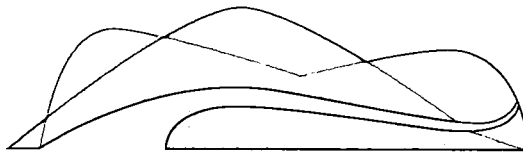


John L.B. Kehl  
Erin Culbertson

J.J. Andrighetti



KEHL • CULBERTSON • ANDRIGHETTI  
— ATTORNEYS AT LAW —

October 10, 2018

The Hon. Daniel E. Shearouse  
Clerk of Court, SC Supreme Court  
1231 Gervais St.  
Columbia, SC 29201

**RECEIVED**

OCT 12 2018

**VIA OVERNIGHT MAIL**

Re: *Piedmont Natural Gas v. Richeous Smith, et al.*  
*Appellate Case # 2015-001909*

**S.C. SUPREME COURT**

Dear Mr. Shearouse:

Please allow this letter to serve as notification of a supplemental citation in the above-referenced matter, pursuant to Rule 208(b)(7). This citation relates to certain policy arguments made in Respondents' Final Brief at Pages 10-15 and in Respondents' Reply to Amicus Curiae Brief at Pages 6-7. A copy of the Bill is attached for convenience.

1. An Act to Amend Section 58-7-10, Code of Laws of South Carolina, 1976, Act No. 205, Ratified R225, S868, 2015-2016 121<sup>st</sup> Session, South Carolina General Assembly.

With kind regards, I remain,

Yours very truly,

Erin Culbertson  
erin@palmettolawfirm.com

enclosure

cc: Kevin A. Dunlap, Esq.  
file

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

Download [This Bill](#) in Microsoft Word format

**A205, R225, S868**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Young, Massey, Setzler and Nicholson

Document Path: I:\council\bill\agm\18669ab15.docx

Companion/Similar bill(s): 4326

Introduced in the Senate on June 3, 2015

Introduced in the House on March 8, 2016

Last Amended on June 1, 2016

Passed by the General Assembly on June 2, 2016

Governor's Action: June 3, 2016, Signed

Summary: Procedures for eminent domain for pipeline companies

**HISTORY OF LEGISLATIVE ACTIONS**

Date	Body	Action Description with journal page number
6/3/2015	Senate	Introduced and read first time ( <a href="#">Senate Journal-page 13</a> )
6/3/2015	Senate	Referred to Committee on Judiciary ( <a href="#">Senate Journal-page 13</a> )
6/4/2015	Senate	Referred to Subcommittee: Young (ch), Hutto, Massey
2/10/2016	Senate	Committee report: Favorable with amendment Judiciary ( <a href="#">Senate Journal-page 10</a> )
2/11/2016		Scrivener's error corrected
2/11/2016		Scrivener's error corrected
2/18/2016	Senate	Amended ( <a href="#">Senate Journal-page 22</a> )
2/19/2016		Scrivener's error corrected
2/25/2016	Senate	Read second time ( <a href="#">Senate Journal-page 24</a> )
2/25/2016	Senate	Roll call Ayes-38 Nays-0 ( <a href="#">Senate Journal-page 24</a> )
3/3/2016	Senate	Read third time and sent to House ( <a href="#">Senate Journal-page 11</a> )
3/8/2016	House	Introduced and read first time ( <a href="#">House Journal-page 9</a> )
3/8/2016	House	Referred to Committee on Judiciary ( <a href="#">House Journal-page 9</a> )
5/24/2016	House	Committee report: Favorable with amendment Judiciary ( <a href="#">House Journal-page 12</a> )
5/31/2016	House	Requests for debate-Rep(s). Whipper, Henderson, Brannon, Nanney, Bedingfield, Atwater, VS Moss, Gilliard, Rhyal, Ott, King, Willis, Weeks, Crosby, Neal, Hardee, Jefferson ( <a href="#">House Journal-page 17</a> )
6/1/2016	House	Amended ( <a href="#">House Journal-page 120</a> )
6/1/2016	House	Read second time ( <a href="#">House Journal-page 120</a> )
6/1/2016	House	Roll call Yeas-89 Nays-3 ( <a href="#">House Journal-page 122</a> )
6/2/2016	House	Read third time and returned to Senate with amendments ( <a href="#">House Journal-page 42</a> )
6/2/2016	Senate	Concurred in House amendment and enrolled ( <a href="#">Senate Journal-page 39</a> )
6/2/2016		Ratified R 225
6/3/2016		Signed By Governor
6/9/2016		Effective date 06/03/16
6/9/2016		Act No. 205

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## VERSIONS OF THIS BILL

[6/3/2015](#)

[2/10/2016](#)

[2/11/2016](#)

[2/11/2016-A](#)

[2/18/2016](#)

[2/19/2016](#)

[5/24/2016](#)

[6/1/2016](#)

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

(A205, R225, S868)

**AN ACT TO AMEND SECTION 58-7-10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RIGHTS, POWERS, AND PRIVILEGES OF TELEGRAPH AND TELEPHONE COMPANIES CONFERRED ON PIPELINE COMPANIES, SO AS TO PROVIDE THAT CERTAIN RIGHTS, POWERS, PRIVILEGES DO NOT APPLY TO PRIVATE, FOR-PROFIT PIPELINE COMPANIES, AND TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE REPEALED ON JUNE 30, 2019.**

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:

### **Certain rights, powers, and privileges inapplicable to private, for-profit pipeline companies**

SECTION 1. Section 58-7-10 of the 1976 Code 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, 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 and of Chapter 2, Title 28 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."

### **Provisions to sunset June 30, 2019**

SECTION 2. Unless the General Assembly amends Section 58-7-10 in any manner before the passing of three 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 June 30, 2019.

### **Time effective**

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

Ratified the 2nd day of June, 2016.

Approved the 3rd day of June, 2016.

This web page was last updated on June 28, 2016 at 4:03 PM