A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING ARTICLE 3 TO CHAPTER 7, TITLE 58 SO AS TO ESTABLISH PROVISIONS RELATING TO PETROLEUM PIPELINES, TO PROVIDE FOR APPLICATIONS, PERMITTING, AND HEARINGS, TO SET REQUIREMENTS FOR RENDERING FINAL ORDERS, TO PROVIDE FOR REHEARINGS, TO PROMULGATE REGULATIONS, TO ALLOW THE OFFICE OF REGULATORY STAFF TO REQUIRE RECORDS PRODUCTION, TO PROVIDE FOR DISCOVERY, TO EMPLOY EXPERT WITNESSES, TO PROVIDE THAT A PETROLEUM PIPELINE COMPANY MAY REQUEST REASONABLE ACCESS TO PROPERTY ON A PROPOSED SITE FOR SURVEY PURPOSES, TO PROVIDE REPORTING REQUIREMENTS FOR A SPILL OR AN ACCIDENTAL RELEASE, TO PROVIDE FOR EMINENT DOMAIN AND HEARINGS BEFORE THE ADMINISTRATIVE LAW COURT, AND TO DEFINE NECESSARY TERMS; AND TO DESIGNATE SECTIONS 58‑7‑10 THROUGH 58‑7‑70 AS ARTICLE 1, ENTITLED “SPECIAL PROVISIONS AFFECTING GAS, WATER, OR PETROLEUM PIPELINE COMPANIES.”

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

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

Article 3

Petroleum Pipelines

Section 58‑7‑300. As used in this article:

(1) “Applicant” means a petroleum pipeline company that has submitted an application with the commission seeking the issuance of a permit by ORS for the construction of a new petroleum pipeline or the extension of an existing petroleum pipeline in this State.

(2) “Commission” means the Public Service Commission.

(3) “Department” means the Department of Environmental Services.

(4) “Easement” means a corridor obtained by a petroleum pipeline company for the right of use on or under the property of others for the permanent placement and operation of a petroleum pipeline.

(5) “Existing petroleum pipeline” means a petroleum pipeline that a petroleum pipeline company can affirmatively establish to the commission was constructed and in use upon the effective date of this act.

(6) “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.

“Expansion” does not include improvements, maintenance, or repairs such as pump station development or pressure increases on an existing petroleum pipeline.

(7) “Extension” means a modification to an existing petroleum pipeline that increases the length or footprint of the existing petroleum pipeline or right of way by a distance greater than one linear mile.

(8) “Maintenance” means:

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

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

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

(9) “New petroleum pipeline” means a petroleum pipeline that was not constructed and in use upon the effective date of this act. The term “new petroleum pipeline” shall not include an expansion, an extension, or any maintenance.

(10) “ORS” means the Office of Regulatory Staff.

(11) “Parallel petroleum pipeline” means a petroleum pipeline that runs side by side to an existing petroleum pipeline.

(12) “Permit” means a permit issued by ORS in compliance with the provisions of an order of the commission authorizing the construction, expansion, or extension of a petroleum pipeline.

(13) “Petroleum” means crude oil and any product derived from crude oil, including liquefied petroleum gases, refined petroleum products, or any blend thereof.

(14) “Petroleum pipeline” means a fixed conduit of pipe located within South Carolina that transports petroleum products intrastate or interstate.

(15) “Petroleum pipeline company” or “company” means a person, partnership, or corporation organized under the laws of this State or another state that is authorized to do business in this State and specifically authorized by its agreement, charter, or articles of incorporation to construct and operate petroleum pipelines for the transportation of petroleum or petroleum products.

(16) “Right of way” means a temporary easement obtained by a petroleum pipeline company not to exceed one third of one mile in width for the purpose of establishing a corridor for the surveying and construction of a petroleum pipeline.

Section 58‑7‑310. Construction of any new petroleum pipeline or the extension or expansion of an existing petroleum pipeline in this State shall require a permit issued by ORS in accordance with the terms and conditions set forth in a final order of the commission as provided in this article. No construction activity on any portion of a new petroleum pipeline or on the extension or expansion of an existing petroleum pipeline shall occur unless and until a permit is issued. The permit shall be in addition to any other permits or authorization required pursuant to this article or any other provision of state or federal law. A permit issued by ORS is not required by a company in order for the company to perform maintenance on an existing petroleum pipeline.

Section 58‑7‑320. (A) An application to the commission for approval of the issuance of a permit by ORS pursuant to this article shall contain, at a minimum, the following:

(1) a description of the proposed project together with its siting information, including, but not limited to, a map detailing the proposed route and width of both the right of way and easement being requested for the new petroleum pipeline, extension, or expansion;

(2) a description of the public convenience and necessity that supports the proposed route of the new petroleum pipeline, extension, or expansion, including the extent of public convenience and necessity in South Carolina and the Southeastern United States;

(3) an assessment of historical, archeological, and grave sites conducted along the proposed route of the new petroleum pipeline, extension, or expansion;

(4) information specifying geological and hydrologic features along the proposed route of the new petroleum pipeline, extension, or expansion;

(5) information addressing the presence of threatened or endangered species along the proposed route of the new petroleum pipeline, extension, or expansion;

(6) environmental information described in 40 C.F.R. Sections 1502.12 through 1502.18 as such provisions existed on June 30, 2017;

(7) evidence detailing the financial responsibility of the applicant;

(8) a proposal, if appropriate, for monitoring the effects of the petroleum pipeline during construction 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;

(9) an objective evaluation of the environmental effect of all reasonable alternatives for siting of the petroleum pipeline and a description of the means intended to be used to mitigate adverse environmental impacts;

(10) a report assessing the economic impact of the proposed petroleum pipeline on the State of South Carolina;

(11) a description of any lands or property over which the proposed route of the petroleum pipeline crosses that are public lands or lands held in a conservation easement and, if held in conservation easement, a statement establishing why the petroleum pipeline must cross the lands and why this is the most reasonable option;

(12) a copy of all permits issued by any federal agency or other South Carolina entity related to the proposed petroleum pipeline; and

(13) any other information that the commission may request or that may be required by statute or regulation within the review period.

(B) Within ten days of filing a petition with the commission seeking the issuance of a permit, the applicant shall also file with the commission the following:

(1) proof of publication of notice in a newspaper or other publication of general circulation in each county through which the proposed new petroleum pipeline, expansion, or extension is to be located;

(2) evidence of written notice to the governmental bodies and members of the General Assembly representing each county and municipality through which the proposed route of the new petroleum pipeline, expansion, or extension is to be located; and

(3) evidence of written notice of the filing of an application pursuant to this section to all landowners whose property is located within one thousand feet from the edge of the right of way of the proposed route of the new petroleum pipeline, expansion, or extension. For the purposes of this subsection, “landowner” means the landowner of record pursuant to the county property tax assessor’s office as of thirty days before the filing of the application with the commission. The notice shall be delivered to each landowner and shall contain the contact number for ORS, its website address, the docket number assigned by the commission, and the following language in at least twenty‑four point bold font:

“YOUR PROPERTY IS LOCATED WITHIN 1,000 FEET OF A PROPOSED PETROLEUM PIPELINE FOR WHICH A PERMIT APPLICATION HAS BEEN FILED WITH THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA PURSUANT TO ARTICLE 3, CHAPTER 7, TITLE 58 OF THE SOUTH CAROLINA CODE OF LAWS. THIS ARTICLE OF LAW PROVIDES SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY THE PETROLEUM PIPELINE COMPANY BEFORE THEY MAY BUILD A NEW PETROLEUM PIPELINE OR MODIFY AN EXISTING PETROLEUM PIPELINE. THE PROVISIONS OF THIS ARTICLE PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION AS A LANDOWNER. ADDITIONAL INFORMATION REGARDING THE PERMIT APPLICATION PROCESS AND HOW YOU MAY EXERCISE YOUR RIGHTS MAY BE OBTAINED BY CONTACTING THE OFFICE OF REGULATORY STAFF.”

(C) A copy of the application must be served on ORS, the department, the Department of Natural Resources, and the Department of Parks, Recreation and Tourism contemporaneous with the applicant’s filing at the commission.

Section 58‑7‑330. (A) Upon receipt of an application complying with Section 58‑7‑320, the commission shall promptly fix a date for the commencement of a hearing before the commission on the merits of the application, not less than sixty nor more than ninety days after receipt of the application, and shall conclude the proceedings as expeditiously as practicable. Testimony presented at the hearing may be presented in writing or orally, but the commission may make rules or procedures as it deems necessary to exclude repetitive, redundant, or irrelevant testimony.

(B) The commission shall also set public meetings to provide the opportunity to comment on the proposed petroleum pipeline to members of the public. Any person may appear as a public witness at any of these public meetings held by the commission. The commission must hold at least one public meeting to receive comments per every three counties through which the proposed petroleum pipeline project may be located, and a meeting must be held in one of the three counties covered by the meeting. Any meeting held pursuant to this subsection shall provide information to the public about the proposed project and right of way with the opportunity for the public to provide testimony and comments to be included in the commission’s record.

Section 58‑7‑340. (A) The parties to a proceeding at the commission under this article shall include:

(1) the applicant;

(2) ORS, the department, the Department of Natural Resources, and the Department of Parks, Recreation and Tourism;

(3) each municipality and local government agency entitled to receive service of a copy of the application pursuant to Section 58‑7‑320(B) if the municipality or local government agency has filed a notice of intervention as a party with the commission within thirty days after the date that it was served with a copy of the application; and

(4) any person entitled to receive service of a copy of the application pursuant to Section 58‑7‑320(B); any domestic nonprofit organization that is formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health, or other biological values, to preserve historical sites, to promote consumer interest, to represent commercial and industrial groups, or to promote the orderly development of the area where the facility is to be located; or any other person or organization, if the person or organization has petitioned the commission for leave to intervene as a party within thirty days after the date given in the published notice as the date for filing the application and if the petition has been granted by the commission for good cause shown.

(B) All testimony and comments presented at public hearings and meetings shall be made a part of the commission’s record of proceedings. No person appearing as a public witness may be a party or have the right to present oral testimony or argument or cross examine witnesses at the commission’s hearing on the merits of the application.

(C) The commission may, in extraordinary circumstances for good cause shown, and giving consideration to the need for the timely start of construction, grant a petition for leave to intervene as a party, in order to participate in subsequent phases of the proceeding, to a municipality, government agency, person, or organization identified in subsection (A)(3) and (4) that filed a petition but failed to file a timely notice of intervention or petition for leave to intervene.

Section 58‑7‑350. (A) The commission shall render a final written order upon the record either granting or denying the application as filed, or granting it on the terms, conditions, or modifications for construction, operation, or maintenance that the commission may deem appropriate.

(B) In making a decision as to whether to order the issuance of a permit required by this article, the commission shall determine whether the portion of the petroleum pipeline for which the permit is sought is consistent with, and not an undue hazard to, the public, environment, and natural resources of this State, after consideration of the following factors:

(1) the information contained in the application, including the basis of the need for the proposed new petroleum pipeline, expansion, or extension;

(2) the probable environmental impact of the proposed new petroleum pipeline, expansion, or extension;

(3) the feasibility of possible alternative locations for the proposed new petroleum pipeline, expansion, or extension;

(4) public comment testimony and opinion regarding the suitability of the proposed location of the new petroleum pipeline, expansion, or extension;

(5) whether existing petroleum pipelines are adequate to meet the public need in South Carolina and other portions of the Southeastern United States;

(6) the financial ability of the applicant to furnish adequate service;

(7) the economic benefit of the proposed new petroleum pipeline for both the State of South Carolina and the applicant; and

(8) other information that the commission deems reasonable and applicable or that the commission has by regulation established in order to protect the best interests of this State, its citizens, and its natural resources.

(C) The applicant shall bear the burden of proof, by a preponderance of evidence, to demonstrate to the commission that it should approve the issuance of a permit as provided pursuant to this article.

(D) In rendering its decision to grant or to deny an application, or in establishing any terms, conditions, or modification on which a permit may be granted, the commission may seek the assistance of other state agencies not named as statutory parties herein and may base its decision in whole or in part on the expertise, opinions, or recommendations of state agencies that have jurisdiction under state law via statutes, regulations, or standards promulgated thereunder on matters affected by the issuance of a petroleum pipeline permit.

(E) Should the commission determine that the location of all or a part of the proposed petroleum pipeline, expansion, or extension should be modified, it may condition the issuance of the permit upon the modification, provided that the municipal and county governmental bodies, members of the General Assembly representing the newly affected area, and persons residing in the newly designated and affected area pursuant to Section 58‑7‑320(B)(3) have been given reasonable notice of a public hearing at which testimony and comments can be taken.

(F) The commission must determine the amount of insurance that the applicant must carry for the proposed petroleum pipeline. The minimum amount of insurance that the applicant must carry is ten million dollars per occurrence in both general liability and pollution insurance coverages.

(G) The commission must issue, and serve on all parties, its final written order granting or denying the application within one hundred eighty days of the filing date of the application. However, the commission may extend this timeline for an additional ninety days for good cause.

(H) No order of the commission approving the new construction, expansion, or extension of a petroleum pipeline may be in force during the pendency of an appeal.

Section 58‑7‑360. (A)(1) A party aggrieved or adversely affected by an order of the commission pursuant to the provisions of this article may apply for a rehearing within twenty days of the commission’s order.

(2) No right of appeal arising out of an order or decision of the commission accrues in any court unless an application is made to the commission for a rehearing within the time specified.

(3) The commission must issue a final written order on any petition for rehearing pursuant to this article within thirty days of a petition being filed.

(4) A commission order on reconsideration constitutes the commission’s final agency determination.

(B) A final agency determination of the commission order may be reviewed by the South Carolina Supreme Court upon questions of both law and fact. The commission may not be a party to the action.

(C) Any appeal must be ruled on by the South Carolina Supreme Court within twelve months of the notice of appeal. This period may be extended by order of the court for no more than six months for good cause shown.

Section 58‑7‑370. (A) ORS shall not issue a permit for constructing, expanding, or extending a petroleum pipeline until the applicant has provided written proof to the department and ORS that the applicant is insured in an amount of at least ten million dollars in both general liability and pollution insurance coverages and further proof that the applicant has posted a bond as determined by the commission in its final order pursuant to this article to be appropriate to protect property owners and the public from damages or other harm resulting from acts and omissions both during and after the completion of the project. In setting the bond, the commission must consider the amount and scope of insurance coverages available to the applicant.

(B) The applicant must provide proof to the department and ORS by July first of each year after the permit is issued that the insurance and bond, if any, required by the commission order is maintained. Failure to provide proof by July first will result in a fine to be imposed by the department of one thousand dollars per day until the required proof is submitted. Any fines must be placed in an account that shall be immediately available for use by the department or other state agencies for use by the State for reimbursement to affected private landowners for any costs associated with a spill or accidental release of liquid petroleum products from a petroleum pipeline permitted pursuant to this article.

Section 58‑7‑380. (A) The commission shall initiate the promulgation of regulations necessary for the purposes of enforcement of this article, which shall include, but are not limited to, procedures regarding:

(1) the submission of a permit application and provisions for the application submission, review, notice, and hearing process, not to exceed one hundred eighty days in length, except if an extension is given for up to ninety days for good cause shown;

(2) payment of a nonrefundable application fee in an amount sufficient to defray the administrative costs of the review of the application and the conduct of a hearing by the commission;

(3) reasonable public notice of the filing of permit applications to any landowner who, after reasonable efforts, cannot personally be given the notice required by Section 58‑7‑320(B);

(4) notice and conduct of public hearings to be held prior to any commission order or action on any permit application; and

(5) standards for proof of financial responsibility as required by Section 58‑7‑320(A)(8).

(B) No permit shall be ordered by the commission or issued by ORS before the commission adopts regulations pursuant to this section.

(C) At its discretion, the commission may permit amendments to the permit application. However, if amendments are permitted, then the public and other interested parties must have the opportunity to provide comments regarding the amendments.

Section 58‑7‑390. (A) In accomplishing its responsibilities, ORS may require the production of books, records, and other information from the applicant that must be submitted by the applicant to ORS under oath. If the books, records, or other information provided do not appear to disclose full and accurate information and if the apparent deficiencies are not cured after reasonable notice, then ORS may require the attendance and testimony under oath of the officers, accountants, or other agents of the applicant having knowledge thereof, at such place as ORS may designate. The expense of making the necessary examination or inspection for procuring information must be paid by the applicant, to be collected by ORS by suit or action, if necessary.

(B) Nothing in this section restricts ORS’s ability to serve discovery in a contested case proceeding pursuant to this article that seeks documents or information that ORS has previously obtained in the course of any review, investigation, inspection, audit, or examination, nor does anything in this section restrict the ability of any company to object to discovery or to seek relief regarding discovery, including, without limitation, the entry of a protective order.

(C) ORS may employ, as necessary, an expert witness pursuant to the provisions of Section 58‑4‑100 to perform ORS’s obligations pursuant to this article.

Section 58‑7‑400. (A)(1) Before the issuance of a permit pursuant to this article, a company may request reasonable access to property proposed as the site of a petroleum pipeline for survey purposes upon notice for access to the landowner. This notice must be in writing and must provide the following information:

(a) the date and approximate time of the survey, provided that it may also include up to one alternate date and time;

(b) a description of the proposed survey activities;

(c) a general schedule of the date or dates of the proposed survey activities;

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

(e) a description of any soil testing or water testing;

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

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

(2) The request must be delivered to the landowner of record pursuant to the county property tax assessor’s office at least twenty‑one days before the company or its contractors may access the property. If the company fails to perform the survey on the date and time provided in its written notice, then the company must provide a subsequent written notice pursuant to this section before it may proceed with a survey.

(B) After the issuance of a permit pursuant to this article, a company may have reasonable access to property proposed as the site of a petroleum 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 the petroleum pipeline. Before a 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 twenty‑one days before the company may access the property. This written notice must be accompanied by a copy of the permit. After obtaining the permit and after complying with the notice requirement pursuant to this subsection, a company shall have reasonable access to any property proposed as the site of a petroleum pipeline for the purpose of conducting additional surveying as may be necessary for petroleum pipeline construction.

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

Section 58‑7‑410. Each company shall, as soon as possible, report each spill or accidental release of any petroleum‑based product in excess of one hundred gallons in the State of South Carolina from a petroleum pipeline operating in this State by telephone or electronic mail to the South Carolina Warning Point. A first report shall later be supplemented by a full statement provided to ORS and the department of the location, cause, and details of the spill, as well as all actions taken by the company to clean up the spill and the precautions, if any, taken to prevent similar accidents.

Section 58‑7‑420. If a company has met all of the requirements of this article and, after reasonable, good faith negotiations with the owner of the real property or interest required for the new construction or extension of a petroleum pipeline, is unable to acquire the real property or interest, then the company may acquire the real property or interest by eminent domain for the purpose of the new construction or extension of a petroleum pipeline by complying with the provisions of this article.

Section 58‑7‑430. (A) Any company desiring to use the power of eminent domain to acquire property for the new construction or extension of a petroleum pipeline shall be required to file an application with the department showing the details of the project and the public need for a new petroleum pipeline or extension of the petroleum pipeline which would justify the company proceeding with eminent domain proceedings pursuant to Chapter 2, Title 28.

(B) A company must receive a permit issued by ORS as ordered by the commission pursuant to the provisions of this article before it may file an application with the department.

(C) A company is not required to obtain a permit issued by ORS pursuant to the provisions of this article prior to its use of a right of way, provided that the company fulfill the notice requirements contained in Section 58‑7‑400, in order to:

(1) conduct inspections and surveys to determine proposed routes; or

(2) investigate the possible environmental impacts and economic feasibility of the new construction or extension of a petroleum pipeline.

Section 58‑7‑440. (A) Any application pursuant to Section 58‑7‑430(A) shall contain, at a minimum, the following:

(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 supports the proposed location of the route of the new petroleum pipeline or of the proposed extension;

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

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

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

(6) a showing that the company engaged in reasonable, good faith negotiations to acquire the subject property or properties with the affected property owner or owners and that those negotiations were not successful;

(7) a description of the properties that may have to be obtained through eminent domain, including the legal status of the properties and whether the properties are protected public lands or titled in conservation easements, and why acquisition of protected properties is necessary for the proposed new construction or extension; and

(8) any other information that the department’s regulations may require.

(B) Within ten business days of its initial filing with the department, the applicant shall provide:

(1) proof of publication of notice in a newspaper or other publication of general circulation in each county through which the proposed new petroleum pipeline or extension is to be located;

(2) evidence of written notice to the governmental body representing each county and municipality and to each member of the General Assembly representing each county and municipality through which the proposed route of the new petroleum pipeline or the extension is to be located; and

(3) evidence of written notice of the filing of an application pursuant to this section to all landowners whose property is located within the proposed route of the new petroleum pipeline or extension. For the purposes of this subsection, “landowner” means the landowner of record pursuant to the county property tax assessor’s office as of thirty days before the filing of an application pursuant to this section. The notice shall be delivered to each landowner and shall contain the following language in at least twenty‑four point bold font:

“YOUR PROPERTY IS LOCATED WITHIN THE PROPOSED ROUTE OF A PETROLEUM PIPELINE FOR WHICH AN APPLICATION FOR A PERMIT AND/OR FOR AN ORDER ALLOWING EMINENT DOMAIN HAVE BEEN FILED PURSUANT TO ARTICLE 3, CHAPTER 7, TITLE 58 OF THE SOUTH CAROLINA CODE OF LAWS. THIS ARTICLE PROVIDES SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY PETROLEUM PIPELINE COMPANIES BEFORE THEY MAY BUILD A NEW PETROLEUM PIPELINE, MODIFY AN EXISTING PETROLEUM PIPELINE, OR ACQUIRE PROPERTY INTERESTS. THE PROVISIONS OF THIS ARTICLE PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU SHOULD FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND YOUR RIGHTS.”

Section 58‑7‑450. (A) The department must hold a public meeting or meetings regarding the company’s proposed use of eminent domain. During this meeting, the company shall explain why eminent domain is necessary, and the public must have the opportunity to comment. Any person may appear as a public witness at any of these public meetings held by the department. The department must hold at least one public meeting to receive comments per every three counties through which the proposed petroleum pipeline project may be located and in which the applicant seeks the power of eminent domain. A meeting must be held in one of the three counties covered by the meeting. Any meeting held pursuant to this subsection shall provide information to the public about the proposed project and right of way and the request for eminent domain, with the opportunity for the public to provide testimony and comments to be included in the record. All information received at this public hearing must be made part of the department’s record.

(B)(1) In determining if there is a public need for a new petroleum pipeline or an extension that justifies the use of eminent domain, the department shall consider:

(a) whether existing petroleum pipelines are adequate to meet reasonable public needs;

(b) the volume of demand for petroleum and whether the current demand and the demand reasonably anticipated in the future can support already existing petroleum pipelines, if any, and the petroleum pipeline proposed by the applicant;

(c) the financial ability of the company to furnish adequate continuous service and to meet the financial obligations of the service that the applicant proposes to perform;

(d) the adequacy of the supply of petroleum to serve the public;

(e) the economic feasibility of the proposed petroleum pipeline;

(f) whether the primary and paramount beneficiary of the proposed petroleum pipeline is the public in this State or the company;

(g) the effect of the proposed petroleum pipeline on existing revenues and service of other petroleum pipelines, including whether the granting of a permit will or may seriously impair existing public service in this State and elsewhere; and

(h) information received by ORS from its public hearing or hearings pursuant to this section.

(2) This subsection shall not be construed as exhaustively describing all facts that the department may consider in its decision to grant or to deny the use of eminent domain.

(3) In determining whether to grant eminent domain authority over land protected by conservation easements or otherwise protected public land, the department must determine whether the public need for the new petroleum pipeline or extension outweighs the conservation interests being protected by the easement or other public land.

Section 58‑7‑460. (A) Upon review of the information provided by the applicant and the comments and testimony received at the end of the public hearing(s), the department shall issue a determination regarding whether the public need for a new petroleum pipeline or an extension of the petroleum pipeline justifies the use of eminent domain.

(B) Upon determination by the department regarding whether a public need exists for the new petroleum pipeline or the extension of the petroleum pipeline, the company or any landowner whose property is proposed to be taken by eminent domain may request a contested case hearing before the Administrative Law Court for the review of public need determination and whether that need justifies the use of eminent domain. The company shall bear the burden of proof to demonstrate by clear and convincing evidence the need for eminent domain. The Administrative Law Court may restrict the grant of the power of eminent domain to protect property protected by conservation easements or other public land.

(C)(1) The Administrative Law Court’s issuance or denial of a request to use eminent domain may be reviewed by the South Carolina Supreme Court as provided by statute and the South Carolina Appellate Court Rules upon questions of both law and fact. The review shall be by petition filed within thirty days of the order and shall be determined on the basis of the record before the judge of the Administrative Law Court. The order shall be affirmed if supported by clear and convincing evidence.

(2) Any appeal must be ruled on by the South Carolina Supreme Court within twelve months of notice of the appeal. This period may be extended by order of the court for no more than six months for good cause shown.

(D)(1) The department shall initiate the promulgation of regulations as are necessary and reasonable for the purposes of enforcement of this section, which shall include, but may not be limited to:

(a) the filing for a request to use eminent domain and provisions for the application review process, not to exceed one hundred eighty days in length;

(b) reasonable public notice of the filing of a request for use of eminent domain to a landowner who, after reasonable efforts, cannot personally be given the notice required; and

(c) provisions for public meetings to be held prior to any action on any decision.

(2) The department shall not make a determination on public need prior to the promulgation of regulations as provided in this subsection. However, once these regulations have been promulgated and applications are accepted for filing, an application must be approved or denied by the department within one hundred eighty days of the date that the application is filed pursuant to this section.

Section 58‑7‑470. (A) For the purposes of this subsection, “landowner” means the landowner of record in the county tax assessor’s office whose property may be condemned.

(B) Before initiating eminent domain proceedings or threatening to do so, a company shall cause to be delivered to each landowner a written notice containing the following language in boldface type:

“ARTICLE 3, CHAPTER 7, TITLE 58 OF THE SOUTH CAROLINA CODE OF LAWS PROVIDES SPECIFIC REQUIREMENTS THAT MUST BE FOLLOWED BY PETROLEUM PIPELINE COMPANIES BEFORE THEY MAY ACQUIRE THE POWER OF EMINENT DOMAIN FOR A SPECIFIC PROJECT AND BEFORE THEY MAY EXERCISE THE RIGHT TO CONDEMN YOUR PROPERTY IN ACCORDANCE WITH THE EMINENT DOMAIN PROCESSES AND PROCEDURES IN CHAPTER 2, TITLE 28 OF THE SOUTH CAROLINA CODE OF LAWS. THESE PROVISIONS ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU SHOULD FAMILIARIZE YOURSELF WITH THESE REQUIREMENTS AND YOUR RIGHTS PRIOR TO CONTINUING NEGOTIATIONS CONCERNING THE SALE OF YOUR PROPERTY TO A PETROLEUM PIPELINE COMPANY.”

Section 58‑7‑480. (A) If the easement or other property interest, or any portion of it, condemned by a company under the power of eminent domain pursuant to the provisions of this article and Chapter 2, Title 28 is not used for the purpose for which it was condemned within a four year period from the date that it was condemned, then the former owner, or his successor in interest, has the right to repurchase the property from the company, or its successor in interest, for the amount paid to the former owner by the company at the time of the condemnation.

(B) Unless the former owner, or his successor in interest, exercises his right to repurchase this property within a period of one year from the expiration of the four year period as provided in subsection (A), the right to repurchase ceases when the company gives the former owner, or his successor in interest, one hundred eighty days’ written notice by certified mail that the right pursuant to subsection (A) will expire at the end of the ninety‑day period.

SECTION 2. (A) On or after the effective date of this act, construction of any new petroleum pipeline or the extension or expansion of an existing petroleum pipeline in this State shall require a permit issued by the Office of Regulatory Staff pursuant to Section 58‑7‑310, as added by this act.

(B) No later than ninety days after the effective date of this act, the Public Service Commission shall initiate the promulgation of regulations pursuant to Section 58‑7‑380, as added by this act.

(C) On or after the effective date of this act, any petroleum pipeline company desiring to use the power of eminent domain to acquire property for certain purposes shall be required to obtain a determination from the department pursuant to Section 58‑7‑430(A), as added by this act.

(D) No later than ninety days after the effective date of this act, the department shall initiate the promulgation of regulations pursuant to Section 58‑7‑460(D).

SECTION 3. Sections 58‑7‑10 through 58‑7‑70 of the S.C. Code are designated as Article 1, Chapter 7, Title 58 entitled, “Special Provisions Affecting Gas, Water, or Petroleum Pipeline Companies.”

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

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