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April 25, 2017

To: The Honorable Jeffrey S. Gossett, Clerk of the South Carolina Senate
The Honorable Charles F. Reid, Clerk of the South Carolina House of Representatives

From: Senator Tom Young

Re: Petroleum Pipeline Study Committee

The Petroleum Pipeline Study Committee ("study committee") was established by Act 304 of 2016 to study matters related to the presence of petroleum pipelines in South Carolina. The study committee was directed to provide a report to the General Assembly by June 30, 2017, but upon a finding or recommendation that further work was needed, the study committee could continue its work until December 31, 2017, at which time the study committee would be dissolved. A copy of Act 304 is attached as Exhibit A.

As chairman, I am writing to explain the need for the study committee to continue its work and submit its report to the General Assembly later this year. The study committee has met three times since September 2016 - the initial meeting was held on September 28, 2016, the second meeting on November 30th, and the latest meeting on March 9, 2017. At the March 9th meeting, the study committee voted to extend its work through 2017 in order to fully discuss the issues raised at prior meetings and to study relevant legislation that was pending before the Georgia General Assembly, legislation that has since become the law in Georgia. The study committee also voted to summarize the issues being considered by the study committee and to post those issues on the study committee's website for public comment. That list is attached as Exhibit B, and is posted on the study committee's website: www.scstatehouse.gov/CommitteeInfo/PetroleumPipelineStudyCommittee/PetroleumPipelineStudyCommittee.php.

Due to the number of issues identified during the study committee's meetings, and the complexity of these issues, the study committee needs to continue its work in order to adequately address each issue and to provide for additional opportunities for public comment. The study committee intends to continue its work through the summer and fall, and as directed by Act 304, it will submit a report and dissolve no later than December 31, 2017.

South Carolina General Assembly
121st Session, 2015-2016

A304, R296, S1065

A JOINT RESOLUTION TO CLARIFY THAT SECTION 58-7-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, DOES NOT APPLY TO A PRIVATE, FOR-PROFIT PIPELINE COMPANY, INCLUDING A PUBLICLY TRADED FOR-PROFIT COMPANY THAT IS NOT A PUBLIC UTILITY AS DEFINED BY TITLE 58; AND TO CREATE THE PETROLEUM PIPELINE STUDY COMMITTEE TO STUDY MATTERS RELATED TO THE PRESENCE OF PETROLEUM PIPELINES IN SOUTH CAROLINA, AND FOR THE STUDY COMMITTEE TO PROVIDE A REPORT TO THE GENERAL ASSEMBLY BY JUNE 30, 2017, AND TO CONTINUE ITS WORK UNTIL DECEMBER 31, 2017, IF THE JUNE REPORT DETERMINES FURTHER WORK IS NEEDED.

Whereas, petroleum and petroleum products are a national commodity, yet are commodities that may pose a threat to the property and health of South Carolinians if not properly transported or stored; and

Whereas, questions have recently arisen regarding petroleum pipeline siting in South Carolina, as well as questions regarding responsibility for monitoring and for inspecting these pipelines; and

Whereas, the General Assembly recognizes the importance of economic development in this State, yet recognizes there must be a balance between economic development and the protection of the health, safety, welfare, and property of this state's citizens; and

Whereas, the General Assembly also recognizes the importance of, and intends to defend, the rights of private property owners within this State, rights which have been established within the South Carolina Constitution, the laws of this State, and case law; and

Whereas, the South Carolina Attorney General's Office issued an opinion on July 1, 2015, which states there is "substantial doubt" that Section 58-7-10 intended to extend the public power of eminent domain to any private petroleum or oil pipeline company pipeline that is not defined in, or otherwise outside of the regulatory scope of, Title 58; and

Whereas, the General Assembly does not find that a private, for-profit pipeline company, which includes a publicly traded for-profit company, that is not defined as a "public utility" in Title 58 meets the current "public use" requirement for purposes of eminent domain; and

Whereas, natural gas and petroleum companies utilize pipelines as a method to transport their respective products and both types of companies are primarily regulated by federal law; however, due to the differences in the products these companies provide, the federal government has differing statutory and regulatory provisions for natural gas and petroleum companies, and the majority of the states differentiate between natural gas and petroleum companies, including South Carolina; and

Whereas, unlike other companies that utilize pipelines that are defined in Title 58 as a public utility, such as natural gas companies and water companies, petroleum companies are not defined in Title 58 as a public utility; and

Whereas, the General Assembly finds that Section 58-7-10 was not intended to confer the right of eminent domain to a private, for-profit company, including a publicly traded for-profit company, that is not defined as a “public utility” in Title 58; and

Whereas, a recent pipeline leak of over 300,000 gallons of petroleum product near Belton, South Carolina, has demonstrated the risks inherent in pipeline transportation of refined petroleum products; and

Whereas, the cleanup of refined petroleum products from soil and groundwater is an expensive, imperfect, and time consuming process; and

Whereas, the financial and technical abilities of the party responsible for the cleanup of any refined petroleum products released from a pipeline are critical to ensure that the responsibility for the cleanup is not imposed upon the citizens of South Carolina; and

Whereas, it is the duty of the General Assembly to establish the policy for the authorization of use for eminent domain and to provide statutory processes and procedures to balance the interests of the state’s health, safety, welfare, and property of this state’s citizens without unnecessarily impeding or discouraging economic development; and

Whereas, it is the duty of the General Assembly to address any potential expansion of the use of eminent domain authority in this State in a meaningful and deliberative manner. Now, therefore,

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

Petroleum Pipeline Study Committee created

SECTION 1. (A) There is created the Petroleum Pipeline Study Committee to study matters related to the presence of petroleum pipelines in South Carolina, including, but not limited to:

- (1) the various types of petroleum products and by-products that are transported by a pipeline;
- (2) the federal requirements for petroleum pipeline siting and monitoring;
- (3) the state’s responsibilities as to the regulation of petroleum pipeline siting and monitoring;

- (4) the possible environmental implications from a petroleum pipeline;
- (5) the potential economic development implications for South Carolina resulting from a petroleum pipeline located in this State;
- (6) whether other states permit petroleum pipeline companies to exercise eminent domain, and if so, under what circumstances;
- (7) whether a bonding requirement can and should be imposed as a prerequisite for any private company seeking to install a petroleum pipeline in South Carolina.

(B) The study committee must be composed of:

- (1) three members of the House of Representatives appointed by the Speaker of the House of Representatives;
- (2) three members of the Senate appointed by the Chairman of the Senate Judiciary Committee;
- (3) the Director of the Department of Health and Environmental Control, or his designee;
- (4) the Executive Director of the Office of Regulatory Staff, or his designee;
- (5) one member representing environmental or conservation organizations, appointed by the Governor; and
- (6) one member representing the South Carolina Petroleum Council, appointed by the Governor.

The Speaker of the House of Representatives and the Chairman of the Senate Judiciary Committee shall provide appropriate staffing for this study committee.

(C) The study committee shall prepare a report for the General Assembly that sets forth findings and recommendations regarding matters related to the presence of petroleum pipelines in South Carolina, and provide its report to the General Assembly by June 30, 2017, at which time the study committee may dissolve. However, if the report contains findings or a recommendation that further work is needed, the study committee may continue its work until December 31, 2017, at which time the study committee must be dissolved.

Time effective

SECTION 2. This joint resolution shall take effect upon approval by the Governor.

Ratified the 6th day of June, 2016.

Approved the 9th day of June, 2016.

Considerations for Petroleum Pipeline Study Committee

Issue: Should private petroleum pipeline companies be authorized to use eminent domain in South Carolina under limited circumstances after certain regulatory hurdles and other requirements are met?

If yes, the following should be considered in any recommendation to the General Assembly:

- Should a petroleum pipeline company be deemed a public utility in South Carolina, regulated by state agencies in areas that are not preempted by federal law?
- Should there be a process to require a showing of need prior to a petroleum pipeline company utilizing eminent domain? If so, the following may need to be considered:
 - Should “public use” be defined in statute? Should that include identifying certain tangible benefits specific to South Carolina and its citizens?
 - Should petroleum pipeline companies obtain a certificate of need and/or public necessity as part of the permitting process? What factors would be included to establish public necessity?
 - What opportunities should be given for public notice and public comment during the permitting process?
 - Does current law provide adequate protections for conservation areas? Do additional environmental concerns need to be addressed to protect certain environmentally sensitive areas of the state?
 - Although South Carolina’s current eminent domain cases are determined by the courts, other states utilize a two-step system for pipeline companies in which regulators initially determine if there is a need for a pipeline and review environmental factors. If this type of review were implemented in South Carolina, would all permitting/approvals need to be issued before a pipeline company could begin construction?
- Should there be standards for a petroleum pipeline company’s initial interaction with property owners for surveys?
- Should state agencies be more involved overall in regards with petroleum pipeline matters?
 - Should there be requirements for when a spill must be reported to a state agency, in addition to federal reporting requirements?
 - Should petroleum pipeline companies be required to respond to certain state regulatory entities concerning clean-up or any additional monitoring following a spill?
 - Should a state agency be tasked with inspecting petroleum pipelines, which currently is a federal responsibility? If yes, could this include inspections from the beginning of the pipeline’s construction throughout its use?
 - What funding mechanism should be available for clean-up in the event the petroleum pipeline company is incapable of paying for a spill?

- Should there be a bonding requirement for a petroleum pipeline company to post a minimum amount to be available in the event of a future spill?
- Are the current standards in South Carolina law sufficient for a petroleum pipeline clean-up?
- Are there adequate protections in current law to notify the public when there is a spill incident, which includes the availability of information to assist citizens who are directly affected by a petroleum pipeline spill?
- Should a buy back option be required if a petroleum pipeline company condemns property but does not utilize the property within a certain time period?
- Should abandoned petroleum pipelines be addressed in legislation?