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Currently residing in the House Committee on **Agriculture, Natural Resources and Environmental Affairs**

Summary: Eminent domain

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/14/2020 House Introduced and read first time ([House Journal‑page 124](file:///h:\hj\20200114.docx))

1/14/2020 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 124](file:///h:\hj\20200114.docx))

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=4833&session=123&summary=B) at the website

**VERSIONS OF THIS BILL**

[1/14/2020](file:///p:\pprever\2019-20\4833_20200114.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 3 TO CHAPTER 7, TITLE 58 SO AS TO PROVIDE PROCEDURES FOR THE EXERCISE OF EMINENT DOMAIN BY PIPELINE COMPANIES, TO PROVIDE NECESSARY DEFINITIONS, TO PROVIDE CERTIFICATION OR PERMITTING FUNCTIONS AT THE PUBLIC SERVICE COMMISSION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, TO PROVIDE A METHOD BY WHICH A FORMER PROPERTY OWNER MAY REPURCHASE PROPERTY THAT WAS CONDEMNED, BUT NOT USED BY A PIPELINE COMPANY, AND TO REQUIRE A PERFORMANCE BOND, CONSTRUCTION BOND, OR ENVIRONMENTAL IMPACT BOND FOR PROPERTY CONDEMNED BY A PIPELINE COMPANY; AND TO DESIGNATE THE EXISTING SECTIONS OF CHAPTER 7, TITLE 58 AS ARTICLE 1 ENTITLED “GENERAL PROVISIONS”.

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

SECTION 1. Chapter 7, Title 58 of the 1976 Code is amended by adding:

“Article 3

Pipeline Companies

Section 58‑7‑300. For the purposes of this article:

(1) ‘Director’ means the director of the Department of Health and Environmental Control.

(2) ‘Department’ means the Department of Health and Environmental Control.

(3) ‘Commission’ means the Public Service Commission.

(4) ‘Existing petroleum pipeline’ means a petroleum pipeline constructed and in use prior to January 1, 2020.

(5) ‘Expansion’ means a modification to an existing petroleum pipeline within the existing easement or right of way that increases the supply of petroleum by:

(a) increasing the diameter of an existing petroleum pipeline; or

(b) constructing a parallel petroleum pipeline.

(6) ‘Extension’ means a modification to an existing petroleum pipeline that is not within the existing easement or right of way and is not a parallel petroleum pipeline, that increases the length or footprint of the existing petroleum pipeline by a distance greater than one mile.

(7) ‘Maintenance’ means:

(a) the care or upkeep of an existing petroleum pipeline and any appurtenances;

(b) the replacement of an existing petroleum pipeline within the existing easement or right of way; or

(c) the relocation of an existing petroleum pipeline for repair within one linear mile of the existing petroleum pipeline’s alignment.

(8) ‘New petroleum pipeline’ means a petroleum pipeline that was not constructed and in use prior to January 1, 2020. The term ‘new petroleum pipeline’ does not include an expansion, an extension, or any maintenance, regardless of when such expansion, extension, or maintenance occurs.

(9) ‘Parallel petroleum pipeline’ means a petroleum pipeline that abuts an existing petroleum pipeline in the existing easement or right of way.

(10) ‘Petroleum pipeline’ means a fixed conduit constructed to transport petroleum or petroleum products across this State.

(11) ‘Petroleum pipeline company’ means a corporation organized under the laws of this State or which is organized under the laws of another state and is authorized to do business in this State and which is specifically authorized by its charter or articles of incorporation to construct and operate petroleum pipelines for the transportation of petroleum and petroleum products.

Section 58‑7‑310. After June 30, 2020, any construction of a new petroleum pipeline or an extension in this State requires a permit from the director as provided in this article. Such permit is required without regard to whether the petroleum pipeline company intends to exercise any power of eminent domain.

(A) Any application to the department for a permit pursuant to this article shall contain, at a minimum, the following:

(1) siting information including, but not limited to, a map showing the proposed location of the route of the new petroleum pipeline or of the extension;

(2) information regarding geological and hydrologic features along the proposed route of the new petroleum pipeline or of the extension;

(3) information confirming either the presence or absence of threatened and endangered species along the proposed route of the new petroleum pipeline or of the extension; and

(4) evidence of financial resources sufficient to operate a petroleum pipeline.

(B) Within ten days of submitting a permit application to the department, the applicant must provide:

(1) public notice in a newspaper having general circulation in each county through which the proposed route of the new petroleum pipeline or of the extension is to be located; and

(2)(a) written notice of the filing of an application pursuant to this article to all landowners whose property is:

(i) located on the proposed route of the new petroleum pipeline or of the extension;

(ii) abuts the proposed route of the new petroleum pipeline or of the extension; or

(iii) contains a residence that is located within one hundred fifty feet of the proposed route of the new petroleum pipeline or of the extension.

(b) Such notice must be delivered to each landowner and contain the following language in boldface type:

‘An application for a permit has been filed for a proposed route of a new petroleum pipeline or for a proposed route of an extension of an existing petroleum pipeline. Your property is located on the proposed route, abuts the proposed route, or contains a residence that is located within 150 feet of the proposed petroleum pipeline. South Carolina law provides specific requirements governing the proposed construction of a new petroleum pipeline or extension of an existing petroleum pipeline. These provisions of South Carolina law also provide specific rights for your protection.’

Section 58‑7‑320. (A) Upon consideration of the following factors, the director shall determine whether an undue hazard to the environment and natural resources of this State would result from the completion of the proposed pipeline activity for which the permit is sought:

(1) the information required in the application;

(2) the direct environmental impacts of the proposed new petroleum pipeline or the proposed extension; and

(3) public comment.

(B) This decision must be based on the record before the director, to include, but not be limited to, the applicant’s submissions and written comments submitted to the director.

(C) The provisions of this article supersede and preempt any ordinance governing petroleum pipelines enacted by any state political subdivision.

Section 58‑7‑330. The denial or approval and issuance of a permit may be appealed to the Administrative Law Court. The appeal must be by petition filed within thirty days of the date of approval or disapproval of the application and must be heard by an administrative law judge.

Section 58‑7‑340. No later than July 1, 2020, the department shall promulgate such rules and regulations as are necessary and reasonable for purposes of enforcing this article, which shall include, but not limited to, the following:

(1) submission of a permit application and provisions for the application review process, not to exceed ninety days in length;

(2) provisions for a nonrefundable application fee not to exceed five thousand dollars that must be sufficient to defray the administrative costs of review of the application by the department and of the cost to the division of monitoring and inspection of compliance with any such permit that may be issued;

(3) reasonable public notice of the filing of an application of a permit to an owner of property who, after reasonable efforts, cannot personally receive the notice required;

(4) provisions for public open houses to be held prior to any action on any permits; and

(5) evidence of financial resources sufficient to operate a petroleum pipeline.

Section 58‑7‑350. A petroleum pipeline company is entitled to reasonable access to property proposed as either the site or route of a pipeline so that the company may conduct a survey of the surface of the property for use in determining the suitability of the property for placement of a pipeline. Before a petroleum pipeline company may conduct survey activities, written notice must be delivered to the landowner of record pursuant to the county property tax assessor’s office at least fourteen days before the company may access the property. This written notice shall include:

(1) notification that the petroleum pipeline company is entitled to perform any survey activities on the property of the landowner without the landowner’s prior written consent;

(2) a description of the proposed survey activities;

(3) a general schedule of the dates of the proposed survey activities;

(4) a map showing the approximate location of the proposed survey activities; and

(5) a description of proposed measures to prevent property damage and a statement that the pipeline company shall provide reasonable compensation to the landowner for damage to the property incident to such survey activities.

Section 58‑7‑360. Subject to the provisions, conditions, and restrictions of this article, petroleum pipeline companies are granted the power to acquire property or interests in property by eminent domain for the purpose of an expansion, an extension, maintenance, or construction of a new petroleum pipeline. A petroleum pipeline company may not exercise the power of eminent domain for the purpose of constructing a new petroleum pipeline or for an extension unless and until a certificate of public convenience and necessity is issued by the commission. No such certificate of public convenience and necessity or permit shall be required of a petroleum pipeline company performing petroleum pipeline maintenance.

Section 58‑7‑370. (A) After June 30, 2020, a petroleum pipeline company desiring to use the power of eminent domain, granted pursuant to this article, to acquire property for a new petroleum pipeline or an extension is required to obtain a certificate of public convenience and necessity from the commission.

(B) An application for a certificate of public convenience and necessity shall contain, at a minimum:

(1) a description of the proposed project together with its siting information including, but not limited to, a map showing the proposed location of the route of the new petroleum pipeline or of the proposed extension;

(2) a description of the public convenience and necessity that support the proposed location of the route of the new petroleum pipeline or of the proposed extension, if such an assessment is otherwise required by applicable law;

(3) the width of the proposed petroleum pipeline corridor up to a maximum width of one‑third mile;

(4) a showing that the use of the power of eminent domain is necessary for construction of the new petroleum pipeline or for the proposed extension;

(5) a showing that the public necessity for the petroleum pipeline justifies the use of the power of eminent domain.

(C) Within ten days of applying for a certificate of public convenience and necessity, the applicant shall provide:

(1) public notice in a newspaper having general circulation in each county through which the proposed route of the new petroleum pipeline or of the extension is to be located; and

(2) written notice of the filing of an application under this section to all landowners whose property is located within the proposed route of the new petroleum pipeline or of the extension. Such notice shall be delivered to each landowner and contain the following language in boldface type:

‘Your property is located within the proposed route of a proposed petroleum pipeline for which an application for a certificate of public convenience and necessity has been filed. South Carolina law provides specific requirements governing the proposed construction of a new petroleum pipeline or extension of an existing petroleum pipeline. These provisions of South Carolina law also provide specific rights for your protection.’

(D) In making the decision as to whether to grant any certificates of public convenience and necessity, the Public Service Commission shall consider the following:

(1) whether the petroleum pipeline company has demonstrated a demand for the transportation services to be provided by the new petroleum pipeline or the proposed extension;

(2) whether the petroleum pipeline company has demonstrated a demand in the markets to be served by the new petroleum pipeline or the proposed extension for the volume of petroleum to be transported; and

(3) the financial ability of the applicant to furnish adequate continuous service and to meet the financial obligations of the service which the applicant proposes to perform.

(E) The denial or approval and issuance of a certificate of public convenience and necessity may be appealed to the Administrative Law Court. The appeal must be by petition filed within thirty days of the date of approval or disapproval of the application and shall be heard by an administrative law judge.

(F) No later than July 1, 2020, the commission shall promulgate such rules and regulations as are necessary and reasonable for purposes of enforcing this section, which shall include, but not be limited to:

(1) the submission of an application for a certificate of public convenience and necessity and provisions for the application review process, not to exceed ninety days in length;

(2) provisions for a nonrefundable application fee not to exceed five thousand dollars that must be sufficient to defray the administrative costs of review of the application by the commission;

(3) reasonable public notice of the filing of an application for a certificate of public convenience and necessity to an owner of property who, after reasonable efforts, cannot personally be given the notice required in subsection (C); and

(4) provisions for public meetings to be held prior to any action on any certificates of public convenience and necessity.

Section 58‑7‑380. Prior to initiating eminent domain proceedings or taking actions with the expectation of initiating eminent domain proceedings, the petroleum pipeline company shall cause to be delivered to each landowner whose property may be condemned a written notice containing the following language in boldface type:

‘South Carolina law provides specific requirements governing petroleum pipeline companies’ exercise of condemnation rights over private property. Those provisions also provide specific rights for your protection. Knowledge of those provisions and your rights may assist you in negotiations concerning the sale of your property to a petroleum pipeline company.’

Section 58‑7‑390. When a petroleum pipeline company that has met all the requirements of this article is unable to acquire the property or interest required for the purpose of an expansion, an extension, maintenance, or construction of a new petroleum pipeline, after reasonable negotiation with the owner of such property or interest, the petroleum pipeline company may acquire such property or interest by the use of the eminent domain procedures.

Section 58‑7‑400. (A) If the property, or any portion of it, condemned by a pipeline company pursuant to the provisions of this chapter, is not used for the purpose for which it was condemned within a five‑year period from the date it was condemned, the former owner has the right to repurchase the property from the corporation upon payment of the original purchase price or the current appraised value, whichever amount is lower.

(B) Unless the former owner exercises his right to repurchase this property within a period of one year from the expiration of the five‑year period as provided in subsection (A), the right to repurchase ceases when the pipeline company gives the former owner ninety days’ notice that the right will expire at the end of the ninety‑day period.

Section 58‑7‑410. (A) Prior to the condemnation of private property by a pipeline company for the purpose of constructing, expanding, extending, or repairing a pipeline, the Public Service Commission shall require a performance bond, a construction bond, or an environmental impact bond of the pipeline company to protect property owners from incompletion of, or mishap with, the project or its construction completion.

(B) The Public Service Commission shall set the amount of the bond which is required by this section.”

SECTION 2. Sections 58-7-10 through 58-7-70 are designated as Article 1 and entitled “General Provisions”.

SECTION 3. This act takes effect upon approval by the Governor.

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