

House Bill 1036 (AS PASSED HOUSE AND SENATE)

By: Representatives Hitchens of the 161st, Stephens of the 164th, Petrea of the 166th, Williams of the 168th, Abrams of the 89th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the
2 exercise of power of eminent domain for special purposes, so as to change certain provisions
3 relating to the exercise of power of eminent domain for construction of petroleum pipelines;
4 to provide for legislative findings; to provide for definitions; to enact a temporary
5 moratorium on the use of eminent domain powers for construction of petroleum pipelines so
6 that a commission of elected officials and field experts can conduct a detailed study; to
7 ensure the exercise of eminent domain powers by petroleum pipelines is carried out in a
8 prudent and responsible manner consistent with this state's essential public interests; to
9 provide for the membership, powers, duties, compensation, and allowances of the
10 commission; to provide for the abolishment of the commission; to suspend the exercise of
11 the power of eminent domain by pipeline companies for a certain period; to provide for an
12 exception; to suspend the receipt of certain applications and the issuance of certain
13 approvals; to move existing provisions relating to the use of the power of eminent domain
14 for natural or artificial gas; to provide for related matters; to provide an effective date; to
15 repeal conflicting laws; and for other purposes.

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

18 Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the exercise of
19 power of eminent domain for special purposes, is amended by revising Article 4, relating to
20 the construction and operation of petroleum pipelines and gas pipelines, as follows:

"ARTICLE 4

Part 1

22-3-80.

~~The General Assembly finds and declares that, based on an authorized study by the Petroleum Pipeline Study Committee created by the General Assembly, while petroleum pipelines are appropriate and valuable for use in the transportation of petroleum and petroleum products, there are certain problems and characteristics indigenous to such pipelines which require the enactment and implementation of special procedures and restrictions on petroleum pipelines and related facilities as a condition of the grant of the power of eminent domain to petroleum pipeline companies. With respect to the siting and regulation of petroleum pipelines in this state, the General Assembly finds that:~~

(1) The natural resources, environment, and vital areas of the state are of utmost importance to the state and its citizens and the State of Georgia has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas;

(2) State law presently grants pipeline companies the power to acquire property or interests in property through the use of eminent domain;

(3) The procedures that pipeline companies are required to use to exercise such statutory powers of eminent domain have not been reviewed since the Petroleum Pipeline Study Committee created in an Act approved March 24, 1994 (Ga. L. 1994, p. 229) and abolished on January 1, 1995, studied the issue;

(4) Technology has significantly advanced in the past decade and the pipeline industry has also changed;

(5) The vitally important issue of land use impacts associated with pipelines that are presently in use and being developed for future use merits a detailed study by elected officials and experts in this field to ensure that the exercise of eminent domain by pipeline companies is carried out in a prudent and responsible manner consistent with this state's essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas; and

(6) A temporary moratorium on the exercise of eminent domain powers of pipeline companies through June 30, 2017, would provide the General Assembly with time to study the need for any changes to land use controls or restrictions related to pipeline companies seeking to deliver petroleum to residents of this state or other states, including but not limited to those related to siting of pipelines, and to assess various proposals relating to the eminent domain powers that pipeline companies presently enjoy, the issuance of certain environmental permits to pipeline companies, and the enactment of

57 additional laws to ensure the consistency of pipeline development and operation with the
 58 state's land use goals and standards.

59 22-3-81.

60 As used in this article, the term:

61 (1) 'Commission' means the State Commission on Petroleum Pipelines created pursuant
 62 to Code Section 22-3-82.

63 ~~(1)~~(2) 'Pipeline' means a pipeline constructed or to be constructed as a common carrier
 64 in interstate or intrastate commerce for the transportation of petroleum or petroleum
 65 products in or through this state.

66 ~~(2)~~(3) 'Pipeline company' means a corporation organized under the laws of this state or
 67 which is organized under the laws of another state and is authorized to do business in this
 68 state and which is specifically authorized by its charter or articles of incorporation to
 69 construct and operate pipelines for the transportation of petroleum and petroleum
 70 products.

71 ~~(3)~~(4) 'Pipeline facility' or 'pipeline facilities' means and includes the pipeline and all
 72 equipment or facilities, including lateral lines, essential to the operation of the pipeline
 73 but shall not include any storage tank or storage facility which is not being constructed
 74 as a part of the operation of the pipeline.

75 22-3-82.

76 There is created the State Commission on Petroleum Pipelines to be composed of three
 77 members of the House of Representatives to be appointed by the Speaker of the House of
 78 Representatives; three members of the Senate to be appointed by the President of the
 79 Senate; the director of the Environmental Protection Division of the Department of Natural
 80 Resources or his or her designee; the commissioner of community affairs or his or her
 81 designee; and five members to be appointed by the Governor, including one member who
 82 shall represent the petroleum industry and four members who shall represent a cross section
 83 of the interests of local government, business, agriculture, and conservation. The Speaker
 84 of the House of Representatives and the President of the Senate shall each select a
 85 cochairperson. The cochairpersons shall call all meetings of the commission.
 86 Administrative support for the commission shall be provided by the staff of the Office of
 87 Planning and Budget, the staff of the Environmental Protection Division of the Department
 88 of Natural Resources, or the staff of the Department of Community Affairs, as appropriate.

89 22-3-83.

90 (a) The commission shall perform the following by December 31, 2016:

- 91 (1) Examine the impacts on land associated with pipeline siting, construction, and
92 operation, including impacts associated with potential leaks and spills;
- 93 (2) Examine the current legal and regulatory structure pertinent to the protection of land
94 uses and natural resources from impacts associated with pipeline siting, construction, and
95 operation;
- 96 (3) Examine the purposes behind and necessity of, if any, Part 2 of this article and the
97 grant therein of eminent domain powers to pipeline companies and the siting procedures
98 therein and weigh those with the rights of property owners affected by the use of such
99 eminent domain powers;
- 100 (4) Consider the extent to which the powers granted pipeline companies under Part 2 of
101 this article, and more broadly the existing legal and regulatory system pertinent to the
102 siting, construction, and operation of pipelines, are consistent with and implement
103 Georgia's essential public interest in establishing minimum standards for land use in order
104 to protect and preserve its natural resources, environment, and vital areas;
- 105 (5) Consider legal and regulatory mechanisms by which the eminent domain powers of
106 pipeline companies can be appropriately restricted or controlled in order to ensure siting
107 of pipelines that is consistent with current state and local land use policies and the
108 protection of natural resources;
- 109 (6) Consider whether any changes to the siting procedures in this article are necessary
110 to protect the residents of this state in consideration of whether the pipeline is delivering
111 petroleum to customers inside or outside this state;
- 112 (7) Prepare a report summarizing the findings of the commission and submit such report
113 to the President of the Senate and the Speaker of the House of Representatives and to the
114 chairpersons of each of the standing committees of the Senate and of the House of
115 Representatives which regularly consider proposed legislation related to transportation,
116 energy, or natural resources; and
- 117 (8) Recommend to the General Assembly proposed legislation as necessary to
118 accomplish the continuing goal of ensuring that pipeline siting, construction, and
119 operation are consistent with and implement the State of Georgia's essential public
120 interest in establishing minimum standards for land use in order to protect and preserve
121 its natural resources, environment, and vital areas and to best serve the residents of this
122 state.
- 123 (b) The legislative members of the commission shall be entitled to receive the
124 compensation and allowances provided for in Code Section 28-1-8. Members of the
125 commission who are state officials, other than legislative members, or state employees
126 shall receive no compensation for their services on the commission but may be reimbursed
127 for expenses incurred by them in the performance of their duties as members of the

128 commission in the same manner as they are reimbursed for expenses in their capacities as
 129 state officials or employees. Members of the commission who are not legislators, state
 130 officials, or state employees shall receive a daily expense allowance in an amount the same
 131 as that specified in subsection (b) of Code Section 45-7-21, as well as the mileage or
 132 transportation allowance authorized for state employees, and the funds for payment thereof
 133 shall come from funds of the Department of Natural Resources.

134 (c) The commission may conduct such meetings at such places and at such times as it may
 135 deem necessary or convenient to enable it to exercise fully and effectively its powers,
 136 perform its duties, and accomplish the objectives and purposes of this part.

137 (d) The commission shall stand abolished on January 1, 2017.

138 Part 2

139 22-3-85.

140 (a)(1) The powers of eminent domain granted by this part to pipeline companies shall be
 141 temporarily suspended starting from the effective date of this Code section through and
 142 including June 30, 2017, in order to allow the commission to complete its report and
 143 recommendations and to allow the General Assembly to act on those recommendations
 144 during the 2017 legislative session.

145 (2) Between the effective date of this Code section and June 30, 2017:

146 (A) No pipeline company shall exercise any eminent domain powers under this part,
 147 including, without limitation, condemning any property through the exercise of eminent
 148 domain;

149 (B) The commissioner of transportation shall not accept any applications for or issue
 150 any certificates of public convenience and necessity provided for in Code Section
 151 22-3-87;

152 (C) The Environmental Protection Division of the Department of Natural Resources
 153 shall not accept any applications for or issue any permits provided for in Code Section
 154 22-3-88; and

155 (D) No state officer, official, or employee or any state agency, department,
 156 commission, or committee shall issue any approval, permit, or document necessary for
 157 the construction of a pipeline, including, but not limited to, the granting of any
 158 easement, deed, license, or permission to cross over, under, or through any:

159 (i) Body of water, state wildlife management areas, heritage or historic preserve
 160 areas, or historical sites within this state;

161 (ii) Area of Particular Concern as set out in the State of Georgia Coastal Management
 162 Program as such existed on January 1, 2016; or

163 (iii) Public road of the state highway system.
 164 (b) The temporary suspension of the power of eminent domain provided in subsection (a)
 165 of this Code section and temporary suspension of the issuance of approvals, permits, or
 166 documents provided in subparagraph (D) of paragraph (2) of subsection (a) of this Code
 167 section shall not apply to acquisitions, approvals, permits, or documents for the purposes
 168 of:

169 (1) Maintaining an existing pipeline facility in place;
 170 (2) Replacing lines within 200 feet of an existing pipeline facility; or
 171 (3) Relocating temporary work space for repairs of an existing pipeline facility.
 172 For purposes of this subsection, the term 'existing pipeline facility' means a pipeline facility
 173 constructed and in use prior to January 1, 2016.

174 ~~22-3-82~~ 22-3-86.

175 (a) Subject to the provisions and restrictions of this ~~article~~ part, pipeline companies are
 176 granted the right power to acquire property or interests in property by eminent domain for
 177 the construction, reconstruction, operation, and maintenance of pipelines in this state;
 178 provided, however, that prior to instigating eminent domain proceedings or threatening to
 179 do so, the pipeline company shall cause to be delivered to each landowner whose property
 180 may be condemned a written notice containing the following language in boldface type:

181 'CODE SECTIONS ~~22-3-80~~ 22-3-86 THROUGH ~~22-3-87~~ 22-3-91 OF THE OFFICIAL
 182 CODE OF GEORGIA ANNOTATED PROVIDE SPECIFIC REQUIREMENTS
 183 WHICH MUST BE FOLLOWED BY PETROLEUM PIPELINE COMPANIES
 184 BEFORE THEY MAY EXERCISE THE RIGHT TO CONDEMN YOUR PROPERTY.
 185 THOSE CODE SECTIONS ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR
 186 PROTECTION. YOU SHOULD MAKE YOURSELF FAMILIAR WITH THOSE
 187 REQUIREMENTS AND YOUR RIGHTS PRIOR TO CONTINUING NEGOTIATIONS
 188 CONCERNING THE SALE OF YOUR PROPERTY TO A PETROLEUM PIPELINE
 189 COMPANY.'

190 (b) The restrictions and conditions imposed by this ~~article~~ part on the exercise of the power
 191 of eminent domain by ~~petroleum~~ pipeline companies shall not apply to relocations of
 192 pipelines necessitated by the exercise of a legal right by a third party or to any activities
 193 incident to the maintenance of an existing pipeline or existing pipeline right of way. A
 194 pipeline company shall have a right of reasonable access to property proposed as the site
 195 of a pipeline for the purpose of conducting a survey of the surface of such property for use
 196 in determining the suitability of such property for placement of a pipeline.

197 (c) After obtaining the certificate of convenience and necessity provided for in Code
 198 Section ~~22-3-83~~ 22-3-87 and after complying with the notice requirements set forth in

199 subsection (a) of this Code section, a pipeline company shall have a right of reasonable
 200 access to any property proposed as the site of a pipeline for the purpose of conducting
 201 additional surveying which may be necessary in preparing its submission to the Department
 202 of Natural Resources as provided for in Code Section ~~22-3-84~~ 22-3-88.

203 (d) The owner of any property or property interest which is entered by a pipeline company
 204 for the purpose of surveying such property, as allowed in this Code section, or for access
 205 to or maintenance or relocation of an existing pipeline shall have the right to be
 206 compensated for any damage to such property incident to such entry. Any survey
 207 conducted pursuant to this ~~article part~~ shall be conducted in such a fashion as to cause
 208 minimal damage to the property surveyed.

209 ~~22-3-83~~ 22-3-87.

210 (a) Before exercising the ~~right power~~ of eminent domain as authorized in this ~~article part~~,
 211 a pipeline company shall first obtain from the commissioner of transportation or the
 212 commissioner's designee a certificate of public convenience and necessity that such action
 213 by the pipeline company is authorized. Such certificate shall not be unreasonably withheld.

214 (b) The commissioner of transportation shall prescribe regulations pursuant to Chapter 13
 215 of Title 50, the 'Georgia Administrative Procedure Act,' relative to the requirements for
 216 obtaining a certificate of public convenience and necessity which shall include:

217 (1) A requirement that the application for such certificate shall include a description of
 218 the proposed project including its general route, a description of the public convenience
 219 and necessity which support the proposed pipeline route, the width of the proposed
 220 pipeline corridor up to a maximum width of one-third mile, ~~and~~ a showing that use of the
 221 power of eminent domain may be necessary ~~to~~ for construction of the pipeline, and a
 222 showing that the public necessity for the ~~petroleum~~ pipeline justifies the use of the power
 223 of eminent domain;

224 (2) A provision for reasonable public notice of the application and the proposed route;

225 (3) Provision for a hearing on the application and the filing and hearing of any objections
 226 to such application;

227 (4) A requirement that all hearings shall be held and a final decision rendered on any
 228 application not later than 90 days from the date of the publication of notice required in
 229 paragraph (2) of this subsection; and

230 (5) Such other reasonable requirements as shall be deemed necessary or desirable to a
 231 proper determination of the application.

232 (c) In the event the application is not approved or denied within the time period provided
 233 for in paragraph (4) of subsection (b) of this Code section, the application shall be deemed
 234 to be approved by operation of law.

235 (d) The approval and issuance of the certificate of public convenience and necessity shall
 236 not be subject to review. The denial of the certificate may be reviewed by a judge of the
 237 superior court of the county in which the pipeline company has an agent and place of doing
 238 business. The review shall be by petition filed within 30 days of the date of disapproval of
 239 the application and shall be determined on the basis of the record before the commissioner
 240 of transportation. The action of the commissioner of transportation shall be affirmed if
 241 supported by substantial evidence.

242 ~~22-3-84~~ 22-3-88.

243 (a) In addition to obtaining a certificate as required in Code Section ~~22-3-83~~ 22-3-87, a
 244 pipeline company shall, prior to the exercise of the power of eminent domain, obtain a
 245 permit from the director of the Environmental Protection Division of the Department of
 246 Natural Resources as provided in this Code section.

247 (b) The Board of Natural Resources shall, pursuant to Chapter 13 of Title 50, the 'Georgia
 248 Administrative Procedure Act,' issue rules and regulations governing the obtaining of the
 249 permit provided for in subsection (a) of this Code section which shall include:

250 (1) Reasonable public notice to an owner of property who, after reasonable efforts,
 251 cannot personally be given the notice in subsection (a) of Code Section ~~22-3-82~~ 22-3-86;

252 (2) Reasonable public notice of the filing of an application for a permit;

253 (3) Provisions for hearings on all applications for such permits; and

254 (4) A requirement that no such permit shall be granted by the division unless, prior to the
 255 construction of any portion of the ~~petroleum~~ pipeline project for which the use of the
 256 power of eminent domain may be required, the pipeline company has submitted the
 257 proposed siting of such portion of the pipeline project to the division with appropriate
 258 notices thereof to affected parties and unless the division director determines after a
 259 hearing that the location, construction, and maintenance of such portion of the pipeline
 260 ~~is~~ are consistent with and not an undue hazard to the environment and natural resources
 261 of this state, determined in accordance with the factors set forth in subsection (c) of this
 262 Code section.

263 (c) In making the decision required by paragraph (4) of subsection (b) of this Code section,
 264 the director shall determine:

265 (1) Whether the proposed route of such portion of the pipeline is an environmentally
 266 reasonable route;

267 (2) Whether other corridors of public utilities already in existence may reasonably be
 268 used for the siting of such portion of the pipeline;

269 (3) The existence of any local zoning ordinances and that such portion of the project will
 270 comply with those ordinances unless to require such compliance would impose an
 271 unreasonable burden on the project as weighed against the purpose of such ordinances;

272 (4) That ample opportunity has been afforded for public comment, specifically including
 273 but not limited to comment by the governing body of any municipality or county within
 274 which the proposed project or any part thereof is to be located; and

275 (5) Such reasonable conditions to the permit as will allow the monitoring of the effect
 276 of the ~~petroleum~~ pipeline upon the property subjected to eminent domain and the
 277 surrounding environment and natural resources.

278 (d) In the event an application under this Code section is not approved or denied
 279 within 120 days of the date of the publication of notice required in paragraph (2) of
 280 subsection (b) of this Code section, the application shall be deemed to be approved by
 281 operation of law.

282 ~~22-3-85~~ 22-3-89.

283 All hearings and appeals on applications for certificates and permits required under this
 284 ~~article part~~ shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia
 285 Administrative Procedure Act,' provided that if the final decision of the Administrative
 286 Law Judge on any appeal is not rendered within 120 days from the date of filing of a
 287 petition for review, the decision of the director shall be affirmed by operation of law; and
 288 provided further that judicial review of the approval or denial of an application under Code
 289 Section ~~22-3-84~~ 22-3-88 shall be governed by Code Section 12-2-1.

290 ~~22-3-86~~ 22-3-90.

291 When a pipeline company which has obtained the certification and permits required in this
 292 ~~article part~~ is unable to acquire the property or interest required for such certified or
 293 permitted project after reasonable negotiation with the owner of such property or interest,
 294 the company may acquire such property or interest by the use of the condemnation
 295 procedures authorized by Chapter 2 of this title.

296 ~~22-3-87~~ 22-3-91.

297 If the portion of the ~~petroleum~~ pipeline route chosen and approved pursuant to Code
 298 Section ~~22-3-84~~ 22-3-88 unreasonably impacts any other property of the same owner which
 299 is not acquired by eminent domain as a part of such portion of the project, there shall be
 300 a right of compensation available under the laws of eminent domain for the fair market
 301 value of any such damage upon the trial of the case of the parcel taken.

302 ~~22-3-88.~~

303 ~~The power of eminent domain may be exercised by persons who are or may be engaged in~~
 304 ~~constructing or operating pipelines for the transportation or distribution of natural or~~
 305 ~~artificial gas and by persons who are or may be engaged in furnishing natural or artificial~~
 306 ~~gas for heating, lighting, or power purposes in the State of Georgia."~~

307 **SECTION 2.**

308 Said chapter is further amended by adding a new article to read as follows:

309 "ARTICLE 4A

310 22-3-95.

311 The power of eminent domain may be exercised by persons who are or may be engaged in
 312 constructing or operating pipelines for the transportation or distribution of natural or
 313 artificial gas and by persons who are or may be engaged in furnishing natural or artificial
 314 gas for heating, lighting, or power purposes in this state."

315 **SECTION 3.**

316 This Act shall become effective upon its approval by the Governor or upon its becoming law
 317 without such approval.

318 **SECTION 4.**

319 All laws and parts of laws in conflict with this Act are repealed.