~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

June 5, 2012

**S. 1220**

Introduced by Senators Campbell, Hayes and Ford

S. Printed 6/5/12--H.

Read the first time April 17, 2012.

**A** **BILL**

TO AMEND SECTION 48‑2‑50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FEES IMPOSED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL FOR CERTAIN ENVIRONMENTAL PROGRAMS, INCLUDING THE SURFACE WATER WITHDRAWAL PROGRAM, WHICH ARE DEPOSITED INTO THE ENVIRONMENTAL PROTECTION FUND FOR ADMINISTRATION OF THESE PROGRAMS, SO AS TO ENUMERATE THE FEES FOR SURFACE WATER WITHDRAWAL APPLICATIONS AND PERMITS THAT WOULD OTHERWISE HAVE BEEN REPEALED JANUARY 1, 2013; BY ADDING SECTION 49‑4‑175 SO AS TO REIMPOSE THE FEES THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL MAY CHARGE FOR SURFACE WATER WITHDRAWAL AND APPLICATIONS AND PERMITS AND TO PROVIDE THAT THE DEPARTMENT SHALL RETAIN THESE FEES TO IMPLEMENT AND OPERATE THE SURFACE WATER WITHDRAWAL PROGRAM; AND TO AMEND ACT 247 OF 2010, BY REPEALING PROVISIONS THAT PROSPECTIVELY REPEAL THE IMPOSITION OF SURFACE WATER WITHDRAWAL PERMIT FEES.

Amend Title To Conform

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

SECTION 1. Section 48‑2‑50(H) of the 1976 Code, as last amended by Act 247 of 2010, is further amended by adding an appropriately numbered item at the end to read:

“( ) Surface Water Withdrawals:

(a) Existing surface water withdrawal permit application processing fee $1,000;

(b) New surface water withdrawal permit application processing fee $7,500;

(c) Modification of surface water withdrawal permit application processing fee $2,000;

(d) Renewal of surface water withdrawal permit with modifications application processing fee $1,000;

(e) Surface water withdrawal annual operating fee per permitted intake $1,000.”

SECTION 2. Chapter 4, Title 49 of the 1976 Code is amended by adding:

“Section 49‑4‑175.(A) The department is authorized to collect the following surface water withdrawal program fees:

(1) existing surface water withdrawal permit application processing fee $1,000;

(2) new surface water withdrawal permit application processing fee 7,500;

(3) modification of surface water withdrawal permit application processing fee 2,000;

(4) renewal of surface water withdrawal permit with modifications application processing fee 1,000;

(5) surface water withdrawal annual operating fee per permitted intake 1,000.

(B) The department shall retain the fees collected pursuant to this section for the purposes of implementing and operating the Surface Water Permitting and Withdrawal regulatory program, including permit application review, compliance inspections, and enforcement and for technical assistance and monitoring.”

SECTION 3. Section 3C of Act 247 of 2010, which reads as stated below, is repealed:

“C. The new item added to Section 48‑2‑50 by this SECTION is repealed January 1, 2013. No new fees may be charged for Surface Water Withdrawal applications following that date without an act of the General Assembly setting the fee schedule.”

SECTION 4. The Board of the Department of Health and Environmental Control shall appoint a committee to study the future impact of the surface water withdrawal program, as funded pursuant to Chapter 2, Title 48, on water use as it relates to rights of users and consumers and the general impact on the economy. The committee also shall consider future fees and economic and environmental issues as they pertain to groundwater use and consumption and correlative rights, as well as the impact of development on all water resources including, but not limited to, wetlands. The committee shall submit its findings to the President Pro Tempore of the Senate and the Speaker of the House of Representatives no later than July 1, 2013.

SECTION 5. A. Section 48-1-90 of the 1976 Code is amended to read:

“Section 48‑1‑90.~~(a)~~(A)(1) It shall be unlawful for ~~any~~ a person, directly or indirectly, to throw, drain, run, allow to seep or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes and other wastes, except as in compliance with a permit issued by the Department.

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

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

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

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

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

(3) Subsection (A)(2) must not be construed to:

(a) impair or affect common law rights;

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

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

accidental discharges or spills.

(4) A person 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, if the proposed or existing discharge is not exempt or excluded from permitting pursuant to Section 48‑1‑90(A)(2). The person proposing to emit or emitting the discharge must be named on and served with the petition. Within sixty days after receipt of the petition, the department shall issue a declaratory ruling as to the applicability of the program to the discharge. If the department determines a permit is required under the program and that no exception or exclusion exists, including, but not limited to, the exceptions provided for in Section 48‑1‑90(A)(2), the department shall issue a declaration requiring the submission of an application to permit the 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 the unpermitted discharge, the department may further declare the existence of an emergency and order action as the department considers necessary to address the emergency. A person to whom the 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 shall revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists. A party contesting a department decision on a petition may request a contested case hearing in the Administrative Law Court. Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.

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

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

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

B. Section 48-1-130 of the 1976 Code is amended to read:

“Section 48-1-130. ~~Any~~ A person discharging sewage, industrial waste or other waste or air contaminant into ~~any of~~ the ~~waters or ambient air~~ environment of the State, in such manner or quantity as to cause pollution, without regard to the time that ~~such~~ the discharge began or whether ~~such~~ or not the continued discharge has been by virtue of a permit issued by the Department, shall discontinue the discharge ~~of such sewage, industrial waste or other wastes into, or in such manner or quantity as to cause pollution of, the waters of the State upon receipt of a final order of the Department issued pursuant to the provisions of this chapter. But in the case of such discharges, except those discharges causing an actual or potential hazard to public health, no final order of discontinuance of discharge shall be entered until a reasonable time after service of an order of the Department determining that such discharge constitutes pollution in contravention of the standards adopted by the Department and directing the alleged polluter to take such steps as may be necessary to abate the polluting content of such discharge to conform to the standards of the Department~~. An order is subject to review pursuant to Section 44-1-60 and the Administrative Procedures Act. This section does not abrogate any of the department’s emergency powers.”

C. Section 48-1-250 of the 1976 Code is amended to read:

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

D. (A) There is created the “Isolated Wetlands and Carolina Bays Task Force” to review, study, and make recommendations concerning issues related to isolated wetlands and Carolina Bays in South Carolina. The task force must be comprised of the following members:

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

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

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

(4) one member representing the Coastal Conservation League;

(5) one member representing the Conservation Voters of South Carolina;

(6) one member representing the South Carolina Association of Realtors;

(7) one member representing the South Carolina Association of Homebuilders, upon consultation with the South Carolina Association of General Contractors;

(8) one member representing the South Carolina Farm Bureau;

(9) one member representing the South Carolina Manufacturer’s Alliance;

(10) one member representing the South Carolina Chapter of the Sierra Club;

(11) one member representing the South Carolina Wildlife Federation;

(12) one member representing the Environmental Law Project; and

(13) one member representing the utilities industry.

(B) The task force shall meet as soon as practicable after the effective date of this act for organizational purposes.

(C) The members of the task force shall serve without compensation and may not receive mileage or per diem.

(D) Vacancies on the task force must be filled in the same manner as the original appointment.

(E) The task force shall compile a comprehensive inventory of existing data and information regarding Carolina Bays and isolated wetlands in South Carolina. The inventory, as far as possible, must identify the number, distribution, size, description, and characteristics of the Carolina Bays and isolated wetlands throughout the State. The task force also shall compile a glossary of standard terms and definitions used when describing Carolina Bays and isolated wetlands, their various types, and characteristics.

(F) During its review and study of Carolina Bays and isolated wetlands, and in its findings and recommendations, the task force shall consider at a minimum:

(1) the biological, hydrological, ecological, and economic values and services of Carolina Bays and isolated wetlands;

(2) prior disturbances of Carolina Bays and isolated wetlands and the cumulative impacts of disturbances to isolated wetlands and their functions;

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

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

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

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

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

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

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

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

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

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

(G) The task force shall submit a report of its findings and recommendations related to Carolina Bays to the General Assembly on January 2, 2013. The task force shall submit a report of its findings and recommendations related to isolated wetlands on July 2, 2013, at which time the study committee is abolished.

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

E. The term “permit” as used in the Pollution Control Act is inclusive and intended to mean all permits, certifications, determinations, or other approvals required by law issued by the department, consistent with the definition of “license” as found in Chapter 23, Title 1 of the Administrative Procedures Act.

F. The repeal or amendment by this section of any law or any other provision contained in this section, 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 and for any such project, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this section. After the effective date of this act, all laws repealed or amended by this section 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 section, 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 section.

G. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this section 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 section, the General Assembly hereby declaring that it would have passed this section, 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.

H. This section takes effect upon approval by the Governor.

SECTION 6. This act takes effect January 1, 2013.

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