

House Bill 1273

By: Representatives Massey of the 86th, Wilkinson of the 43rd, Richardson of the 26th, Stokes of the 92nd and Purcell of the 147th

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 require telegraph and
3 telephone companies to gain approval from a county or a municipality prior to undertaking
4 condemnation; to require persons operating and constructing electric power plants to gain
5 approval from a county or a municipality prior to undertaking condemnation; to require
6 approval by a county or a municipality prior to the condemnation of mills, factories, and
7 dams; to require approval from a county or a municipality prior to flooding of roads and
8 highways by electric power plant operators; to require nongovernmental entities constructing,
9 owning, or operating waterworks or sanitary sewerage systems to gain approval from a
10 county or a municipality prior to undertaking condemnation; to require pipeline operators to
11 gain approval from a county or a municipality prior to condemnation; to amend Title 46 of
12 the Official Code of Georgia Annotated, relating to public utilities and public transportation,
13 so as to require electric suppliers to gain approval of a county or a municipality prior to
14 condemning property; to require gas utilities to gain approval of a county or a municipality
15 prior to condemning property; to require rural telephone cooperatives to gain approval of a
16 county or a municipality prior to condemning property; to require railroad companies to gain
17 approval of a county or a municipality prior to condemning property; to amend Chapter 4
18 of Title 52 of the Official Code of Georgia Annotated, relating to canal companies, so as to
19 require canal companies to gain approval of a county prior to condemning property; to
20 provide for related matters; to provide an effective date; to repeal conflicting laws; and for
21 other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

24 Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the exercise of
25 power of eminent domain for special purposes, is amended by adding a new Code Section
26 22-3-1.1 to read as follows:

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1 "22-3-1.1

2 Prior to a condemnation under Code Section 22-3-1, a telegraph or telephone company
3 condemning property in any county or municipality within this state shall first obtain the
4 consent of the county, if the property to be condemned is located in the unincorporated
5 portion of the county, or the municipality, if the property to be condemned is located within
6 the city limits, before the condemnation procedure begins. Such consent by the county or
7 municipality may be granted by resolution or ordinance."

8 **SECTION 2.**

9 Said chapter is further amended by striking Code Section 22-3-20, relating to powers of
10 persons operating or constructing electric power plants, in its entirety and inserting in lieu
11 thereof the following:

12 "22-3-20.

13 Any person operating or constructing or preparing to construct a plant for generating
14 electricity shall have the right to purchase, lease, or condemn rights of way or other
15 easements over the lands of others in order to run power lines, maintain dams, flow
16 backwater, or carry on other activities necessary for constructing and operating such a
17 plant, provided that the person first pays just compensation to the owner of the land to be
18 affected and that prior to condemning property in any county or municipality within this
19 state, any such person shall first obtain the consent of the county, if the property to be
20 condemned is located within the unincorporated portion of the county, or the municipality,
21 if the property to be condemned is located within the city limits, which consent may be
22 granted by resolution or ordinance."

23 **SECTION 3.**

24 Said chapter is further amended by striking Code Section 22-3-22, relating to condemnation
25 of mills, factories, and dams, in its entirety and inserting in lieu thereof the following:

26 "22-3-22.

27 Any person seeking to exercise the power of eminent domain under Code Section 22-3-20
28 shall have the right and authority to acquire by condemnation any mill, factory, dam, or
29 other property or interest connected with same, except cotton mills or factories or any plant
30 engaged in furnishing electric power to the public; provided, however, that prior to
31 condemning property in any county or municipality within this state, any such person shall
32 first obtain the consent of the county, if the property to be condemned is located within the
33 unincorporated portion of the county, or the municipality, if the property to be condemned
34 is located within the city limits, which consent may be granted by resolution or ordinance."

1 other electric supplier. In addition, prior to condemning property in any county or
 2 municipality within this state, any such electric supplier, except municipalities as defined
 3 in Code Section 46-3-3, shall first obtain the consent of the county, if the property to be
 4 condemned is located within the unincorporated portion of the county, or the municipality,
 5 if the property to be condemned is located within the city limits, which consent may be
 6 granted by resolution or ordinance."

7 SECTION 9.

8 Said title is further amended by striking subsection (c) of Code Section 46-4-57, relating to
 9 the exercise of the right of eminent domain by gas utilities, in its entirety and inserting in lieu
 10 thereof the following:

11 "(c) The right of eminent domain granted by this Code section shall apply to property or
 12 property interests held by private owners, by the State of Georgia or by any political
 13 subdivision of the state, by any municipal corporation, or by any other public or
 14 quasi-public body; provided, however, that prior to condemning property in any county or
 15 municipality within this state, the gas utility shall first obtain the consent of the county, if
 16 the property to be condemned is located within the unincorporated portion of the county,
 17 or the municipality, if the property to be condemned is located within the city limits, which
 18 consent may be granted by resolution or ordinance."

20 SECTION 10.

21 Said title is further amended by striking subsection (a) of Code Section 46-5-1, relating to
 22 the exercise of eminent domain by telephone and telegraph companies, in its entirety and
 23 inserting in lieu thereof the following:

24 "(a) Any telegraph or telephone company chartered by the laws of this or any other state
 25 shall have the right to construct, maintain, and operate its lines upon, under, along, and
 26 over the public highways of this state, with the approval of the county or municipal
 27 authorities in charge of such highways. Upon making due compensation, a telegraph or
 28 telephone company shall have the right to construct, maintain, and operate its lines through
 29 or over any lands of this state; on, along, and upon the right of way and structures of any
 30 railroads; and, where necessary, under or over any private lands; and, to that end, a
 31 telegraph or telephone company may have and exercise the right of eminent domain;
 32 provided, however, that prior to condemning property in any county or municipality within
 33 this state, any telephone or telegraph company shall first obtain the consent of the county,
 34 if the property to be condemned is located within the unincorporated portion of the county,
 35 or the municipality, if the property to be condemned is located within the city limits, which
 36 consent may be granted by resolution or ordinance."

1 portion of the county, or the municipality, if the property to be condemned is located within
 2 the city limits, which consent may be granted by resolution or ordinance."

3 SECTION 14.

4 Said title is further amended by striking Code Section 46-8-124, relating to the exercise of
 5 eminent domain by railroad companies, in its entirety and inserting in lieu thereof the
 6 following:

7 "46-8-124.

8 In the event a railroad company does not procure, by contract, lease, or purchase, the title
 9 to the lands, rights of way, or other property necessary for the construction or connection
 10 of the railroad and of such branches and extensions as are necessary or proper for the
 11 company to reach its freight or passenger depot in any city in this state or as are necessary
 12 to reach its wharves, docks, or other necessary terminal facilities, the company may
 13 construct its railroad over any lands, any rights of way, or the tracks of other railroads upon
 14 paying or tendering to the owner thereof, or to the legally authorized representative of such
 15 owner, just and reasonable compensation for said lands or said right of way; provided,
 16 however, that prior to construction or connection of the railroad and of such branches and
 17 extensions in any county or municipality within this state, the railroad company shall first
 18 obtain the consent of the county, if the property to be condemned is located within the
 19 unincorporated portion of the county, or the municipality, if the property to be condemned
 20 is located within the city limits, which consent may be granted by resolution or ordinance.

21 If the compensation cannot be agreed upon, it shall be assessed and determined in the
 22 manner provided in Title 22."

23 SECTION 15.

24 Said title is further amended by striking subsection (a) of Code Section 46-8-125, relating
 25 to the change of general direction and route of railroads, in its entirety and inserting in lieu
 26 thereof the following:

27 "(a) Any railroad company incorporated under this chapter shall have the power to change
 28 the general direction and route of its railroad from that stated in the original petition by a
 29 ~~two-thirds~~ two-thirds vote of the capital stock of the corporation represented in person or
 30 by written proxy at any annual or special meeting of the stockholders of the corporation.
 31 When the direction and route are so changed, the railroad company shall have the right and
 32 power to enter upon, condemn for rights of way, and construct said road on the land along
 33 the new or changed line, as it had on the original line; provided, however, that prior to
 34 condemning property in any county or municipality within this state, the railroad company
 35 shall first obtain the consent of the county, if the property to be condemned is located

1 within the unincorporated portion of the county, or the municipality, if the property to be
 2 condemned is located within the city limits, which consent may be granted by resolution
 3 or ordinance."

4 **SECTION 16.**

5 Said title is further amended by striking Code Section 46-8-126, relating to the relocation of
 6 highways necessitated by construction of crossings, in its entirety and inserting in lieu
 7 thereof the following:

8 "46-8-126.

9 In all cases where a railroad crosses a highway and the cutting makes a change in the route
 10 of any such highway or a change is desirable with a view to easier ascent or descent, the
 11 railroad company may take such additional lands for the construction of such highway
 12 upon a new route as may be deemed necessary by the directors. In taking property under
 13 this Code section, the railroad company shall proceed in the manner provided in Title 22
 14 for condemning rights of way and other property; provided, however, that prior to
 15 condemning property in any county or municipality within this state, the railroad company
 16 shall first obtain the consent of the county, if the property to be condemned is located
 17 within the unincorporated portion of the county, or the municipality, if the property to be
 18 condemned is located within the city limits, which consent may be granted by resolution
 19 or ordinance."

20 **SECTION 17.**

21 Chapter 4 of Title 52 of the Official Code of Georgia Annotated, relating to canal companies,
 22 is amended by striking Code Section 52-4-8, relating to the duties and powers of canal
 23 companies, in its entirety and inserting in lieu thereof the following:

24 "52-4-8.

25 All companies incorporated under this chapter shall have power to bring or be the subject
 26 of actions; make contracts; lease, purchase, hold, and sell such property, real and personal,
 27 as may be necessary for the purposes of the corporation; and construct and maintain a canal
 28 and branch canals, dams, races, weirs, aqueducts, reservoirs, towpaths, and all other
 29 appliances necessary to divert, take, or use the waters of any stream or body of water.
 30 However, the canal companies shall not, by building any dam in or across or by diverting
 31 water from any navigable stream, destroy or obstruct the navigation of such stream. Such
 32 fishways shall be placed in any dams at the time of the construction of the dam as the
 33 commissioner of natural resources shall direct. Fishways shall be kept in good order and
 34 repair by the canal company, and the company shall notify the commissioner of natural

1 resources of the proposed construction of any dam. Further, the canal companies shall pay
2 reasonable compensation to such landholders as may have riparian rights in any stream or
3 body of water taken, diverted, or obstructed for such taking, diversion, or obstruction or for
4 any damage done them. The canal companies may also enter upon, take, and appropriate
5 any lands and tenements necessary and appropriate for the purposes of the corporation
6 upon first paying reasonable compensation therefor. No company incorporated as provided
7 in this chapter shall have power to construct or use any canal within the corporate limits
8 of any incorporated municipality or county without first obtaining the consent of the proper
9 ~~corporate~~ governing authorities of such municipality or county."

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SECTION 18.

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

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SECTION 19.

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