~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 4, 2016

**S. 229**

Introduced by Senators Campbell and Turner

S. Printed 5/4/16--H.

Read the first time May 15, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 229) to amend Section 48‑1‑90 of the 1976 Code, relating to remedies for causing or permitting pollution of the environment, to clarify that persons who may file, 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, by striking all after the enacting words and inserting:

/ SECTION 1. It is the intent of the General Assembly that no private right of action exists under the Pollution Control Act, as contained in Chapter 1, Title 48. Except as set forth in Section 48‑1‑90(A)(4), no claim or cause of action alleging a violation of the act may be filed in a court or administrative tribunal by any person other than the department or an agency, commission, department, or political subdivision of the State on or after June 6, 2012.

SECTION 2. Section 48‑1‑90(A)(4) of the 1976 Code is amended to read:

“(4) ~~A~~ Any person, other than the department or an agency, commission, department, or political subdivision of the State, asserting that a person is in violation of this section 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 subsection (A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must issue, 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 subsection (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~~ seventy-two 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. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court. Any decision of the department with respect to which review could have been, but was not, obtained under this item is not subject to judicial review in any civil proceeding. Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.”

SECTION 3. Section 6 of Act 198 of 2012 is amended to read:

“SECTION 6. The repeal or amendment by this act of any law or any other provision contained in this act, 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 (1) 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~~ June 6, 2012, and (2) for any commercial hazardous waste storage, treatment, and landfill facility managed or operated by a trust for which the State of South Carolina or its department or agency serves as a trustee or beneficiary for such hazardous waste facility, and for any such project, or hazardous waste facility, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this act. ~~After the effective date of this act~~ On and after June 6, 2012, all laws repealed or amended by this act 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 act~~, 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 act~~. However, in regard to subitem (2) herein, no private right of action under the Pollution Control Act may be brought or lie against such a trust, its trustee, beneficiary, or interim administrator.”

SECTION 4. 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 5. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

GREGORY F. DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 48‑1‑90 OF THE 1976 CODE, RELATING TO REMEDIES FOR CAUSING OR PERMITTING POLLUTION OF THE ENVIRONMENT, TO CLARIFY THAT PERSONS WHO MAY FILE A PETITION WITH THE DEPARTMENT DOES NOT INCLUDE A DEPARTMENT, AGENCY, COMMISSION, DEPARTMENT, OR POLITICAL SUBDIVISION OF THE STATE, AND TO PROVIDE FOR DEPARTMENT DECISIONS THAT ARE NOT SUBJECT TO JUDICIAL REVIEW IN A CIVIL PROCEEDING; TO AMEND SECTION 6 OF ACT 198 OF 2012, RELATING TO THE SAVINGS CLAUSE, TO PROVIDE THAT THE SAVINGS CLAUSE OF ACT 198 APPLIES ONLY TO CASES FILED BEFORE JUNE 6, 2012, AND ANY FEDERAL PROJECT FOR WHICH A FINAL ENVIRONMENTAL IMPACT STATEMENT WAS ISSUED PRIOR TO JUNE 6, 2012, BUT NO RECORD OF DECISION WAS ISSUED PRIOR TO JUNE 6, 2012.

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

SECTION 1. It is the intent of the General Assembly that no private right of action exists under the Pollution Control Act, as contained in Chapter 1, Title 48. Except as set forth in Section 48‑1‑90(A)(4), no claim or cause of action alleging a violation of the act may be filed in a court or administrative tribunal by any person other than the department or an agency, commission, department, or political subdivision of the State on or after June 6, 2012.

SECTION 2. Section 48‑1‑90(A)(4) of the 1976 Code is amended to read:

“(4) ~~A~~ Any person, other than the department or an agency, commission, department, or political subdivision of the State, asserting that a person is in violation of this section 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 subsection (A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must issue, 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 subsection (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~~ seventy-two 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. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court. Any decision of the department with respect to which review could have been, but was not, obtained under this item is not subject to judicial review in any civil proceeding. Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.”

SECTION 3. Section 6 of Act 198 of 2012 is amended to read:

“SECTION 6. The repeal or amendment by this act of any law or any other provision contained in this act, 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 (1) 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~~ June 6, 2012, (2) for any commercial hazardous waste storage, treatment, and landfill facility managed or operated by a trust for which the State of South Carolina or its department or agency serves as a trustee or beneficiary for such hazardous waste facility, and (3) for any pollution, discharges, contamination, or other harms related to, originating from, or caused by coal ash, coal combustion waste, residuals, or toxic pollutants designated by the U.S. Environmental Protection Agency in 40 C.F.R. Section 401.15 and for any such project, hazardous waste facility, or coal ash pollution, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this act. ~~After the effective date of this act~~ On and after June 6, 2012, all laws repealed or amended by this act 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 act~~, 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 act~~. However, in regard to subitem (2) herein, no private right of action under the Pollution Control Act may be brought or lie against such a trust, its trustee, beneficiary, or interim administrator.”

SECTION 4. 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 5. This act takes effect upon approval by the Governor.

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