

Senate Bill 267

By: Senators Unterman of the 45th, Stephens of the 51st and Lamutt of the 21st

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 the power of eminent domain, so as to revise a provision relating to the power to
3 condemn easements for electric power plants; to prohibit the use of the power of eminent
4 domain to acquire any property for the construction of an electric transmission line without
5 issuance of a certificate of need by the Public Service Commission; to provide for
6 applications for such certificates of need and for rules establishing the practice and procedure
7 in connection therewith; to provide for related matters; to provide for an effective date and
8 applicability; 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 Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the exercise of
12 the power of eminent domain, is amended by striking in its entirety Code Section 22-3-20,
13 relating to condemnation for running power lines, and inserting in lieu thereof the following:
14 "22-3-20.

15 Any person operating or constructing or preparing to construct ~~a plant~~ facilities for
16 generating or transmitting electricity shall have the right to purchase, lease, or condemn
17 property or interests therein including but not limited to rights of way or other easements
18 over the lands of others in order to run power lines, maintain dams, flow backwater, or
19 carry on other activities necessary for constructing and operating such ~~a plant~~ facilities,
20 provided that the person first pays just compensation to the owner of the land to be
21 affected."

22 style="text-align:center">**SECTION 2.**

23 Said chapter is further amended by adding at the end thereof a new Article 8 to read as
24 follows:

"ARTICLE 8

22-3-160.

As used in this article, the term:

(1) 'Commission' means the Georgia Public Service Commission.

(2) 'Electric transmission line' means a line of five miles or longer that is constructed or to be constructed for the transmission of not less than 115 kilovolts of electrical power.

(3) 'Electric transmission line company' means a private corporation, public corporation, authority, municipal corporation, cooperative, or other entity authorized under the laws of this state to exercise the power of eminent domain for purposes of constructing and maintaining electric transmission lines.

(4) 'Public necessity' means the need for an electric transmission line as established by criteria set forth in rules promulgated by the commission in keeping with sound engineering practices and principles for electric system reliability and integrity.

22-3-161.

Except as otherwise provided in this article, before exercising the right of eminent domain on or after January 1, 2004, for purposes of constructing an electric transmission line, an electric transmission line company shall first obtain from the commission a certificate of need as described in this article. The commission shall grant such a certificate of need if the electric transmission line company demonstrates that the electric transmission line is supported by public necessity.

22-3-162.

(a) Any electric transmission line company seeking to obtain a certificate of need from the commission shall file with the commission a written application for such certificate of need prior to exercising the power of eminent domain for purposes of constructing the electric transmission line for which the power of eminent domain is to be used.

(b) No later than January 1, 2004, the commission shall prescribe rules in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' relative to the requirements for obtaining a certificate of need, which shall be limited to:

(1) A requirement that the application for such certificate of need shall include a description of the proposed project;

(2) A requirement that the application for such certificate of need shall include a description of the public necessity supporting the project;

1 (3) A requirement that the application for such certificate of need shall include a
2 statement that the power of eminent domain may be necessary to construction of the
3 electric transmission line;

4 (4) Criteria, in keeping with sound engineering practices and principles for electric
5 system reliability and integrity, that when satisfied shall establish public necessity for an
6 electric transmission line. In formulating such criteria, the commission shall consider the
7 electric transmission needs of the state as a whole, the electric transmission needs of the
8 geographic area primarily to be served by the proposed electric transmission line, the
9 costs associated with constructing and maintaining the proposed electric transmission
10 line, and other factors reasonably affecting the reliability and integrity of the electric
11 system; and

12 (5) A uniform fee schedule in amounts reasonably necessary to defray the expense of the
13 commission in reviewing the application and determining whether to grant the
14 application.

15 (c) Within ten days after the filing of an application for a certificate of need, the
16 commission shall set a date, time, and location for public comment on the application,
17 which may be no sooner than 30 days after the date on which the application was filed.

18 (d) Within ten days after the commission sets a date, time, and location for public
19 comment on the application, the electric transmission line company that filed the
20 application shall publish notice of the application and the date, time, and location for public
21 comment in the legal organ of each county through which the proposed electric
22 transmission line might run.

23 22-3-163.

24 (a) No sooner than 30 days after the filing of an application as described in Code Section
25 22-3-162, the commission, through a hearing officer it appoints, shall conduct a public
26 comment session on the application in the county through which the majority of the
27 proposed electric transmission line most likely will run. The public comment session shall
28 be transcribed and the transcription of the public comment session shall be made a part of
29 the administrative record.

30 (b) Any interested person may comment on the application orally or, at the discretion of
31 the hearing officer, in writing, but no such person shall be considered a party to the
32 commission's proceedings. The electric transmission line company that filed the
33 application may appear at such public comment session to explain the application and shall
34 respond to any comments about public necessity made at such session during the session
35 or within 30 days thereafter, which responses shall be made a part of the administrative
36 record.

1 (c) Notwithstanding any other provision of law, no person other than the electric
2 transmission line company that filed the application shall be considered a party to the
3 commission's proceedings on the application, and no person shall be allowed to intervene
4 as a party to such proceedings.

5 22-3-164.

6 (a) The hearing officer, within 30 days after the electric transmission line company files
7 its responses to the public comment session, shall issue an administrative determination,
8 which determination shall include:

9 (1) Factual findings as to whether the information set forth in the application meet each
10 of the criteria adopted by the commission to establish public necessity in accordance with
11 paragraph (4) of subsection (b) of Code Section 22-3-162; and

12 (2) An ultimate finding as to whether the proposed electric transmission line is supported
13 by public necessity.

14 (b) Based on the findings required by this Code section, the hearing officer's determination
15 shall recommend that the commission take one of the following actions on the application:

16 (1) Approve the application and issue the certificate of need; or

17 (2) Reject the application and deny issuance of the certificate of need.

18 (c) The hearing officer's determination, along with the administrative record, shall be
19 transmitted to the commission, which must issue a final decision adopting or rejecting the
20 recommendation of the hearing officer no sooner than ten days after issuance of the hearing
21 officer's determination. The electric transmission line company that filed the application
22 may request a hearing before the commission by filing such request in writing within ten
23 days after issuance of the hearing officer's determination.

24 (d) If the commission fails to issue a final decision on the application (1) within 120 days
25 from the date on which the application was filed, or (2) within 60 days from the date on
26 which a request for hearing is filed under subsection (c) of this Code section, then the
27 application shall be deemed approved and the certificate of need shall be issued by
28 operation of law.

29 (e) Issuance of a certificate of need shall constitute conclusive evidence of public necessity
30 in any condemnation proceeding related to the electric transmission line for which the
31 certificate of need was issued. The issuance of a certificate of need shall not be subject to
32 relitigation or review in any other administrative or judicial proceeding.

33 22-3-165.

34 (a) Notwithstanding any other provision of law, no certificate of need as described in this
35 article shall be required for:

1 (1) The construction of any line for the transmission of less than 115 kilovolts of
2 electrical power;

3 (2) The construction of any line less than five miles in length;

4 (3) The construction of any electric transmission line for which the commission
5 determines that an electric transmission line company has, as of July 1, 2003, determined
6 a route and expended funds for the planning, design, or acquisition of real property or an
7 interest therein for the purpose of constructing such electric transmission line;

8 (4) The maintenance, upgrade, or alteration of any electric transmission line, provided
9 such maintenance, upgrade, or alteration does not increase the width of the existing right
10 of way;

11 (5) The relocation of any electric transmission line, which relocation is required by
12 action or order of any agency or department of the federal government or the state
13 government or any political subdivision thereof, including authorities, counties, and
14 municipalities.

15 (b) The commission, in its discretion, may waive the requirement for obtaining a
16 certificate of need as described in this article if it determines:

17 (1) That an electric service urgency exists in the geographic area primarily to be served
18 by the proposed electric transmission line; and

19 (2) That the proposed electric transmission line will alleviate the electric service urgency.

20 22-3-166.

21 The decision of the commission to deny issuance of a certificate of need may be reviewed
22 by a judge of the Superior Court of Fulton County. The review shall be by petition filed
23 within 30 days after the action of the commission and shall be determined on the basis of
24 the record before the commission. The action of the commission shall be affirmed if
25 supported by substantial evidence. The decision of the superior court shall be final and no
26 further appeal shall be taken or allowed."

27 **SECTION 3.**

28 This Act shall become effective on July 1, 2003, and shall apply only with respect to
29 condemnations filed on or after January 1, 2004.

30 **SECTION 4.**

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