CHAPTER 1

General Provisions

**SECTION 49‑1‑10.** Navigable streams considered common highways; obstruction as nuisance.

 All streams which have been rendered or can be rendered capable of being navigated by rafts of lumber or timber by the removal of accidental obstructions and all navigable watercourses and cuts are hereby declared navigable streams and such streams shall be common highways and forever free, as well to the inhabitants of this State as to citizens of the United States, without any tax or impost therefor, unless such tax or impost be expressly provided for by the General Assembly. If any person shall obstruct any such stream, otherwise than as in Chapters 1 to 9 of this Title provided, such person shall be guilty of a nuisance and such obstruction may be abated as other public nuisances are by law.

HISTORY: 1962 Code Section 70‑1; 1952 Code Section 70‑1; 1942 Code Section 5807; 1932 Code Section 5807; Civ. C. ‘22 Section 2901; Civ. C. ‘12 Section 1928; Civ. C. ‘02 Section 1335; G. S. 1062; R. S. 1159; G. S. 1104; 1853 (12) 305; SC Const, Art 14, Section 1.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

CROSS REFERENCES

Dams, generally, see Sections 49‑11‑10, 49‑11‑20, 49‑11‑110 et seq.

Jurisdiction of State and United States, generally, see Section 1‑1‑10 et seq.

Liability of railroad to landowners for damages for obstruction of watercourses, see Section 58‑17‑3910.

Parks and playgrounds, generally, see Section 51‑1‑10 et seq.

Ports and maritime matters, generally, see Section 54‑1‑10 et seq.

Regulation of pilots, see Section 54‑15‑10 et seq.

Regulations governing permits for construction in navigable waters, see S.C. Code of Regulations R. 19‑450.1 et seq.

Soil conservation, generally, see Section 48‑1‑10 et seq.

Steamboat and canal companies, see Section 58‑15‑10 et seq.

Tax or toll for use of wharf in or over the waters of any navigable stream, see SC Const. Art. XIV, Section 4.

Water, sewage and disposal, generally, see Section 44‑55‑10 et seq.

Library References

Navigable Waters 1, 15, 19.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 1 to 19, 40 to 49, 51, 64 to 65.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Action Section 14, Determination of Private Rights.

S.C. Jur. Public Nuisance Section 11, Unauthorized Obstruction of a Navigable Stream.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual survey of South Carolina law: Property law. 43 S.C. L. Rev. 142 (Autumn 1991).

Damaging the Special Injury Rule: A Restrictive Holding in Overcash v. South Carolina Electric & Gas Co., 57 S.C. L. Rev. 610 (Spring 2006).

The Law Pertaining to Estuarine Lands in South Carolina. 23 S.C. L. Rev. 7.

Limitation on Diversion From the Watershed: Riparian Roadblock to Beneficial Use. 23 S.C. L. Rev. 43.

Navigability—Its Meaning and Application in South Carolina. 23 S.C. L. Rev. 28.

Navigable Waters. 25 S.C. L. Rev. 459.

Pollution of the Marine Environment From Outer Continental Shelf Oil Operations. 22 S.C. L. Rev. 228.

The Prime Obstacle to a Redevelopment of South Carolina Water Law. 23 S.C. L. Rev. 63.

The Public Trust Doctrine in South Carolina. 7 SC Env. LJ 31, Summer 1998.

The Rights of the Public Versus the Rights of Riparian Owners to the Use of the Shore Between the Water’s Edge and the High Water Mark on Lake Murray. 23 S.C. L. Rev. 71.

The Riparian Rights Doctrine in South Carolina. 21 S.C. L. Rev. 757.

Shifting sands: A meta‑theory for public access and private property along the coast. Melissa K. Scanlan, 65 S.C. L. Rev. 295 (Winter 2013).

Surface Water in South Carolina. 23 S.C. L. Rev. 82.

Attorney General’s Opinions

Artificial canals from which the public has been continuously and consistently excluded would not constitute navigable waters of the State. 1986 Op. Atty Gen, No. 86‑99, p 303.

The public may use the foreshore along the coast; however, they have no absolute rights to cross the beach in order to reach the foreshore. 1976‑77 Op. Atty Gen, No. 77‑91, p 82.

A stream navigable in fact is navigable in law. The General Assembly may not declare a navigable stream to be non‑navigable in order to bar public travel thereon. 1974‑75 Op. Atty Gen, No. 4140, p 207.

Beaufort County should not construct drainage canals through State property without obtaining permission from the Budget and Control Board. 1967‑68 Op. Atty Gen, No. 2599, p 318.

NOTES OF DECISIONS

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1. In general

A stream having no public terminus except as its outlet is not a navigable water or a public highway of the United States, nor of this State. Manigault v S. M. Ward & Co., 123 F 707 (1903, CC SC), affd 199 US 473, 50 L Ed 274, 26 S.Ct. 127. Chisolm v Caines, 67 F 285 (1894, CC SC).

This section does not change the definition of navigable waters. It only emphasizes the law already declared that navigability does not depend upon depth or width of stream, nor upon ebb and flow of tide therein. Manigault v. S.M. Ward & Co., 1903, 123 F. 707, affirmed 26 S.Ct. 127, 199 U.S. 473, 50 L.Ed. 274.

Title to island situated within marshland did not follow title to the marshland, and thus, was not subject to public trust doctrine presumption that title rested in the state, to be held in trust for the benefit of the public; public trust doctrine presumption applied to land below the high water mark, and did not extend to land located in marshland that remained above the high water mark; abrogating Coburg, Inc. v. Lesser, 309 S.C. 252, 422 S.E.2d 96, and Coburg Dairy, Inc. v. Lesser, 318 S.C. Estate of Tenney v. South Carolina Dept. of Health and Environmental Control (S.C. 2011) 393 S.C. 100, 712 S.E.2d 395, rehearing denied. Water Law 1459; Water Law 2659

State holds navigable watercourses subject to a public trust, and the state’s ownership of public trust resources is generally not alienable. State v. Head (S.C.App. 1997) 330 S.C. 79, 498 S.E.2d 389. Water Law 2519; Water Law 2538

Section 49‑1‑10 does not change the definition of navigable waters, but merely emphasizes the law already declared and set out in case law. State ex rel. Medlock v. South Carolina Coastal Council (S.C. 1986) 289 S.C. 445, 346 S.E.2d 716.

Cited in Sawyer v. State Highway Department of South Carolina (S.C. 1932) 164 S.C. 53, 161 S.E. 883.

For additional related case, see Edgefield County v. Georgia‑Carolina Power Co. (S.C. 1916) 104 S.C. 311, 88 S.E. 801.

The object of this section is plainly to make navigable streamways open to public use, with no suggestion of their repair. Speights v. Colleton County (S.C. 1915) 100 S.C. 304, 84 S.E. 873.

Navigable streams are defined in Heyward v Farmers’ Min. Co., 42 SC 138, 19 SE 963 (1894), reh dismd 42 SC 158, 20 SE 64. State v. Pacific Guano Co. (S.C. 1884) 22 S.C. 50.

2. Valuable floatage

Man‑made 80‑acre pond, which was created when a dam was constructed at the point where two streams converged, was not a navigable waterway and, thus, was not subject to general right of the public to access its waters, where the streams flowing into and out of the pond were not capable of supporting valuable floatage, such that the pond was an isolated body of water. White’s Mill Colony Inc. v. Williams (S.C.App. 2005) 363 S.C. 117, 609 S.E.2d 811, on remand 2006 WL 6091789. Water Law 2529

In determining whether a waterway can support valuable floatage, so as to be deemed navigable and thus open to the public, the focus is strictly on capacity, irrespective of actual use of the waterway. White’s Mill Colony Inc. v. Williams (S.C.App. 2005) 363 S.C. 117, 609 S.E.2d 811, on remand 2006 WL 6091789. Water Law 2523

Whether a waterway can support “valuable floatage,” so as to be deemed navigable and thus open to the public, is not determined by resort to generic guidelines as to what specific size or class of vessel or object can achieve buoyancy in the waterway; rather, the term “valuable floatage” is defined broadly to include any legitimate and beneficial public use, including all varieties of commercial traffic, ranging from passage of the largest freighter to the floating of raw timber downstream to mill. White’s Mill Colony Inc. v. Williams (S.C.App. 2005) 363 S.C. 117, 609 S.E.2d 811, on remand 2006 WL 6091789. Water Law 2523

If a waterway can support valuable floatage, it is deemed navigable and thus open to the public. White’s Mill Colony Inc. v. Williams (S.C.App. 2005) 363 S.C. 117, 609 S.E.2d 811, on remand 2006 WL 6091789. Water Law 2523

Waterway which only supports use by small fishing or pleasure craft, in the appropriate case, meets the “valuable floatage” test for navigability, and the fact that a dam prevents a continuous thoroughfare along a stream does not necessarily cause the stream to lose its navigable character. State v. Head (S.C.App. 1997) 330 S.C. 79, 498 S.E.2d 389. Water Law 2523

The true test of navigable waters is whether a stream inherently and by its nature has a capacity for valuable floatage, irrespective of the fact of actual use or the extent of such use; valuable floatage is not necessarily commercial floatage. State ex rel. Medlock v. South Carolina Coastal Council (S.C. 1986) 289 S.C. 445, 346 S.E.2d 716. Water Law 2523

3. Public use

In the case of nontidal navigable streams, while adjacent property owners hold title from their shoreline to center of the stream bed, public has easement in use of waterway. State v. Head (S.C.App. 1997) 330 S.C. 79, 498 S.E.2d 389. Water Law 2538; Water Law 2657

If nontidal watercourse is navigable, person who legally accesses watercourse, and fishes from within boat on watercourse, cannot be convicted of violating statute prohibiting fishing on private property without consent of owner, as public has easement in use of waterway, and thus, person has constitutional and statutory right to be there. State v. Head (S.C.App. 1997) 330 S.C. 79, 498 S.E.2d 389. Fish 13(1)

Lake along navigable stream was “navigable,” and thus defendant could not be convicted of fishing on lands of another without owner’s permission, although predecessor‑in‑interest of owner of land surrounding lake had created it by damming the stream. State v. Head (S.C.App. 1997) 330 S.C. 79, 498 S.E.2d 389. Fish 13(1)

4. Wharfs and landings

A county ordinance prohibiting the “loading or unloading of any cargo or passengers for hire or compensation” on public county boat landings was reasonable and valid, and thus did not interfere with a tour boat operator’s right to freely use the navigable waters of the state, where the increased use of the landings would have resulted in overcrowding, inadequate parking, additional littering, and safety hazards. Captain Sandy’s Tours, Inc. v. Georgetown County Bldg. Official (S.C. 1992) 310 S.C. 206, 423 S.E.2d 99, rehearing denied. Counties 107

A county ordinance prohibiting the “loading or unloading of any cargo or passengers for hire or compensation” on public county boat landings did not take the property of an individual who was running a tour boat operation from such landings, even though his profits would be reduced due to increased gasoline cost incurred by using another landing, since an ordinance is not made constitutionally invalid merely because a business’ costs are increased. Captain Sandy’s Tours, Inc. v. Georgetown County Bldg. Official (S.C. 1992) 310 S.C. 206, 423 S.E.2d 99, rehearing denied.

The right to erect a wharf on a navigable stream is a franchise which can only be obtained from the State, and any erection without such authority is a nuisance. State v. Young (S.C. 1889) 30 S.C. 399, 9 S.E. 355.

5. Blockage

Coastal Council’s grant of permit to landowner to impound 660 acres of marshland which would result in the blockage of navigable streams was reversed, since a principal purpose of the impoundment would not be to give effect to any overriding public interest, but, rather, to allow the permittee to engage in a commercial venture of building duck blinds for annual leasing. State ex rel. Medlock v. South Carolina Coastal Council (S.C. 1986) 289 S.C. 445, 346 S.E.2d 716.

The Coastal Council does not have the authority to authorize the complete blockage of navigable streams and waterways, especially in the case where there is no overriding public interest. State ex rel. Medlock v. South Carolina Coastal Council (S.C. 1986) 289 S.C. 445, 346 S.E.2d 716. Water Law 2529; Water Law 2600

6. Private cause of action

Private right of action does not exist for violation of statute providing that any person who obstructs a navigable stream shall be guilty of a nuisance. Overcash v. South Carolina Elec. and Gas Co. (S.C. 2005) 364 S.C. 569, 614 S.E.2d 619, rehearing denied. Water Law 2629

Boater’s personal injury resulting from collision with dock that was blocking navigable waterway constituted the type of “special” or “particular” injury necessary to maintain a private action for public nuisance against electric utility; boater’s injuries were different in kind from those suffered by general public due to blocking of navigable waterway, which was interference with right to travel unobstructed along waterway. Overcash v. South Carolina Elec. & Gas Co. (S.C.App. 2003) 356 S.C. 165, 588 S.E.2d 116, certiorari granted, reversed 364 S.C. 569, 614 S.E.2d 619, rehearing denied. Water Law 2632(3)

Statute providing that any person who obstructs a navigable water course is guilty of a nuisance, and that such obstruction may be abated as other public nuisances are by law, creates a private, statutory cause of action for public nuisance. Overcash v. South Carolina Elec. & Gas Co. (S.C.App. 2003) 356 S.C. 165, 588 S.E.2d 116, certiorari granted, reversed 364 S.C. 569, 614 S.E.2d 619, rehearing denied. Water Law 2629

One sustaining special injuries from the obstruction of a navigable stream, otherwise than as permitted by this section, may recover without proof of negligence. Drews v. E.P. Burton & Co. (S.C. 1907) 76 S.C. 362, 57 S.E. 176. Water Law 2600

7. Navigability

Although dock made access at the mouth of tributary where it joined river more difficult to upstream landowners, tributary was still considered navigable waterway, and thus, landowners were not permitted to extend their docks across tributary to obtain access to river; the test for navigability did not hinge on the existence of man‑made impediments or other obstructions, and these impediments did not cause the waterway to lose its characterization as navigable. Brownlee v. South Carolina Dept. of Health and Environmental Control (S.C. 2009) 382 S.C. 129, 676 S.E.2d 116, rehearing denied. Water Law 1250(2); Water Law 2520; Water Law 2620

**SECTION 49‑1‑15.** Permits for hydroelectric projects involving impoundment or diversion of waters of navigable streams.

 (A) Except as otherwise provided herein, no person may erect, construct, or build any structure or works in order to dam or impound the waters of a navigable stream or any waters which are tributary to a navigable stream for the purpose of generating hydroelectricity without securing a permit from the Department of Health and Environmental Control. Any projects that are subject to Chapter 33 of Title 58 of the Utility Facility Siting and Environmental Protection Act are exempted from this section. Further exempted are projects where the project developer without exercising condemnation authority is the existing owner of the property upon which the project is to be constructed and projects which do not exceed sixty acres including in both cases inundated land.

 (B) The Department of Health and Environmental Control may issue a permit for the projects in this subsection after a thorough review of the proposed project and a finding that it meets any regulations of the board and the following standards:

 (1) The proposed project does not halt or prevent navigation by watercraft of the type ordinarily frequenting the reach of the watercourse in question.

 (2) The projects proposed for shoaled areas of the watercourse provide a means of portage or bypass of the project structure.

 (3) The need for the proposed project far outweighs the historical and current uses of the stream in question.

 (4) The impact of the proposed project will not threaten or endanger plant or animal life.

 (5) The recreational and aesthetic benefits or detriments caused by the proposed project do not alter the watercourse or damage riparian lands.

 (C) The Attorney General shall represent before any federal agency the department, if so requested by the department, respecting the same application.

HISTORY: 1986 Act No. 489, Section 1; 1993 Act No. 181, Section 1241.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 22.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 47, 55 to 57, 59.

**SECTION 49‑1‑16.** Fees for permits.

 The Department of Health and Environmental Control may charge a fee to an applicant for a permit for any construction, alteration, dredging, filling, or other activity in navigable waters of the State. If the project is commercial or industrial and is in support of operations that charge for the production, distribution, or sale of goods or services, a fee of five hundred dollars must be charged, except if the aerial crossing of navigable waters by conductors or other wires supported solely by structures outside the navigable waters the fee shall be one hundred dollars. If the work is noncommercial in nature and provides personal benefits that have no connection with a commercial enterprise the fee must be fifty dollars. The department shall remit the fees to the State Treasurer and shall be issued a credit for any portion of the fees necessary to offset its costs in processing, investigating and taking final action on each permit application. Any remaining portion shall be credited to the general fund of the State.

HISTORY: 1993 Act No. 181, Section 1242.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 2.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 20 to 21, 23 to 30, 33.

**SECTION 49‑1‑18.** Control authority over certain Savannah River matters suspended.

 The General Assembly, pursuant to Section 7, Article I of the South Carolina Constitution, suspends the authority of the South Carolina Department of Health and Environmental Control, hereinafter the department, for all decisions subsequent to 2007 related to all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels, in particular the approval by the department of the application of the United States Army Corps of Engineers for a Construction in Navigable Waters Permit for the dredging of the South Carolina portion of the Savannah River, because the authority of the Savannah River Maritime Commission, hereinafter the Maritime Commission, superseded the responsibilities of the department for such approval, as established by Act 56 of 2007, and the approval by the department could present imminent and irreversible public health and environmental concerns for the South Carolina portion of the Savannah River. The Department of Health and Environmental Control retains authority for all matters pertaining to the Savannah River unrelated to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels.

HISTORY: 2012 Act No. 125, Section 1, eff March 1, 2012.

Code Commissioner’s Note

At the direction of the Code Commissioner, this section was codified in 2012.

Editor’s Note

2012 Act No. 125, provides as follows:

“Whereas, the South Carolina Department of Health and Environmental Control, hereinafter the department, was granted the authority to maintain reasonable standards of purity of air and water quality by enactment of the South Carolina Pollution Control Act; and

“Whereas, the Savannah River Maritime Commission, hereinafter the Maritime Commission, by enactment of Act 56 in 2007, effective May 1, 2007, was granted the authority to represent this State in all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels; and

“Whereas, the General Assembly granted to the Maritime Commission by statute the oversight and permitting responsibilities for the State as to the navigability or depth of the South Carolina portion of the Savannah River, superseding any other concurrent responsibilities of a particular state agency or department; and

“Whereas, by enactment of Act 56 in 2007, the General Assembly also bifurcated the permitting process for construction in the South Carolina portion of the Savannah River, such that all matters pertaining to the navigability, depth, dredging, wastewater and sludge disposal, and related collateral issues, including navigable waters permitting criteria, in regard to the use of the Savannah River as a waterway for ocean‑going container or commerce vessels fell within the purview of the Maritime Commission; and

“Whereas, the South Carolina General Assembly has learned that, contrary to its legislative enactment of 2007, the authority of the Maritime Commission was unlawfully usurped by the department in its approval of an application from the Savannah District Office of the United States Corps of Engineers for Water Quality Certification pursuant to Section 401 of the Clean Water Act and Construction in Navigable Waters Permit to dredge a portion of the Savannah River in South Carolina as part of the Savannah River Expansion Project; and

“Whereas, the South Carolina General Assembly has learned that the approval of the above‑referenced application could present imminent and irreversible public health and environmental concerns; and

“Whereas, Section 7, Article I of the South Carolina Constitution provides that the power to suspend the laws shall be exercised only by the General Assembly. Now, therefore, [text of section appears].”

**SECTION 49‑1‑20.** Permitting logs and the like to obstruct or interfere with navigation of rivers or harbors.

 Any person who shall be found guilty of cutting any trees or tree tops, brush or logs, or throwing any refuse material whatever into any navigable river or harbor or who shall float logs singly or in rafts in any manner whatsoever without being properly or plainly lighted at night and attended by day with a sufficient number of men to prevent such rafts and logs from negligently damaging property along the river banks, from catching on snags, sinking and forming obstructions or in any manner whatsoever interfering with the navigation of or obstructing such rivers or harbors shall be guilty of a misdemeanor and punished by fine not exceeding two hundred and fifty dollars or by imprisonment not exceeding two years. All such trees, logs, rafts, floating booms or pens of timber dangerous to navigation in any such river may be captured, secured, properly rafted to market and sold, one half of the net proceeds over the expense of capturing and marketing to be paid to the county treasurer of the county in which such timber may be captured and the other half to the person capturing it. But this section shall not apply to logs or timber accidentally drifting loose from a raft or from any stationary boom where timber is kept for proper use or for proper rafting or to any logs floated off from the owner by a sudden freshet before he shall have had an opportunity to raft them.

HISTORY: 1962 Code Section 70‑2; 1952 Code Section 70‑2; 1942 Code Section 1188; 1932 Code Section 1188; Cr. C. ‘22 Section 79; Cr. C. ‘12 Section 235; Cr. C. ‘02 Section 181; G. S. 2505; R. S. 175; 1894 (21) 715; 1897 (22) 426.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 19, 23.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 47 to 49, 51, 60, 64 to 65.

**SECTION 49‑1‑30.** Duty of landowners to clean out their streams.

 All landowners shall clean out all streams upon and adjacent to their lands at least twice in each year, at such particular times as the respective governing bodies of the several counties of the State may appoint and according to the directions of such governing bodies, and shall keep them clear of all obstruction to a free and uninterrupted flow of sand and water through the channels thereof. This section shall not be construed to prevent the erection and maintenance of any dam across any of such streams for any useful purpose but such governing bodies may require the owner of any such dam to build and maintain therein suitable and sufficient floodgates and waterways to afford free passage through them of the sand and water, so that the streams above may be properly cleaned out and the lands adjacent thereto properly drained and for such purpose they may require the owner of any such dam to open the floodgates or waterways therein and keep them open for such reasonable time as they may deem to be necessary. Any person violating any of the provisions of this section shall be guilty of maintaining a nuisance and, upon conviction, shall be fined not more than fifty dollars or imprisoned not more than thirty days if ten days’ notice to abate such nuisance shall have been given.

HISTORY: 1962 Code Section 70‑3; 1952 Code Section 70‑3; 1942 Code Section 1215; 1932 Code Section 1215; Cr. C. ‘22 Section 103; Cr. C. ‘12 Section 237; Cr. C. ‘02 Section 183; 1900 (23) 399.

Editor’s Note

Early litigation pertaining to this section and similar sections in prior codes developed around the question of constitutionality. In several early cases the effect of the Constitution of 1895 on the subject was considered. In one case it was decided that the legislation was special, but that, as the constitutional restriction was not retroactive, it did not apply. State v Tucker, 54 SC 251, 32 SE 361 (1899). This decision controlled until the sections were incorporated in the Code of 1902, whereupon it was held that this in effect constituted the passage of a new act, and, as the Code excepted certain other counties, it was within the constitutional provision (formerly held not applicable because retroactive), was special legislation, and was null and void. State v Hammond, 66 SC 300, 44 SE 933 (1903). Finally, in Pierce v Marion County Lumber Co., 108 SC 387, 94 SE 865 (1918), it was held constitutional, because under the act and amendment, which was added thereto on February 18, 1905 (24 Stats 830), the General Assembly could pass local and special laws concerning drainage, and this was a matter of drainage. This act was reenacted in Code of 1912, after the creation of Dillon County, and Dillon County was not excepted. State v Tucker, 54 SC 251, 32 SE 361 (1899). State v Hammond, 66 SC 300, 44 SE 933 (1903). Pierce v Marion County Lumber Co., 108 SC 387, 94 SE 865 (1918).

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 19.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 47 to 49, 51, 64 to 65.

LAW REVIEW AND JOURNAL COMMENTARIES

Navigable Waters. 25 S.C. L. Rev. 459.

The Riparian Rights Doctrine in South Carolina. 21 S.C. L. Rev. 757.

NOTES OF DECISIONS

In general 1

Purpose 2

1. In general

It is not possible to regard the legislation contained in this section as an exercise of the power of taxation, as it does not purport to impose any tax upon either persons or property. State v. Tucker (S.C. 1900) 56 S.C. 516, 35 S.E. 215.

2. Purpose

Nothing more than an intention to impose upon certain landowners in the State the duty of performing a certain act appears from this legislation. State v. Tucker (S.C. 1900) 56 S.C. 516, 35 S.E. 215.

**SECTION 49‑1‑40.** Obstructing streams generally.

 Any person who shall fell, cut or throw or cause to be felled, cut or thrown across or into any of such streams any tree, log or other timber or any trash, brush, debris or obstruction of any kind whatsoever shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than fifty dollars or imprisonment for not more than thirty days.

HISTORY: 1962 Code Section 70‑4; 1952 Code Section 70‑4; 1942 Code Section 1216; 1932 Code Section 1216; Cr. C. ‘22 Section 104; Cr. C. ‘12 Section 238; Cr. C. ‘02 Section 184; 1900 (23) 399.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 19.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 47 to 49, 51, 64 to 65.

**SECTION 49‑1‑50.** Sale or purchase of drifted lumber or timber; penalties.

 (A) No person may sell any drifted lumber or timber, not the property of the person, without first advertising the sale of it at public auction at least three times and at least three days before the date of the sale in the newspaper having the greatest circulation in the county in which the drifted lumber or timber is found and taken, giving an accurate description of any and all marks by which the lumber or timber may be identified.

 (B) It is unlawful for a person to:

 (1) sell any drifted lumber or timber without having first advertised the sale;

 (2) fail to pay the proceeds of the sale to the owner on application, after deducting the expenses; or

 (3) advertise a sale and then refuse to deliver any drifted lumber or timber claimed by the rightful owner, before the date of the sale after the owner has offered to pay reasonable salvage expenses.

 (C) A person who violates the provisions of this section is guilty of a:

 (1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the value of the lumber or timber is ten thousand dollars or more;

 (2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the value of the lumber or timber is more than two thousand dollars but less than ten thousand dollars;

 (3) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the lumber or timber is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days, or both.

 (D) A person who purchases drifted lumber or timber that has not been advertised as provided may be indicted as a receiver of stolen goods and must be fined or imprisoned as provided in Section 16‑13‑180.

HISTORY: 1962 Code Section 70‑7; 1952 Code Section 70‑7; 1942 Code Section 1206; 1932 Code Section 1206; Cr. C. ‘22 Section 94; Cr. C. ‘12 Section 256; Cr. C. ‘02 Section 196; G. S. 1622; R. S. 183; 1853 Act No. 4154; 1907 Act No. 251; 1989 Act No. 190, Section 20; 1993 Act No. 184, Section 126; 2010 Act No. 273, Section 16.G.G, eff June 2, 2010.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Effect of Amendment

The 2010 amendment in subsection (C), in item (1) substituted “ten thousand” for “five thousand”, in item (2) substituted “two thousand” for “one thousand” and “ten thousand” for “five thousand”, and rewrote item (3).

Library References

Navigable Waters 23.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Sections 47, 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

S.C. Jur. Logs and Timber Section 46, Heritage Trust Program Under S. C. Code Ann. Sections 51‑17‑10 to 51‑17‑150.

S.C. Jur. Shipping Law Section 66, Sale or Purchase of Drifted Lumber or Timber.

**SECTION 49‑1‑60.** Tolls allowed owner of shores or wharves.

 The owner of the shores or any wharf erected on the shores or in or over the waters of any navigable stream may charge reasonable tolls for the use thereof.

HISTORY: 1962 Code Section 70‑163; 1952 Code Section 70‑163; 1942 Code Section 6025; 1932 Code Section 6025; Civ. C. ‘22 Section 3090; Civ. C. ‘12 Section 2145; 1911 (27) 25.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 13.

Westlaw Topic No. 270.

C.J.S. Navigable Waters Section 36.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Shipping Law Section 93, Tolls Allowed for Use of Docks.

S.C. Jur. Shipping Law Section 94, License to Transact Marine Insurance.

Forms

Am. Jur. Pl. & Pr. Forms Wharves Section 1 , Introductory Comments.

**SECTION 49‑1‑80.** International Paper Company may use water from Great Pee Dee River.

 The State hereby grants permission to the International Paper Company to divert from the Great Pee Dee River, for use in the course of operation of its plant located at Georgetown in Georgetown County, one hundred cubic feet of water per second each day. The point of diversion shall be at a point twelve and eight‑tenths miles above the Yauhanna Bridge on Route U. S. No. 701, and the main works for the diversion shall be located on the south side of the river. Provided, that the International Paper Company shall obtain all necessary rights of way from the landowners concerned, from and including the point of diversion to the point of use at the plant in Georgetown. Provided, further, that the total amount of water taken out of the Great Pee Dee River pursuant to the terms of this section and Section 49‑1‑90 shall not exceed eight per cent of the flow of the stream at the point of diversion. Provided, further, that this section and Section 49‑1‑90 shall not affect the right of any person to recover, in a court of competent jurisdiction, damages sustained as a result of the diversion of water permitted by this section and Section 49‑1‑90. Provided, further, that the International Paper Company shall take the water authorized herein as is, and shall have no legal or equitable recourse against any present or future user on said river or tributary thereof unless such upper user is violating the laws, rules or regulations regulating the pollution or control of rivers and streams of this State. Provided, further, that nothing in this section and Section 49‑1‑90 contained shall prevent any riparian owner of lands, either above or below the point of diversion, to use the waters of the Pee Dee River for irrigation and for other agricultural purposes.

HISTORY: 1962 Code Section 70‑481; 1955 (49) 100.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 34.

Waters and Water Courses 78.

Westlaw Topic Nos. 270, 405.

C.J.S. Navigable Waters Sections 23, 25 to 30.

C.J.S. Waters Sections 134 to 140, 143.

**SECTION 49‑1‑90.** Right of others to diversions from Great Pee Dee River.

 Any person, firm, corporation, municipality or county which may acquire rights of way for canals, pipelines or ditches, shall have to the same extent the same rights of diversion granted in Section 49‑1‑80 to International Paper Company, to be exercised in the same manner.

HISTORY: 1962 Code Section 70‑482; 1955 (49) 100.

Editor’s Note

2010 Act No. 247, Section 4.B, provides:

“Chapter 1, Title 49 of the 1976 Code is not affected by and supersedes Chapter 4, Title 49 of the 1976 Code, as amended by SECTION 1 of this act.”

Library References

Navigable Waters 34.

Waters and Water Courses 78.

Westlaw Topic Nos. 270, 405.

C.J.S. Navigable Waters Sections 23, 25 to 30.

C.J.S. Waters Sections 134 to 140, 143.