

TO AMEND SECTION 48-1-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROHIBITING THE DISCHARGE OF POLLUTANTS INTO THE ENVIRONMENT AND REMEDIES FOR VIOLATIONS, SO AS TO PROVIDE EXEMPTIONS AND LIMITATIONS ON THESE EXEMPTIONS AND TO SPECIFY THAT NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT; TO AMEND SECTION 48-1-130, RELATING TO FINAL ORDERS OF THE DEPARTMENT DISCONTINUING DISCHARGE OF POLLUTANTS, SO AS TO DELETE PROVISIONS RELATING TO REQUIRED PROCEDURES PRECEDING THE ISSUANCE OF A FINAL ORDER AND TO PROVIDE THAT AN ORDER IS SUBJECT TO REVIEW PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT; TO AMEND SECTION 48-1-250, RELATING TO WHOM BENEFITS FROM CAUSES OF ACTION RESULTING FROM POLLUTION VIOLATIONS INURE, SO AS TO PROVIDE THAT NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT; AND TO MAKE THESE PROVISIONS RETROACTIVE AND EXTINGUISH ANY RIGHT, CLAIM, OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THE POLLUTION CONTROL ACT, SUBJECT TO EXCEPTIONS FOR THE STATE AND ITS SUBDIVISIONS.

Amend Title To Conform

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

SECTION 1. Section 48-1-90 of the 1976 Code is amended to read:

1

2 “Section 48-1-90. ~~(a)~~(A)(1) It is unlawful for ~~any~~ a person,  
3 directly or indirectly, to throw, drain, run, allow to seep, or  
4 otherwise discharge into the environment of the State organic or  
5 inorganic matter, including sewage, industrial wastes, and other  
6 wastes, except in compliance with a permit issued by the  
7 department.

8 (2) The permit requirements of subsection (A)(1) of this  
9 section, Section 48-1-100, and Section 48-1-110 do not apply to:

10 (a) discharges in a quantity below applicable threshold  
11 permitting requirements established by the department;

12 (b) discharges for which the department has no regulatory  
13 permitting program;

14 (c) discharges exempted by the department from  
15 permitting requirements; or

16 (d) normal farming, silviculture, aquaculture, ranching,  
17 and wildlife habitat management activities that are not prohibited  
18 by or otherwise subject to regulation.

19 (3) Subsection (A)(2) of this section must not be construed  
20 to:

21 (a) impair or affect common law rights;

22 (b) repeal prohibitions or requirements of other statutory  
23 law or common law; or

24 (c) diminish the department’s authority to abate public  
25 nuisances or hazards to public health or the environment, to abate  
26 pollution as defined in Section 48-1-10(7), or to respond to  
27 accidental discharges or spills.  
28 accidental discharges or spills.

29 (4) A person must first petition the department in writing for  
30 a declaratory ruling as to the applicability of a specific, existing  
31 regulatory program to a proposed or existing discharge into the  
32 environment, provided that the proposed or existing discharge is  
33 not exempt or excluded from permitting as is set forth in Section  
34 48-1-90(A)(2). The person proposing to emit or emitting such  
35 discharge must be named on and served with the petition. The  
36 department must, within sixty days after receipt of such petition,  
37 issue a declaratory ruling as to the applicability of such program to  
38 such discharge. If the department determines a permit is required  
39 under such program and that no exception or exclusion exists,  
40 including, but not limited to, the exceptions set forth in Section  
41 48-1-90(A)(2), the department must issue a declaration requiring  
42 the submission of an application to permit such discharge pursuant  
43 to the applicable permitting program. If the department further

1 determines that immediate action is necessary to protect the public  
2 health or property due to such unpermitted discharge, the  
3 department may further declare the existence of an emergency and  
4 order such action as the department deems necessary to address the  
5 emergency. Any person to whom such emergency order is  
6 directed may apply directly to the Administrative Law Court for  
7 relief and must be afforded a hearing within forty-eight hours.  
8 Regardless of whether a hearing is held, the department must  
9 revoke all emergency orders as soon as conditions or operations  
10 change to the extent that an emergency no longer exists. A party  
11 contesting any department decision on a petition may request a  
12 contested case hearing in the Administrative Law Court.  
13 Notwithstanding the administrative remedy provided for in this  
14 section, no private cause of action is created by or exists under this  
15 chapter.

16 ~~(b)(B)(1)~~ Any A person who discharges organic or inorganic  
17 matter into the waters of this State as described in subsection  
18 ~~(a)(A)~~ to the extent that the fish, shellfish, aquatic animals,  
19 wildlife, or plant life indigenous to or dependent upon the  
20 receiving waters or ~~any~~ property ~~are~~ is damaged or destroyed ~~shall~~  
21 be is liable to the State for ~~such~~ the damages ~~as may be proved.~~  
22 The action ~~shall~~ must be brought by the State in its own name or in  
23 the name of the department.

24 (2) The amount of ~~any~~ a judgment for damages recovered by  
25 the State, less ~~cost~~ costs, ~~shall~~ must be remitted to the agency,  
26 commission, department, or political subdivision of the State that  
27 has jurisdiction over the fish, shellfish, aquatic animals, wildlife, or  
28 plant life or property damaged or destroyed.

29 (3) The civil remedy ~~herein~~ provided ~~shall~~ in subsection  
30 (B)(2) ~~is~~ not ~~be~~ exclusive, and ~~any~~ an agency, commission,  
31 department, or political subdivision of the State with appropriate  
32 authority may undertake in its own name an action to recover ~~such~~  
33 damages ~~as it may deem advisable~~ independent of this subsection.

34  
35 SECTION 2. Section 48-1-130 of the 1976 Code is amended to  
36 read:

37  
38 “Section 48-1-130. ~~Any~~ A person discharging sewage,  
39 industrial waste, or other waste or air contaminant into ~~any~~ of the  
40 ~~waters or ambient air~~ environment of the State, in such manner or  
41 quantity as to cause pollution, without regard to the time that ~~such~~  
42 the discharge began or whether ~~such~~ or not the continued discharge  
43 has been by virtue of a permit issued by the department, shall

1 ~~discontinue the discharge of such sewage, industrial waste or other~~  
2 ~~wastes into, or in such manner or quantity as to cause pollution of,~~  
3 ~~the waters of the State upon receipt of a final an order of the~~  
4 ~~department issued pursuant to the provisions of this chapter. But~~  
5 ~~in the case of such discharges, except those discharges causing an~~  
6 ~~actual or potential hazard to public health, no final order of~~  
7 ~~discontinuance of discharge shall be entered until a reasonable~~  
8 ~~time after service of an order of the Department determining that~~  
9 ~~such discharge constitutes pollution in contravention of the~~  
10 ~~standards adopted by the Department and directing the alleged~~  
11 ~~polluter to take such steps as may be necessary to abate the~~  
12 ~~polluting content of such discharge to conform to the standards of~~  
13 ~~the department. An order is subject to review pursuant to Section~~  
14 ~~44-1-60 and the Administrative Procedures Act. This section does~~  
15 ~~not abrogate any of the department's emergency powers.~~

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17 SECTION 3. Section 48-1-250 of the 1976 Code is amended to  
18 read:

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20 “~~Section 48-1-250. Causes of action resulting from the violation~~  
21 ~~of the prohibitions contained in this chapter inure to and are for the~~  
22 ~~benefit of any person or persons damaged as the result of any such~~  
23 ~~violation No private cause of action is created by or exists under~~  
24 ~~this chapter. A determination by the department that pollution~~  
25 ~~exists or a violation of any of the prohibitions a prohibition~~  
26 ~~contained in this chapter has occurred, whether or not actionable~~  
27 ~~by the State, create creates no presumption of law or fact inuring to~~  
28 ~~or for the benefit of persons a person other than the State.”~~

29

30 SECTION 4. (A) There is created the “Isolated Wetlands and  
31 Carolina Bays Task Force” to review, study, and make  
32 recommendations concerning issues related to isolated wetlands  
33 and Carolina Bays in South Carolina. The task force shall be  
34 comprised of the following members:

35 (1) the Chairman of the Senate Agriculture and Natural  
36 Resources Committee, ex officio, or his designee, who shall serve  
37 as chairman;

38 (2) the Chairman of the House of Representatives  
39 Agriculture, Natural Resources and Environmental Affairs  
40 Committee, ex officio, or his designee, who shall serve as  
41 vice-chairman;

42 (3) one member representing the South Carolina Chamber of  
43 Commerce;

1 (4) one member representing the Coastal Conservation  
2 League;  
3 (5) one member representing the Conservation Voters of  
4 South Carolina;  
5 (6) one member representing the South Carolina Association  
6 of Realtors;  
7 (7) one member representing the South Carolina Association  
8 of Homebuilders, upon consultation with the South Carolina  
9 Association of General Contractors;  
10 (8) one member representing the South Carolina Farm  
11 Bureau;  
12 (9) one member representing the South Carolina  
13 Manufacturer's Alliance;  
14 (10) one member representing the South Carolina Chapter of  
15 the Sierra Club;  
16 (11) one member representing the South Carolina Wildlife  
17 Federation;  
18 (12) one member representing the Environmental Law  
19 Project; and  
20 (13) one member representing the utilities industry.  
21 (B) The task force shall meet as soon as practicable after the  
22 effective date of this act for organizational purposes.  
23 (C) The members of the task force shall serve without  
24 compensation and may not receive mileage or per diem.  
25 (D) Vacancies on the task force shall be filled in the same  
26 manner as the original appointment.  
27 (E) The task force shall compile a comprehensive inventory of  
28 existing data and information regarding Carolina Bays and isolated  
29 wetlands in South Carolina. The inventory, as far as possible,  
30 must identify the number, distribution, size, description, and  
31 characteristics of the Carolina Bays and isolated wetlands  
32 throughout the State. The task force must also compile a glossary  
33 of standard terms and definitions used when describing Carolina  
34 Bays and isolated wetlands, their various types, and characteristics.  
35 (F) During its review and study of Carolina Bays and isolated  
36 wetlands, and in its findings and recommendations, the task force  
37 shall consider at least:  
38 (1) the biological, hydrological, ecological, and economic  
39 values and services of Carolina Bays and isolated wetlands;  
40 (2) prior disturbances of Carolina Bays and isolated  
41 wetlands and the cumulative impacts of disturbances to isolated  
42 wetlands and their functions;

1 (3) methods to avoid adverse impact on Carolina Bays and  
2 isolated wetlands;

3 (4) methods to minimize adverse impact on Carolina Bays  
4 and isolated wetland function that can be avoided;

5 (5) manners of compensation for any loss of Carolina Bays  
6 and isolated wetland functions that cannot be avoided or  
7 minimized;

8 (6) methods to provide public notice of wetlands permitting  
9 applications;

10 (7) the utility of using a general permitting program for  
11 Carolina Bays and isolated wetlands disturbance, where practical;

12 (8) the proper balance between the economic development  
13 value of a proposed permitted activity and the impact on Carolina  
14 Bays and isolated wetlands;

15 (9) achieving a goal of “no net loss” wetlands;

16 (10) concerning proposals to impact Carolina Bays and  
17 isolated wetlands, including those appearing to be geographically  
18 isolated, the aggregate benefits and services of similarly situated  
19 wetlands in the watershed should be considered;

20 (11) concerning mitigation for Carolina Bays and isolated  
21 wetland impacts, whether a watershed based approach should be  
22 followed in order to replace wetland functions and services where  
23 they are most needed in the impacted watershed; and

24 (12) whether, and the extent to which, the standards used by  
25 the Department of Health and Environmental Control in evaluating  
26 discharges to federal wetlands can and should be used for  
27 non-federal wetlands.

28 (G) The task force shall make a report of its findings and  
29 recommendations related to Carolina Bays to the General  
30 Assembly on or before January 1, 2013. The task force shall make  
31 a report of its findings and recommendations related to isolated  
32 wetlands on or before July 1, 2013, at which time the study  
33 committee terminates.

34 (H) The staffing for the task force must be provided by the  
35 appropriate committees or offices of the Senate and House of  
36 Representatives. The task force may utilize staff of other  
37 government agencies with relevant issue area expertise upon  
38 request.”

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40 SECTION 5. The term “permit” as used in the Pollution Control  
41 Act is inclusive and intended to mean all permits, certifications,  
42 determinations, or other approvals required by law issued by the

1 department, consistent with the definition of “license” as found in  
2 Chapter 23, Title 1 of the Administrative Procedures Act.

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

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22 SECTION 7. If any section, subsection, paragraph, subparagraph,  
23 sentence, clause, phrase, or word of this act is for any reason held  
24 to be unconstitutional or invalid, such holding shall not affect the  
25 constitutionality or validity of the remaining portions of this act,  
26 the General Assembly hereby declaring that it would have passed  
27 this act, and each and every section, subsection, paragraph,  
28 subparagraph, sentence, clause, phrase, and word thereof,  
29 irrespective of the fact that any one or more other sections,  
30 subsections, paragraphs, subparagraphs, sentences, clauses,  
31 phrases, or words hereof may be declared to be unconstitutional,  
32 invalid, or otherwise ineffective.

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34 SECTION 8. This act takes effect upon approval by the Governor.

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