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COMMITTEE REPORT

May 24, 2016

**S. 868**

Introduced by Senators Young, Massey, Setzler and Nicholson

S. Printed 5/24/16--H.

Read the first time March 8, 2016.

**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 deleting all after the enacting words and inserting:

/ SECTION 1. Section 58‑7‑10 of the 1976 Code of Laws is amended to read:

“Section 58‑7‑10. (A) 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.

(B) 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. Unless the General Assembly amends Section 58‑7‑10 in any manner before the passing of five years after the effective date of this act or if the language of subsection (B) is reenacted or otherwise extended by the General Assembly, the provisions of subsection (B), as added by this act, are repealed five years after the effective date of this act.

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

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, 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”.

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 petroleum or oil 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 meets the current “public use” requirement for purposes of eminent domain; and

Whereas, natural gas and petroleum companies utilize pipelines as a method to transport their respective products and both types of companies are primarily regulated by federal law; however, due to the differences in the products these companies provide, the federal government has differing statutory and regulatory provisions for natural gas and petroleum companies, and the majority of the states differentiate between natural gas and petroleum companies, including South Carolina; and

Whereas, unlike other companies that utilize pipelines that are defined in Title 58 as a public utility, such as natural gas companies and water companies, petroleum companies are not defined in Title 58 as a public utility; 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; and

Whereas, it is the duty of the General Assembly to establish the policy for the authorization of use for eminent domain and to provide statutory processes and procedures to balance the interests of the state’s health, safety, welfare, and property of this state’s citizens without unnecessarily impeding or discouraging economic development; and

Whereas, it is the duty of the General Assembly to address any potential expansion of the use of eminent domain authority in this State in a meaningful and deliberative manner. Now, therefore,

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

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

“Section 58-7-10. 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. The provisions of Section 58-7-10, as amended by this act, are repealed five years from the act’s effective date, unless reenacted or otherwise extended by the General Assembly. Unless the General Assembly reenacts or otherwise extends the amendment to Section 58-7-10 within five years from this act’s effective date, Section 58-7-10 shall revert to the language that existed prior to the effective date.

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

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