~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 12, 2012

**H. 4654**

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

S. Printed 4/12/12--S. [SEC 4/17/12 10:25 AM]

Read the first time March 29, 2012.

**THE COMMITTEE ON MEDICAL AFFAIRS**

To whom was referred a Bill (H. 4654) 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, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, page 2, by striking line 14 and inserting:

/ permitting requirements; or

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

Amend the bill further, page 2, by striking lines 41-42 and inserting:

/ (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, provided that the proposed or existing discharge is not exempt or excluded from permitting as is set forth in Section 48-1-90(A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must, within sixty days after receipt of such petition, issue 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 Section 48-1-90(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.” /

Renumber sections to conform.

Amend title to conform.

HARVEY S. PEELER, JR. for Committee.

**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.

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:

“Section 48‑1‑90. ~~(a)~~(A)(1) It is 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 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; or

(c) discharges exempted by the department from permitting requirements.

(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.

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

(4) No private cause of action is created by or exists under this chapter.”

SECTION 2. 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~~ an 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.”

SECTION 3. 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.”

SECTION 4. 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.

SECTION 5. This act must be given retroactive effect and extinguishes any right, claim, or cause of action by any person except the State, State agency, State department, or State instrumentality in any action or claim arising under or related to the Pollution Control Act.

SECTION 6. 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 act, 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 7. This act takes effect upon approval by the Governor.

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