

4654

No. R255
CLERK OF THE SENATE

No. _____
CODE COMMISSIONER

AN ACT

TO AMEND SECTION 48-1-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROHIBITING THE DISCHARGE OF POLLUTANTS INTO THE ENVIRONMENT AND REMEDIES FOR VIOLATIONS, SO AS TO PROVIDE EXEMPTIONS AND LIMITATIONS ON THESE EXEMPTIONS AND TO SPECIFY THAT NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT; TO AMEND SECTION 48-1-130, RELATING TO FINAL ORDERS OF THE DEPARTMENT DISCONTINUING DISCHARGE OF POLLUTANTS, SO AS TO DELETE PROVISIONS RELATING TO REQUIRED PROCEDURES PRECEDING THE ISSUANCE OF A FINAL ORDER, TO PROVIDE THAT AN ORDER IS SUBJECT TO REVIEW PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT, AND TO PROVIDE THIS SECTION DOES NOT ABROGATE ANY EMERGENCY POWER OF THE DEPARTMENT; TO AMEND SECTION 48-1-250, RELATING TO WHOM BENEFITS FROM CAUSES OF ACTION RESULTING FROM POLLUTION VIOLATIONS INURE, SO AS TO PROVIDE THAT NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT, AND TO MAKE THESE PROVISIONS RETROACTIVE AND EXTINGUISH ANY RIGHT, CLAIM, OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THE POLLUTION CONTROL ACT, SUBJECT TO EXCEPTIONS FOR THE STATE AND ITS SUBDIVISIONS; TO CREATE THE "ISOLATED WETLANDS AND CAROLINA BAYS TASK FORCE" TO REVIEW, STUDY, AND MAKE RECOMMENDATIONS CONCERNING ISSUES RELATED TO ISOLATED WETLANDS AND CAROLINA BAYS IN SOUTH CAROLINA, TO PROVIDE FOR THE OBLIGATIONS OF THE TASK FORCE, AMONG OTHER THINGS; AND TO PROVIDE THE TERM "PERMIT" AS USED IN THE POLLUTION CONTROL ACT IS INCLUSIVE AND TO SPECIFY ITS INTENDED MEANING.

I Certify that the Within Originated in the House of Representatives.

Correctly Enrolled _____

Chad F. Reed
Clerk of the House

Stephen T. Draffin
Stephen T. Draffin, Director
Legislative Council

JUN 05 2012

Delivered to the Governor this _____

Delivered to the Secretary of State this _____

day of _____, A.D. 20 _____

day of _____, A.D. 20 _____

Jeffrey
Clerk of the Senate

FILED
JUN 06 2012
Mark Hammond
SEC. OF STATE 8

THE STATE OF SOUTH CAROLINA

At A General Assembly Begun to be Holden at
Columbia, on the Second Tuesday in January, in the
Year of Our Lord Two Thousand Twelve, and
Thence Continued by Divers Adjournments to the
_____ of _____

In the Year of Our Lord Two Thousand Twelve

AN ACT

TO AMEND SECTION 48-1-90, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PROHIBITING THE DISCHARGE OF POLLUTANTS INTO THE ENVIRONMENT AND REMEDIES FOR VIOLATIONS, SO AS TO PROVIDE EXEMPTIONS AND LIMITATIONS ON THESE EXEMPTIONS AND TO SPECIFY THAT NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT; TO AMEND SECTION 48-1-130, RELATING TO FINAL ORDERS OF THE DEPARTMENT DISCONTINUING DISCHARGE OF POLLUTANTS, SO AS TO DELETE PROVISIONS RELATING TO REQUIRED PROCEDURES PRECEDING THE ISSUANCE OF A FINAL ORDER, TO PROVIDE THAT AN ORDER IS SUBJECT TO REVIEW PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT, AND TO PROVIDE THIS SECTION DOES NOT ABROGATE ANY EMERGENCY POWER OF THE DEPARTMENT; TO AMEND SECTION 48-1-250, RELATING TO WHOM BENEFITS FROM CAUSES OF ACTION RESULTING FROM POLLUTION VIOLATIONS INURE, SO AS TO PROVIDE THAT NO PRIVATE CAUSE OF ACTION IS CREATED BY OR EXISTS UNDER THE POLLUTION CONTROL ACT, AND TO MAKE THESE PROVISIONS RETROACTIVE AND EXTINGUISH ANY RIGHT, CLAIM, OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THE POLLUTION CONTROL ACT,

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SUBJECT TO EXCEPTIONS FOR THE STATE AND ITS SUBDIVISIONS; TO CREATE THE "ISOLATED WETLANDS AND CAROLINA BAYS TASK FORCE" TO REVIEW, STUDY, AND MAKE RECOMMENDATIONS CONCERNING ISSUES RELATED TO ISOLATED WETLANDS AND CAROLINA BAYS IN SOUTH CAROLINA, TO PROVIDE FOR THE OBLIGATIONS OF THE TASK FORCE, AMONG OTHER THINGS; AND TO PROVIDE THE TERM "PERMIT" AS USED IN THE POLLUTION CONTROL ACT IS INCLUSIVE AND TO SPECIFY ITS INTENDED MEANING.

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

Prohibition on discharge of pollutants in environment, exemptions, construction, administrative procedures, no private right of action

SECTION 1. Section 48-1-90 of the 1976 Code is amended to read:

"Section 48-1-90. (A)(1) It is unlawful for a person, directly or indirectly, to throw, drain, run, allow to seep, or otherwise discharge into the environment of the State organic or inorganic matter, including sewage, industrial wastes, and other wastes, except in compliance with a permit issued by the department.

(2) The permit requirements of subsection (A)(1) of this section, Section 48-1-100, and Section 48-1-110 do not apply to:

- (a) discharges in a quantity below applicable threshold permitting requirements established by the department;
- (b) discharges for which the department has no regulatory permitting program;
- (c) discharges exempted by the department from permitting requirements; or
- (d) normal farming, silviculture, aquaculture, ranching, and wildlife habitat management activities that are not prohibited by or otherwise subject to regulation.

(3) Subsection (A)(2) of this section must not be construed to:

- (a) impair or affect common law rights;
- (b) repeal prohibitions or requirements of other statutory law or common law; or
- (c) diminish the department's authority to abate public nuisances or hazards to public health or the environment, to abate pollution as defined in Section 48-1-10(7), or to respond to accidental discharges or spills.

accidental discharges or spills.

(4) A person must first petition the department in writing for a declaratory ruling as to the applicability of a specific, existing regulatory program to a proposed or existing discharge into the environment, provided that the proposed or existing discharge is not exempt or excluded from permitting as is set forth in Section 48-1-90(A)(2). The person proposing to emit or emitting such discharge must be named on and served with the petition. The department must, within sixty days after receipt of such petition, issue a declaratory ruling as to the applicability of such program to such discharge. If the department determines a permit is required under such program and that no exception or exclusion exists, including, but not limited to, the exceptions set forth in Section 48-1-90(A)(2), the department must issue a declaration requiring the submission of an application to permit such discharge pursuant to the applicable permitting program. If the department further determines that immediate action is necessary to protect the public health or property due to such unpermitted discharge, the department may further declare the existence of an emergency and order such action as the department deems necessary to address the emergency. Any person to whom such emergency order is directed may apply directly to the Administrative Law Court for relief and must be afforded a hearing within forty-eight hours. Regardless of whether a hearing is held, the department must revoke all emergency orders as soon as conditions or operations change to the extent that an emergency no longer exists. A party contesting any department decision on a petition may request a contested case hearing in the Administrative Law Court. Notwithstanding the administrative remedy provided for in this section, no private cause of action is created by or exists under this chapter.

(B)(1) A person who discharges organic or inorganic matter into the waters of this State as described in subsection (A) to the extent that the fish, shellfish, aquatic animals, wildlife, or plant life indigenous to or dependent upon the receiving waters or property is damaged or destroyed is liable to the State for the damages. The action must be brought by the State in its own name or in the name of the department.

(2) The amount of a judgment for damages recovered by the State, less costs, must be remitted to the agency, commission, department, or political subdivision of the State that has jurisdiction over the fish, shellfish, aquatic animals, wildlife, or plant life or property damaged or destroyed.

(3) The civil remedy provided in subsection (B)(2) is not exclusive, and an agency, commission, department, or political

subdivision of the State with appropriate authority may undertake in its own name an action to recover damages independent of this subsection.”

Final orders for discontinuance of discharge, procedural review, no abrogation of emergency powers of DHEC

SECTION 2. Section 48-1-130 of the 1976 Code is amended to read:

“Section 48-1-130. A person discharging sewage, industrial waste, or other waste or air contaminant into the environment of the State, in such manner or quantity as to cause pollution, without regard to the time that the discharge began or whether or not the continued discharge has been by virtue of a permit issued by the department, shall discontinue the discharge upon receipt of an order of the department . An order is subject to review pursuant to Section 44-1-60 and the Administrative Procedures Act. This section does not abrogate any of the department’s emergency powers.”

Personal causes of action prohibited

SECTION 3. Section 48-1-250 of the 1976 Code is amended to read:

“Section 48-1-250. No private cause of action is created by or exists under this chapter. A determination by the department that pollution exists or a violation of a prohibition contained in this chapter has occurred, whether or not actionable by the State, creates no presumption of law or fact inuring to or for the benefit of a person other than the State.”

Isolated Wetlands and Carolina Bays Task Force created, composition, duties

SECTION 4. (A) There is created the “Isolated Wetlands and Carolina Bays Task Force” to review, study, and make recommendations concerning issues related to isolated wetlands and Carolina Bays in South Carolina. The task force shall be comprised of the following members:

(1) the Chairman of the Senate Agriculture and Natural Resources Committee, ex officio, or his designee, who shall serve as chairman;

(2) the Chairman of the House of Representatives Agriculture, Natural Resources and Environmental Affairs Committee, ex officio, or his designee, who shall serve as vice-chairman;

(3) one member representing the South Carolina Chamber of Commerce;

(4) one member representing the Coastal Conservation League;

(5) one member representing the Conservation Voters of South Carolina;

(6) one member representing the South Carolina Association of Realtors;

(7) one member representing the South Carolina Association of Homebuilders, upon consultation with the South Carolina Association of General Contractors;

(8) one member representing the South Carolina Farm Bureau;

(9) one member representing the South Carolina Manufacturer's Alliance;

(10) one member representing the South Carolina Chapter of the Sierra Club;

(11) one member representing the South Carolina Wildlife Federation;

(12) one member representing the Environmental Law Project; and

(13) one member representing the utilities industry.

(B) The task force shall meet as soon as practicable after the effective date of this act for organizational purposes.

(C) The members of the task force shall serve without compensation and may not receive mileage or per diem.

(D) Vacancies on the task force shall be filled in the same manner as the original appointment.

(E) The task force shall compile a comprehensive inventory of existing data and information regarding Carolina Bays and isolated wetlands in South Carolina. The inventory, as far as possible, must identify the number, distribution, size, description, and characteristics of the Carolina Bays and isolated wetlands throughout the State. The task force must also compile a glossary of standard terms and definitions used when describing Carolina Bays and isolated wetlands, their various types, and characteristics.

(F) During its review and study of Carolina Bays and isolated wetlands, and in its findings and recommendations, the task force shall consider at least:

(1) the biological, hydrological, ecological, and economic values and services of Carolina Bays and isolated wetlands;

(2) prior disturbances of Carolina Bays and isolated wetlands and the cumulative impacts of disturbances to isolated wetlands and their functions;

(3) methods to avoid adverse impact on Carolina Bays and isolated wetlands;

(4) methods to minimize adverse impact on Carolina Bays and isolated wetland function that can be avoided;

(5) manners of compensation for any loss of Carolina Bays and isolated wetland functions that cannot be avoided or minimized;

(6) methods to provide public notice of wetlands permitting applications;

(7) the utility of using a general permitting program for Carolina Bays and isolated wetlands disturbance, where practical;

(8) the proper balance between the economic development value of a proposed permitted activity and the impact on Carolina Bays and isolated wetlands;

(9) achieving a goal of "no net loss" wetlands;

(10) concerning proposals to impact Carolina Bays and isolated wetlands, including those appearing to be geographically isolated, the aggregate benefits and services of similarly situated wetlands in the watershed should be considered;

(11) concerning mitigation for Carolina Bays and isolated wetland impacts, whether a watershed based approach should be followed in order to replace wetland functions and services where they are most needed in the impacted watershed; and

(12) whether, and the extent to which, the standards used by the Department of Health and Environmental Control in evaluating discharges to federal wetlands can and should be used for non-federal wetlands.

(G) The task force shall make a report of its findings and recommendations related to Carolina Bays to the General Assembly on or before January 1, 2013. The task force shall make a report of its findings and recommendations related to isolated wetlands on or before July 1, 2013, at which time the study committee terminates.

(H) The staffing for the task force must be provided by the appropriate committees or offices of the Senate and House of Representatives. The task force may utilize staff of other government agencies with relevant issue area expertise upon request."

Definition and construction of "permit"

SECTION 5. The term "permit" as used in the Pollution Control Act is inclusive and intended to mean all permits, certifications,

determinations, or other approvals required by law issued by the department, consistent with the definition of "license" as found in Chapter 23, Title 1 of the Administrative Procedures Act.

Savings

SECTION 6. The repeal or amendment by this act of any law or any other provision contained in this act, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, liabilities, or rights and does not amend or repeal any provisions of the South Carolina Pollution Control Act for any federal project for which a final Environmental Impact Statement has been issued but no subsequent record of decision has been issued as of the date of this enactment and for any such project, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this act. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws or other provisions contained in this act.

Severability

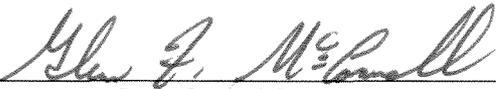
SECTION 7. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

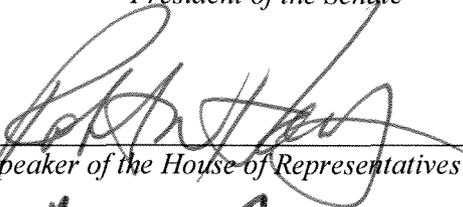
SECTION 8. This act takes effect upon approval by the Governor.

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In the Senate House JUN 05 2012

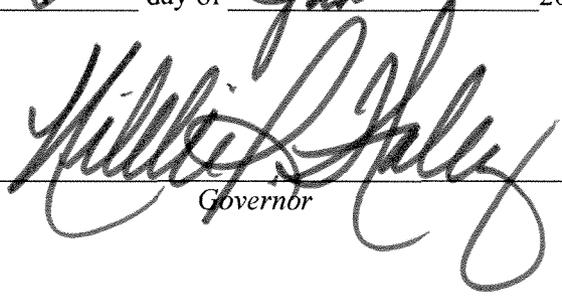


President of the Senate



Speaker of the House of Representatives

Approved the 6th day of June 2012.



Governor

