

From: Taylor, W. Marshall <taylorwm@dhec.sc.gov>  
To: Pisarik, HollyHollyPisarik@gov.sc.gov  
CC: Wilson, DavidWILSONDE@dhec.sc.gov  
Date: 5/6/2016 4:44:07 PM  
Subject: Re: S.229

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Holly,

DHEC is familiar with and has not taken a position on this bill (S.229).

Regards,  
Marshall

W. Marshall Taylor, Jr.  
General Counsel  
SC Department of Health and Environmental Control  
2600 Bull Street  
Columbia, SC 29201  
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From: Pisarik, Holly <HollyPisarik@gov.sc.gov>  
Sent: Friday, May 6, 2016 3:01:12 PM  
To: Taylor, W. Marshall  
Subject: S.229

Marshall, Please review this one as well and let me know if there are concerns. Thanks, Holly

**South Carolina General Assembly**  
121st Session, 2015-2016

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**S. 229**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Campbell and Turner

Document Path: I:\s-res\pgc\005poll.eb.pgc.docx

Companion/Similar bill(s): 3371

Introduced in the Senate on January 13, 2015

Introduced in the House on May 5, 2015

Last Amended on April 30, 2015

Currently residing in the House

## Summary: Pollution of the environment

### HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
12/10/2014	Senate	Prefiled
12/10/2014	Senate	Referred to Committee on <b>Medical Affairs</b>
1/13/2015	Senate	Introduced and read first time ( <a href="#">Senate Journal-page 142</a> )
1/13/2015	Senate	Referred to Committee on <b>Medical Affairs</b> ( <a href="#">Senate Journal-page 142</a> )
3/10/2015	Senate	Committee report: Majority favorable with amend., minority unfavorable <b>Medical Affairs</b> ( <a href="#">Senate Journal-page 18</a> )
3/11/2015		Scrivener's error corrected
3/17/2015	Senate	Special order, set for March 17, 2015 ( <a href="#">Senate Journal-page 31</a> )
3/18/2015	Senate	Committee Amendment Amended ( <a href="#">Senate Journal-page 38</a> )
3/18/2015	Senate	Debate interrupted ( <a href="#">Senate Journal-page 38</a> )
3/19/2015	Senate	Debate interrupted ( <a href="#">Senate Journal-page 16</a> )
3/19/2015		Scrivener's error corrected
3/31/2015	Senate	Debate interrupted ( <a href="#">Senate Journal-page 58</a> )
4/1/2015	Senate	Debate interrupted ( <a href="#">Senate Journal-page 49</a> )
4/29/2015	Senate	Read second time ( <a href="#">Senate Journal-page 71</a> )
4/30/2015	Senate	Amended ( <a href="#">Senate Journal-page 42</a> )
4/30/2015	Senate	Read third time and sent to House ( <a href="#">Senate Journal-page 42</a> )
4/30/2015	Senate	Roll call Ayes-33 Nays-2 ( <a href="#">Senate Journal-page 42</a> )
5/5/2015	House	Introduced and read first time ( <a href="#">House Journal-page 17</a> )
5/5/2015	House	Referred to Committee on <b>Judiciary</b> ( <a href="#">House Journal-page 17</a> )
5/4/2016	House	Committee report: Favorable with amendment <b>Judiciary</b> ( <a href="#">House Journal-page 1</a> )
5/5/2016	House	Requests for debate-Rep(s). Brannon, Hiott ( <a href="#">House Journal-page 142</a> )

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### VERSIONS OF THIS BILL

[12/10/2014](#)

[3/10/2015](#)

[3/11/2015](#)

[3/18/2015](#)

[3/19/2015](#)

[4/30/2015](#)

[5/4/2016](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

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### COMMITTEE REPORT

May 4, 2016

**S. 229**

Introduced by Senators Campbell and Turner

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

Read the first time May 15, 2015.

### THE COMMITTEE ON JUDICIARY

To whom was referred a Bill (S. 229) to amend Section 48-1-90 of the 1976 Code, relating to remedies for causing or permitting pollution of the environment, to clarify that persons who may file, etc., respectfully

#### REPORT:

That they have duly and carefully considered the same and recommend that the same do pass with amendment:  
Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. It is the intent of the General Assembly that no private right of action exists under the

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

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

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

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

"SECTION 6. The repeal or amendment by this act of any law or any other provision contained in this act, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, liabilities, or rights and does not amend or repeal any provisions of the South Carolina Pollution Control Act (1) for any federal project for which a final Environmental Impact Statement has been issued but no subsequent record of decision has been issued as of the date of this enactment June 6, 2012, and (2) for any commercial hazardous waste storage, treatment, and landfill facility managed or operated by a trust for which the State of South Carolina or its department or agency serves as a trustee or beneficiary for such hazardous waste facility, and for any such project, or hazardous waste facility, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this act. After the effective date of this act On and after June 6, 2012, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws or other provisions contained in this act. However, in regard to subitem (2) herein, no private right of action under the Pollution Control Act may be brought or lie against such a trust, its trustee, beneficiary, or interim administrator."

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

Renumber sections to conform.

Amend title to conform.

GREGORY F. DELLENEY, JR. for Committee.

## A BILL

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

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

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

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

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

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

"SECTION 6. The repeal or amendment by this act of any law or any other provision contained in this act, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, liabilities, or rights and does not amend or repeal any provisions of the South Carolina Pollution Control Act (1) for any federal project for which a final Environmental Impact Statement has been issued but no subsequent record of decision has been issued as of the date of this enactment June 6, 2012, (2) for any commercial hazardous waste storage, treatment, and landfill facility managed or operated by a trust for which the State of South Carolina or its department or agency serves as a trustee or beneficiary for such hazardous waste facility, and (3) for any pollution, discharges, contamination, or other harms related to, originating from, or caused by coal ash, coal combustion waste, residuals, or toxic pollutants designated by the U.S. Environmental Protection Agency in 40 C.F.R. Section 401.15 and for any such project, hazardous waste facility, or coal ash pollution, the Pollution Control Act remains in full force and effect as it existed prior to the passage of this act. After the effective date of this act On and after June 6, 2012, all laws repealed or amended by this act must be taken and treated as

remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws or other provisions contained in this act. However, in regard to subitem (2) herein, no private right of action under the Pollution Control Act may be brought or lie against such a trust, its trustee, beneficiary, or interim administrator."

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

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