

House Bill 448

By: Representatives Allen of the 117<sup>th</sup> and Anderson of the 116<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 44-9-40 of the Official Code of Georgia Annotated, relating to the  
2 authority of the superior court to grant private ways, the filing of a petition as a declaration  
3 of necessity, and when a proceeding may be enjoined, so as to provide that a judge shall  
4 grant a private way to individuals to go from and return to their property and places of  
5 business under certain circumstances unless the court makes a finding of fact that granting  
6 such private way would cause great economic harm to the owner of the property over which  
7 such private way would traverse or would greatly impair the owner's use of such property;  
8 to make editorial revisions; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Code Section 44-9-40 of the Official Code of Georgia Annotated, relating to the authority  
12 of the superior court to grant private ways, the filing of a petition as a declaration of  
13 necessity, and when a proceeding may be enjoined, is amended by striking in its entirety  
14 subsection (b) and inserting in lieu thereof the following:

15 "(b) When any person or corporation of this state owns real estate or any interest therein  
16 to which the person or corporation has no means of access, ingress, and egress and when  
17 a means of ingress, egress, and access may be had over and across the lands of any private  
18 person or corporation, such person or corporation may file his or her or its petition in the  
19 superior court of the county having jurisdiction; said petition shall allege such facts and  
20 shall pray for a judgment condemning an easement of access, ingress, and egress not to  
21 exceed 20 feet in width over and across the property of the private person or corporation.  
22 The filing of the petition shall be deemed to be the declaration of necessity. The court shall  
23 grant the petition unless the court makes a finding of fact that granting the petition would  
24 cause great economic harm to the owner of the property over which the private way would  
25 traverse or would greatly impair the owner's use of such property; however, where it  
26 appears that the condemnor owns a right of access, ingress, and egress to his or her

1 property over another route or owns an easement to a right of private way over another  
2 route, which right or easement is not less than 20 feet in width and which alternate route,  
3 ~~or where the judge shall find that the exercise of such right of condemnation by the~~  
4 ~~condemnor is otherwise unreasonable~~, the judge of the superior court is authorized under  
5 such circumstances to find that the condemnation and the declaration of necessity  
6 constitute an abuse of discretion and to enjoin the proceeding."

7 **SECTION 2.**

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