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COMMITTEE REPORT

February 10, 2016

**S. 868**

Introduced by Senators Young, Massey, Setzler and Nicholson

S. Printed 2/10/16--S. [SEC 2/11/16 11:09 AM]

Read the first time June 3, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 868) 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, 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 language and inserting:

/ Whereas, petroleum and petroleum products are a national commodity, yet are commodities that may pose a threat to the property and health of South Carolinians if not properly transported or stored; and

Whereas, questions have recently arisen regarding petroleum pipeline siting in South Carolina, as well as questions regarding responsibility for monitoring and for inspecting these pipelines; and

Whereas, the General Assembly recognizes the importance of economic development in this state, yet recognizes there must be a balance between economic development and the protection of the health, safety, welfare, and property of this state’s citizens; and

Whereas, the General Assembly also recognizes the importance of, and intends to defend, the rights of private property owners within this State, rights which have been established within the South Carolina Constitution, the laws of this State, and case law; and

Whereas, the South Carolina Attorney General’s Office issued an opinion on July 1, 2015, which states there is “substantial doubt” that Section 58‑7‑10 intended to extend the public power of eminent domain to any private pipeline company pipeline that is not defined in, or otherwise outside of the regulatory scope of, Title 58 of the South Carolina Code of Laws; and

Whereas, the General Assembly does not find that a private, for‑profit pipeline company, which includes a publicly traded for‑profit company, that is not defined as a “public utility” in Title 58 of the 1976 Code of Laws could meet the current “public use” requirement for purposes of eminent domain; and

Whereas, the General Assembly finds that South Carolina Code Section 58‑7‑10 was not intended to confer the right of eminent domain to a private, for‑profit company, including a publicly traded for‑profit company, that is not defined as a “public utility” in Title 58 of the 1976 Code of Laws; and

Whereas, a recent pipeline leak of over 300,000 gallons of petroleum product near Belton, South Carolina, has demonstrated the risks inherent in pipeline transportation of refined petroleum products; and

Whereas, the cleanup of refined petroleum products from soil and groundwater is an expensive, imperfect, and time consuming process; and

Whereas, the financial and technical abilities of the party responsible for the cleanup of any refined petroleum products released from a pipeline are critical to ensure that the responsibility for the cleanup is not imposed upon the citizens of South Carolina. Now, therefore

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

SECTION 1. To amend Section 58-7-10 of the 1976 Code of Laws is amended to read:

“Subject to the same duties and liabilities, all the rights, powers and privileges conferred upon telegraph and telephone companies under Article 17 of Chapter 9 of this title are hereby granted to pipeline companies incorporated under the laws of this State or to such companies incorporated under the laws of any other state when such companies have complied with the laws of this State regulating the doing of business herein by foreign corporations. The provisions of this section do not apply to private, for‑profit pipeline companies, including publicly traded for‑profit companies, that are not defined within this title as a public utility.”

SECTION 2. This act shall take effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

TOM YOUNG, JR. for Committee.

**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 CERTAIN RELATED CERTIFICATION OR PERMITTING FUNCTIONS AT THE PUBLIC SERVICE COMMISSION AND THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AND TO PROVIDE PROPERTY OWNER RIGHTS AND A CAUSE OF ACTION FOR DAMAGES SUSTAINED BY CERTAIN ADJACENT PROPERTY OF THE OWNER OF PROPERTY CONDEMNED UNDER THE PROVISIONS OF THIS ACT; AND TO DESIGNATE THE EXISTING PROVISIONS IN THE CHAPTER AS ARTICLE 1 ENTITLED “GAS AND WATER COMPANIES”.

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 58‑7‑310. The South Carolina General Assembly finds and declares that pipelines, including petroleum pipelines, and their related facilities are necessary for use in the transportation of products, including petroleum and petroleum products, but their potentially hazardous nature requires special procedures and restrictions governing the grant of the power of eminent domain to pipeline companies, including petroleum pipeline companies.

Section 58‑7‑320. As used in this article:

(1) ‘Certificate of public convenience and necessity’ or ‘COPCN’ means authorization by the South Carolina Public Service Commission or its designee as provided in Section 58‑7‑340 as a prerequisite for a pipeline company to exercise the right to eminent domain that is required before the company may exercise the right.

(2) ‘Eminent domain permit’ or ‘EDP’ means authorization by the Director of the Department of Health and Environmental Control or his designee as provided in Section 58‑7‑350, as a prerequisite for a pipeline company to exercise the right to eminent domain that is required before the company may exercise the right.

(3) ‘Necessary for a public purpose’ or ‘public necessity’ mean for a use that is vital to the welfare of the people of this State which will be achieved by the location of a pipeline within the boundaries of this State after considering any environmental harm that the pipeline might cause.

(4) ‘Pipeline’ means a pipeline constructed or to be constructed as a common carrier in interstate or intrastate commerce for the transportation of products, to include petroleum or petroleum products, in or through this State.

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

(6) ‘Pipeline facility’ or ‘pipeline facilities’ means a pipeline and all equipment or facilities, including lateral lines, essential to the operation of the pipeline but may not include a storage tank or storage facility that is not being constructed as a part of the operation of the pipeline.

Section 58‑7‑330. (A)(1) Subject to the provisions and restrictions of this article and Title 28, a pipeline company may acquire an interest in property by eminent domain for the construction, reconstruction, operation, and maintenance of pipelines in this State; provided, however, that before instigating or indicating an intention to instigate an eminent domain condemnation action, the pipeline company shall send through certified mail to each landowner whose property may be condemned written notice containing the following language in boldface type:

‘ARTICLE 3, CHAPTER 7, TITLE 58 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, PROVIDES SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY A PIPELINE COMPANY BEFORE IT MAY CONDEMN YOUR PROPERTY. THIS ARTICLE ALSO PROVIDES SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU SHOULD MAKE YOURSELF FAMILIAR WITH THOSE REQUIREMENTS AND YOUR RIGHTS BEFORE CONTINUING NEGOTIATIONS CONCERNING THE SALE OF OR GRANTING AN EASEMENT OVER YOUR PROPERTY TO A PIPELINE COMPANY.’

(2) The notice required in item (1) must be delivered to the landowner at least fourteen days before the company may access the property for any purpose and must be accompanied by:

(a) information regarding whether survey activities on the landowner’s property are being requested, or may be requested, before issuance of a COPCN;

(b) a copy of the COPCN; and

(c) to the extent that survey activities are sought on a landowner’s property at any time, the following additional written information also must be provided:

(i) notification that the pipeline company is not entitled to perform any survey activities on the property of the landowner, without his prior written consent, or otherwise enter upon his property before issuance of a COPCN;

(ii) a description of the proposed survey activities;

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

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

(v) a description of any soil testing and water testing;

(vi) a description of proposed access to the landowner’s property, including the proposed access to cropland, pasture, forest land, orchards, and livestock enclosures; and

(vii) 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.

(B)(1) The restrictions and conditions imposed by this article on the exercise of the power of eminent domain by pipeline companies do not apply to relocations of pipelines necessitated by the exercise of a legal right by a third party or to activities incident to the maintenance of an existing pipeline or existing pipeline right of way.

(2) A pipeline company is entitled to reasonable access to property proposed as the site of a pipeline so 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, but this right to access is only available after:

(a) DHEC issues a certificate of public convenience and necessity; or

(b) the pipeline company obtains the prior written consent to this access from the landowner.

(C) After obtaining the COPCN and after complying with the notice requirements set forth in subsection (A), a pipeline company is entitled to reasonable access to any property proposed as the site of a pipeline for the purpose of conducting additional surveying which may be necessary in preparing its submission to the Department of Health and Environmental Control as provided in Section 58‑7‑350.

(D) The owner of property or a property interest that is entered by a pipeline company for the purpose of surveying the property, as allowed in this section, or for access to or maintenance or relocation of an existing pipeline has the right to be compensated for damage to the property incident to the entry. A survey conducted pursuant to this article must be conducted in a manner to cause minimal damage to the property surveyed.

Section 58‑7‑340. (A) A pipeline company shall obtain a COPCN from the Public Service Commission that authorizes the company to exercise the right to eminent domain before the company may exercise the right.

(B) The commission shall promulgate regulations concerning the requirements for obtaining a COPCN. These regulations must include:

(1) a requirement that the application for such certificate include a description of the proposed project including its route, a description of the public convenience and necessity which supports the proposed pipeline route, the width of the proposed pipeline corridor up to a maximum width of no more than one hundred feet, a showing that the use of the power of eminent domain may be necessary for construction of the pipeline, and a showing that the public necessity for the pipeline justifies the use of the power of eminent domain;

(2) a provision for reasonable public notice of the application and the proposed route;

(3) a provision for at least three public hearings on the application and the filing and hearing of any objections to such application; and

(4) other reasonable requirements that the commission considers necessary or desirable to a proper determination of the application.

(C) The approval or denial of the COPCN is subject to review by the Administrative Law Court pursuant to the Administrative Procedures Act.

Section 58‑7‑350. (A) In addition to obtaining a COPCN, a pipeline company shall obtain an eminent domain permit from the Director of the Department of Health and Environmental Control as provided in this section before it may exercise the power of eminent domain.

(B) The department shall promulgate regulations concerning the requirements for obtaining an EDP from DHEC as required in subsection (A), which must include:

(1) mandatory and reasonable public notice to an owner of property who, after reasonable efforts, cannot personally be given the notice in Section 58‑7‑330(A);

(2) mandatory and reasonable public notice of the filing of an application for a permit;

(3) provisions for public hearings on all applications for such permits; and

(4) a requirement that DHEC may not grant a permit for the construction of any portion of the pipeline project for which the use of the power of eminent domain may be needed until:

(a) the pipeline company submits the proposed siting of the portion of the pipeline project to DHEC and appropriate notices to affected parties; and

(b) the Director of DHEC determines after a public hearing that the location, construction, and maintenance of the portion of the pipeline project in this State is consistent with and not an undue hazard to the environment and natural resources of this State consistent with the factors set forth in subsection (C).

(C) In making the decision required by subsection (B)(4), DHEC shall determine whether:

(1) the proposed route of the portion of the pipeline project is an environmentally reasonable route;

(2) other corridors of public utilities already in existence reasonably may be used for the siting of the portion of the pipeline under consideration;

(3) ample opportunities have been afforded for public comment, including the governing body of any municipality or county within which the proposed project or any part of it is to be located, as well as the general public; and

(4) reasonable conditions to the permit exist so to allow the monitoring of the effect of the pipeline upon the property subjected to eminent domain and the surrounding environment and natural resources.

(D) A permit application must include an environmental effects report to support the permit application, which must include:

(1) a description of the proposed project under consideration for condemnation, including its route across the property sufficiently adequate to permit the location of the subject parcel on a United States Geological Survey 1:24,000 topographic quadrangle map;

(2) a copy of the COPCN, which must include accurate route maps and descriptions;

(3) the location of lands under consideration for condemnation and the names of the owners of said lands;

(4) a specification of alternative routes, as well as information on other corridors of public utilities;

(5) information on the existence of local zoning ordinances and whether the plans of the pipeline company comply with applicable local zoning ordinances; and

(6) a proposal, where appropriate, for monitoring the effects of the pipeline on the surrounding environment and natural resources including, but not limited to, wetland dewatering, sinkhole inducement, impact on protected plants and animals, pollutant pathways, and stream siltation.

(E) The complete application including the environmental effects report must be made available to the public upon request.

Section 58‑7‑360. All hearings and appeals on applications for certificates and permits required under this article must be conducted pursuant to the Administrative Procedures Act.

Section 58‑7‑370. When a pipeline company that has obtained the COPCN and EDP required in this article is unable to acquire the property or interest required for such certified or permitted project after reasonable negotiation with the owner of such property or interest, the company may acquire that property or interest by the use of the condemnation procedures authorized by the Eminent Domain Procedure Act found in Title 28.

Section 58‑7‑380. If the portion of the pipeline route chosen and approved pursuant to this article unreasonably impacts any other property of the same owner that is not acquired by eminent domain as a part of the project, the owner has a cause of action for compensation available under the laws of eminent domain for the fair market value of the damage of the parcel taken.”

SECTION 2. The existing sections of Chapter 7, Title 58 are designated Article 1, “Gas and Water Companies”.

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

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