

Senate Bill 359

By: Senators Clay of the 37th and Thompson of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation
2 and natural resources, Title 22 of the Official Code of Georgia Annotated, relating to
3 eminent domain, and Title 46 of the Official Code of Georgia Annotated, relating to
4 public utilities and public transportation, so as to change provisions relating to
5 location of certain electric facilities, the power of eminent domain, and integrated
6 resource planning; to enact the "Transmission Facility Siting Act" and provide for
7 applications and permits for electric transmission facilities; to provide that certain
8 provisions for refund of fees shall not apply to such applications; to define terms; to
9 provide for powers and duties of the Department of Natural Resources and the
10 Environmental Protection Division; to provide for the application and permitting
11 process and practice and procedure; to change certain time limits for certain actions
12 in certain eminent domain proceedings; to provide certain conditions with respect to
13 the provision or extension of service under the "Georgia Territorial Electric Service
14 Act"; to change provisions relating to resource planning by electric utilities and
15 require certain components in integrated resource plans; to change the utilities
16 required to do such planning; to provide for certificates of public convenience and
17 necessity for certain facilities for covered utilities; to create an Electric Utility
18 Infrastructure Planning Study Committee and provide for its membership and
19 operations; to provide for other matters related to the foregoing; to provide effective
20 dates and applicability; to repeal conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 Title 12 of the Official Code of Georgia Annotated, relating to conservation and
24 natural resources, is amended in Code Section 12-2-2, relating to the Environmental
25 Protection Division and the Environmental Advisory Council, by striking paragraph
26 (1) of subsection (c) and inserting in its place a new paragraph to read as follows:

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1 (3) 'Agency,' as the context requires, means an official, officer, commission,
2 authority, council, committee, department, division, bureau, board, section, or
3 other unit or entity of government, including a county, municipality, or other
4 regional or local governmental entity.

5 (4) 'Amendment' means a material change in information provided by the
6 applicant in the application for a siting permit made after the initial application
7 filing.

8 (5) 'Applicant' means any electric utility that applies for a siting permit pursuant
9 to the provisions of this chapter.

10 (6) 'Application' means the documents required by the department to be filed to
11 initiate a siting permit proceeding. An electric utility may file a comprehensive
12 application encompassing all or a part of one or more proposed transmission
13 facilities.

14 (7) 'Commission' means the Georgia Public Service Commission.

15 (8) 'Construction' means activities such as any clearing of land, surveying,
16 excavation, or other action that would adversely affect the natural environment in
17 proximity to any transmission facility and associated corridors.

18 (9) 'Corridor' means the proposed area within which a transmission right of way
19 is to be located. The width of the corridor proposed for a siting permit by an
20 applicant may be the width of the transmission right of way, or a wider boundary,
21 not to exceed a width of 1,000 feet.

22 (10) 'Department' means the Department of Natural Resources.

23 (11) 'Director' means the director of the Environmental Protection Division.

24 (12) 'Division' means the Environmental Protection Division.

25 (13) 'Electric utility' means a person, whether organized under the laws of this
26 state or under the laws of any other state or country, engaged in producing,
27 generating, transmitting, delivering, or furnishing electricity for private or public
28 use within the state, including counties, municipalities, joint municipal power
29 agencies, electric membership corporations, and public and private corporations.

30 (14) 'Local government' means a municipality, county, zoning board, or regional
31 planning council in the jurisdiction of which a transmission facility and any
32 associated corridor is proposed to be located.

33 (15) 'Person' means an individual, partnership, joint venture, private or public
34 corporation, association, firm, public service company, political subdivision,
35 municipal corporation, government agency, public utility district, or any other
36 entity, public or private, however organized.

1 (16) 'Siting permit' means the approval by the director, with such changes or
 2 conditions as the director deems appropriate, of an electrical substation or of a
 3 corridor and the construction and maintenance of transmission facilities within
 4 such corridor. A siting permit shall be evidenced by a written order of the
 5 director.

6 (17) 'Transmission facility' means any electrical substation or any electrical
 7 transmission line that extends from an existing or proposed substation or power
 8 plant to an existing or proposed transmission network or rights of way or
 9 substation to which the applicant intends to connect which defines the end of the
 10 proposed line and that is designed to operate at 115 kilovolts or more or is part of
 11 the Integrated Transmission System. A transmission facility includes the
 12 following that need to be constructed in order for the facility to become
 13 operational:

14 (A) Structures and maintenance and access roads; and

15 (B) Construction equipment sites and staging areas.

16 (18) 'Transmission right of way' means land necessary for the construction and
 17 maintenance of a transmission facility. A right of way is located within the
 18 corridor specified in the siting permit.

19 12-17-3.

20 The department shall have the following powers and duties:

21 (1) To adopt procedural rules pursuant to Chapter 13 of Title 50, the 'Georgia
 22 Administrative Procedure Act,' to implement the provisions of this chapter and to
 23 adopt or amend rules to implement the provisions of paragraph (3) of this Code
 24 section;

25 (2) To prescribe the form and content of the public notices and the form, content,
 26 necessary supporting documentation, and any required studies for siting permit
 27 applications. A siting permit application shall include:

28 (A) A description of the proposed transmission facility and any associated
 29 corridor, including its general location or route and the width of any corridor;

30 (B) The starting point and ending point of any proposed transmission line;

31 (C) Whether the use of the power of eminent domain may be necessary for the
 32 construction of the proposed transmission facility;

33 (D) Any information required in a certificate of public convenience and
 34 necessity application filed pursuant to Code Section 46-3A-3.1;

35 (E) A description of how the proposed transmission facility and associated
 36 corridor are consistent with local zoning regulations; and

1 (F) Any other information as may be required by the department or director;
2 and

3 (3) To adopt rules, as appropriate, pursuant to Chapter 13 of Title 50, the 'Georgia
4 Administrative Procedure Act,' that establish:

5 (A) Set-back guidelines for location of transmission facilities relative to schools,
6 hospitals, child care centers, nursing homes, cancer treatment centers, and
7 residences; and

8 (B) Minimum standards for transmission facilities as to the criteria enumerated
9 by subsection (b) of Code Section 12-17-10 that the director considers in acting
10 upon a siting permit application.

11 12-17-4.

12 The division shall have the following powers and duties:

- 13 (1) To receive siting permit applications for transmission facilities and corridors;
14 (2) To make or contract for studies of siting permit applications;
15 (3) To administer the processing of applications for siting permits and ensure that
16 the applications are processed as expeditiously as possible;
17 (4) To require such fees as allowed by this chapter; and
18 (5) To prescribe the means for monitoring the effects, which include, but are not
19 limited to, environmental, economic, social, and public health effects, arising from
20 the location of any transmission facility corridor and the construction and
21 maintenance of any transmission facility to assure continued compliance with the
22 terms of the siting permit.

23 12-17-5.

24 (a) No construction of any transmission facility or acquisition of property,
25 including condemnation proceedings pursuant to Title 22, may be undertaken
26 without first obtaining a siting permit under this chapter.

27 (b) All information provided by an electric utility to the division for purposes of
28 obtaining a siting permit shall be made available to the public.

29 12-17-6.

30 The department shall adopt procedural rules for the issuance of a siting permit.
31 These rules shall include adequate public notice and one or more public hearings on
32 a siting permit application. At least one of the public hearings shall be on a
33 weeknight after regular business hours. The department shall use a stakeholders
34 group to assist it with developing these rules. The members of the stakeholders

1 group shall represent a cross section of interests including local government,
2 property owners, business, utilities, public health, and environment.

3
4 12-17-7.

5 (a) Any of the following persons shall, upon petition within 30 days after the
6 issuance of an order pursuant to Code Section 12-17-10, have a right to a hearing
7 before an administrative law judge appointed by the chief state administrative law
8 judge:

9 (1) The applicant;

10 (2) A local government;

11 (3) Any domestic nonprofit corporation or association formed, in whole or in part,
12 to promote conservation of natural beauty; to protect the environment, personal
13 health, or other biological values; to preserve historical sites; to promote consumer
14 interests; to represent labor, commercial, or industrial groups; or to promote
15 comprehensive planning or orderly development of the area in which the proposed
16 transmission facility and any associated corridors are to be located; or

17 (4) Any person who is aggrieved or adversely affected by the order.

18 Persons are 'aggrieved and adversely affected' when the order has caused or will
19 cause them injury in fact. The hearing and associated proceedings are a 'contested
20 case,' as defined by paragraph (2) of Code Section 50-13-2 and shall be conducted
21 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure
22 Act,' and the rules and regulations adopted by the Board of Natural Resources
23 pursuant to Chapter 13 of Title 50. Any person who has a right to a hearing
24 pursuant to this subsection shall have an unconditional right to intervene in a
25 contested case initiated pursuant to this subsection. Any person who successfully
26 petitions for a hearing or intervenes in a contested case pursuant to this subsection
27 shall be a party as defined by paragraph (4) of Code Section 50-13-2. The decision
28 of the administrative law judge shall constitute the final decision of the department.

29 (b) A person is aggrieved for purposes of subsection (a) of Code Section 50-13-19
30 if a final decision by the department in a proceeding pursuant to this chapter is
31 adverse to a position taken by the person during the proceeding.

32 12-17-8.

33 (a) Any amendment made to the application shall be sent by the applicant to the
34 division and to all parties to the certificate of public convenience and necessity
35 proceeding required by Code Section 46-3A-3.1.

1 (b) Any amendment to the application made prior to issuance of the siting permit
2 shall be disposed of as part of the original siting permit proceeding, but the
3 amendment must be disposed of pursuant to the same process as the original permit.
4 Amendment of the application may be considered good cause for alteration of time
5 limits pursuant to Code Section 12-17-9.

6 12-17-9.

7 Any time limitation in this chapter may be altered by the director for good cause.

8 12-17-10.

9 (a) The director shall act upon the application by written order, approving in whole,
10 approving with such conditions as the director deems appropriate, or denying the
11 siting permit and stating the reasons for issuance or denial. The director shall take
12 this action within 90 days from the later of either the date of the commission issuing
13 an order as to the certificate of public convenience and necessity required by Code
14 Section 46-3A-1 or the date all appellate review of such an order has been
15 completed. The grant of a certificate of public convenience and necessity for a
16 transmission facility and any associated corridor shall be a condition precedent to
17 the director issuing a siting permit pursuant to this Code section.

18 (b) In acting upon the siting permit application, the director shall consider:

19 (1) The impacts of the proposed transmission facility and any associated corridor
20 on:

21 (A) The environment;

22 (B) Historical and cultural sites;

23 (C) Water purity;

24 (D) Public health and safety;

25 (E) Property values; and

26 (F) The zoning and present use of properties within the proposed corridor; and

27 (2) Whether the proposed corridor can follow existing rights of way for utility
28 infrastructure or roadways.

29 (c) All sections of the transmission line specified in the siting permit application
30 that the commission finds, pursuant to Code Section 46-3A-3.1, can be
31 cost-effectively constructed underground shall be constructed underground as a
32 condition of the siting permit.

33 (d) The area within the corridor in which a transmission right of way may be
34 located may be further restricted by a condition of the siting permit.

1 (e) The siting permit shall include a schedule for completing construction of the
2 transmission facility. The director may for good cause grant an extension of time
3 for completing the project.

4 12-17-11.

5 (a) Subject to the conditions set forth in the siting permit, the permit shall constitute
6 the sole license of the state and any agency as to the approval of the location of
7 transmission facility corridors and the construction and maintenance of transmission
8 facilities. The siting permit shall be valid for the life of the transmission facility,
9 provided that construction on, or condemnation or acquisition of, the right of way
10 is commenced within three years of the date of the issuance of the siting permit or
11 such later date as may be authorized by the director.

12 (b) The siting permit shall authorize the applicant to locate the transmission facility
13 corridor and to construct and maintain the transmission facilities subject only to the
14 conditions set forth in the siting permit.

15 (c) After all property interests required for the transmission right of way have been
16 acquired by the applicant, the boundaries of the area approved for a corridor shall
17 narrow to only that land within the boundaries of the transmission right of way.

18 12-17-12.

19 Within 60 days after issuance of a siting permit pursuant to this chapter, the
20 applicant shall file with the clerk of the superior court for each county through
21 which any corridor specified in the permit will pass, a notice of the route specified
22 in the permit. The notice shall consist of maps or aerial photographs in the scale of
23 1:24,000 that clearly show the location of the route specified in the permit and shall
24 state that the issuance of the permit will result in the acquisition of rights of way
25 within the corridor specified in the permit. Each clerk shall record the filing in the
26 official record of the county for the duration of the siting permit or until such time
27 as the applicant certifies to the clerk that all lands required for the transmission
28 rights of way within the corridor specified in the permit have been acquired within
29 such county, whichever is sooner. The recording of this notice shall not constitute
30 a lien, cloud, or encumbrance on real property. The applicant shall pay a \$15.00 fee
31 to the clerk for filing the notice.

32 12-17-13.

33 (a) Any siting permit may be revoked or suspended by the director, in full or in
34 part:

1 (1) For any material false statement in the application or in the supplemental or
 2 additional statements of fact or studies required of the applicant when a true
 3 answer would have warranted the director's refusal to issue a siting permit in the
 4 first instance;

5 (2) For failure to comply with the terms or conditions of the siting permit;

6 (3) For violation of the provisions of this chapter or rules or orders issued
 7 pursuant to these provisions;

8 (4) Because all, or part, of a transmission facility and any associated corridor are
 9 abandoned by the electric utility; or

10 (5) For failure to complete construction of a transmission facility within the
 11 approved schedule for construction.

12 (b) Property acquired by an electric utility for a transmission facility or corridor
 13 shall revert back to the seller of such property if a siting permit for the transmission
 14 facility or any associated corridor on such property is revoked pursuant to paragraph
 15 (4) or (5) of subsection (a) of this Code section. If property reverts to a seller
 16 pursuant to this Code section, the electric utility shall not have a claim on the funds,
 17 or any other value, received by the seller from the electric utility for the property,
 18 and the utility shall take reasonable action to restore the property to its condition
 19 prior to the utility's acquisition of the property. If the utility does not take
 20 reasonable action to restore the property as required by this subsection, then the
 21 seller shall be compensated for reasonable costs incurred in restoring the property.

22 12-17-14.

23 If any provision of this chapter is in conflict with any other provision of state law
 24 this chapter shall control and such law shall be deemed superseded for the purposes
 25 of this chapter.

26 12-17-15.

27 The department shall adopt rules pursuant to Chapter 13 of Title 50, the 'Georgia
 28 Administrative Procedure Act,' to establish a fee structure for siting permit
 29 applications to defray the division expense in reviewing the application.

30 12-17-16.

31 (a) For purposes of this Code section, the term 'violation' means:

32 (1) Construction of any transmission facility or acquisition of property rights for
 33 a corridor by any means without first obtaining a siting permit under this chapter;

34 or

1 (2) Noncompliance with any provision of a siting permit issued under this
2 chapter.

3 (b) Whenever the division determines any person is committing or is about to
4 commit a violation, the division may make application to the superior court of the
5 county where such person resides for an order enjoining and restraining such
6 violation. If the person is a nonresident, the division may make such an application
7 to the superior court of the county where the nonresident is committing, or is about
8 to commit, a violation. Upon a showing by the division that a person is committing,
9 or is about to commit, a violation, a permanent or temporary injunction, restraining
10 order, or other order shall be granted without the necessity of showing a lack of
11 adequate remedy at law.

12 (c) Any person who commits a violation shall be liable for a civil penalty not to
13 exceed \$100,000.00 for such violation, and an additional civil penalty not to exceed
14 \$50,000.00 for each day the violation continues after the director notifies the person
15 of the violation. Whenever the director has reason to believe that a person has
16 committed a violation, the director may request and shall receive a hearing before
17 an administrative law judge appointed by the chief administrative law judge of the
18 state. Upon a finding that a person has committed a violation, the administrative
19 law judge is authorized to impose civil penalties as provided in this subsection. The
20 hearing and any judicial review of the final decision of the administrative law judge
21 shall be conducted in accordance with subsection (c) of Code Section 12-2-2. All
22 penalties recovered by the director as provided by this subsection shall be paid into
23 the state treasury to the credit of the general fund.

24 (d) It shall be the duty of the Attorney General to represent the division and its
25 agents or designate some member of his or her staff to represent them in all actions
26 in connection with this Code section."

27 SECTION 3.

28 Title 22 of the Official Code of Georgia Annotated, relating to eminent domain, is
29 amended by striking Code Section 22-2-102, relating to petition and hearing in special
30 master cases, and inserting in its place a new Code section to read as follows:

31 "22-2-102.

32 Whenever it is desirable, for any reason, to arrive at a quick and certain
33 determination of the compensation to be paid first to the condemnee for the taking
34 or damaging of private property, the condemnor shall file a petition in a superior
35 court having jurisdiction for a judgment in rem against the property or interest
36 therein, as provided in Code Section 22-2-130. At least 30 days before the filing of

1 the petition, the condemnor shall give to any person who has a property interest in
 2 the property sought to be condemned notice by certified mail or statutory overnight
 3 delivery that the condemnor intends to file such a petition. The notice shall describe
 4 the property sought to be condemned and state when the condemnor intends to file
 5 the petition. At or before the filing of the petition, the condemnor shall present a
 6 copy of the petition to a judge of the superior court of the county wherein the
 7 property or interest sought to be condemned is located. Thereupon, the judge shall
 8 make an order requiring the condemnor, the person in possession of the property or
 9 interest, and any other person known to have any rights in the property or interest
 10 to appear at a hearing before a special master at a time and place specified in the
 11 order and to make known their rights, if any, in and to the property or interest
 12 sought to be condemned, their claims as to the value of the property or interest, and
 13 any other matters material to their respective rights. The hearing before the special
 14 master shall take place not less than ten days nor more than 15 days after the date
 15 of service of the order. The order shall give such directions for notice and the
 16 service thereof as are appropriate and as are consistent with this article, in such
 17 manner as to provide most effectively an opportunity to all parties at interest to be
 18 heard. It shall not be necessary to attach any other process to the petition except the
 19 order so made, and the cause shall proceed as in rem."

20 **SECTION 4.**

21 Title 46 of the Official Code of Georgia Annotated, relating to public utilities, is
 22 amended in Code Section 46-3-8, relating to certain territorial rights and service under
 23 the "Georgia Territorial Electric Service Act," by adding at the end of the Code
 24 section a new subsection (i) to read as follows:

25 "(i) An electric supplier shall show, prior to furnishing or extending service pursuant
 26 to this Code section, the commission how the service will be provided and identify
 27 any facility additions or changes necessary to provide the service, and demonstrate
 28 that the right of eminent domain will not be exercised unnecessarily as a result of
 29 choosing the electric supplier. All information provided by an electric supplier to
 30 the commission pursuant to this subsection shall be made available to the public."

31 **SECTION 5.**

32 Said Title 46 is further amended by striking Chapter 3A, relating to integrated
 33 resource planning, and inserting in its place a new chapter to read as follows:

"CHAPTER 3A

ARTICLE 1

46-3A-1.

As used in this chapter:

(1) 'Capacity resource' means an electric plant, a long-term power purchase, or a demand-side capacity option.

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

(3) 'Construction' means clearing of land, excavation, or other substantial activity leading to the operation of an electric plant other than planning, land surveying, land acquisition, subsurface exploration, design work, licensing or other regulatory activity, contracting for construction, or environmental protection measures and activities associated therewith.

(4) 'Demand-side capacity option' means a program proposed by a utility or the commission for the reduction of future electricity requirements the utility's Georgia retail customers would otherwise impose, including, but not limited to, conservation, load management, cogeneration, and renewable energy technologies.

(4.1) 'Distributed generation facility' means a facility for the generation of electricity with a capacity of no more than 15 megawatts that is located near the point where the electricity will be used or is in a location that will support the functioning of the electric power transmission and distribution grid.

(4.2) 'Distribution system' means any facilities owned by a utility that are used to distribute electricity and are not transmission facilities.

(5) 'Electric plant' means any facility, or the portion of a facility, that produces electricity or that, at the time application for certification is made pursuant to this chapter, is intended to produce electricity for a utility's Georgia retail customers. 'Electric plant' includes the realty and ancillary facilities for the construction of the plant.

(5.1) 'End-use' means light, heat, cooling, refrigeration, motor drive, microwave energy, video or audio signal, computer processing, electrolytic process, or other useful work produced by electricity or its substitute. If equivalent energy related amenity levels and productivity are maintained, the end-use service is considered constant.

(5.2) 'Energy efficiency' means the decrease of power, in kilowatts, or energy, in kilowatt-hours, requirements of utility customers using energy efficiency measures during any time period with end-use service held constant.

1 (5.3) 'Externalities' means those environmental, public health, homeland security,
2 economic, and social costs or benefits that result from electricity production,
3 delivery of electricity, siting of electric plants, siting of transmission and
4 distribution facilities, or reduction in use of electricity, and that are external to the
5 transaction between the supplier, including the supplier of efficiency
6 improvements, and the wholesale or retail electric customer. Externalities shall be
7 quantified and expressed in monetary terms where possible. Those externalities
8 that cannot be quantified or expressed in monetary terms shall nonetheless be
9 qualitatively considered.

10 (6) 'Long-term power purchase' means a purchase of electric capacity and energy
11 for a period exceeding one year, the principal purpose of which is to supply the
12 requirements of the Georgia retail customers of a utility.

13 (7) 'Plan' means an integrated resource plan which contains the utility's electric
14 demand and energy forecast for at least a 20 year period, contains the utility's
15 program for meeting the requirements shown in its forecast in an economical and
16 reliable manner, contains the utility's analysis of all capacity resource options,
17 including both demand-side and supply-side options, and sets forth the utility's
18 assumptions and conclusions with respect to the effect of each capacity resource
19 option on the future cost and reliability of electric service. The plan shall also:

20 (A) Contain the size and type of facilities which are expected to be owned or
21 operated in whole or in part by such utility and the construction of which is
22 expected to commence during the ensuing ten years or such longer period as the
23 commission deems necessary and shall identify all existing facilities intended
24 to be removed from service during such period or upon completion of such
25 construction;

26 (B) Contain practical alternatives to the fuel type and method of generation of
27 the proposed electric generating facilities and set forth in detail the reasons for
28 selecting the fuel type and method of generation;

29 (C) Contain a statement of the estimated impact of proposed and alternative
30 generating plants on the environment and the means by which potential adverse
31 impacts will be avoided or minimized;

32 (D) Indicate in detail the projected demand for electric energy for a 20 year
33 period and the basis for determining the projected demand;

34 (E) Describe the utility's relationship to other utilities in regional associations,
35 power pools, and networks;

1 (F) Identify and describe all major research projects and programs which will
 2 continue or commence in the succeeding three years and set forth the reasons for
 3 selecting specific areas of research;

4 (G) Identify and describe existing and planned programs and policies to
 5 discourage inefficient and excessive power use; and

6 (H) Provide any other information as may be required by the commission.

7 (8) 'Supply-side capacity option' means an electric plant, a long-term power
 8 purchase, or any other source of additional energy.

9 (8.1) 'Transmission facility' means any electrical substation or any electrical
 10 transmission line that extends from an existing or proposed substation or power
 11 plant to an existing or proposed transmission network or rights of way or
 12 substation to which the applicant intends to connect which defines the end of the
 13 proposed line and that is designed to operate at 115 kilovolts or more or is part of
 14 the Integrated Transmission System. A transmission facility includes the
 15 following that need to be constructed in order for the facility to become
 16 operational:

17 (A) Structures and maintenance and access roads; and

18 (B) Construction equipment sites and staging areas.

19 (8.2) 'Transmission right of way' means land necessary for the construction and
 20 maintenance of a transmission facility.

21 (9) 'Utility' means any electric supplier whose rates are fixed by the commission
 22 unless otherwise provided by this chapter.

23 46-3A-2.

24 (a) On or before January 31, 1992, and at least every three years thereafter as may
 25 be determined by the commission, each utility shall file with the commission an
 26 integrated resource plan as described in this chapter.

27 (b) Not more than 60 days after a utility has filed its plan, the commission shall
 28 convene a public hearing on the adequacy of the plan. At the hearing any interested
 29 person may make comments to the commission regarding the contents and adequacy
 30 of the plan. After the hearing, the commission shall determine whether:

31 (1) The utility's forecast requirements are based on substantially accurate data
 32 and an adequate method of forecasting;

33 (2) The plan identifies and takes into account any present and projected
 34 reductions in the demand for energy which may result from measures to improve
 35 energy efficiency in the industrial, commercial, residential, and energy-producing
 36 sectors of the state; and

1 (3) The plan adequately demonstrates the economic, environmental, and other
2 benefits to the state and to customers of the utility, associated with the following
3 possible measures and sources of supply:

4 (A) Improvements in energy efficiency;

5 (B) Pooling of power;

6 (C) Purchases of power from neighboring states;

7 (D) Facilities which operate on alternative sources of energy;

8 (E) Facilities that operate on the principle of cogeneration or hydro-generation;

9 and

10 (F) Other generation facilities and demand-side options.

11 (c) Within 120 days after the filing of each integrated resource plan, the
12 commission shall approve and adopt an integrated resource plan.

13 46-3A-3.

14 (a) After January 31, 1992, no utility shall commence the construction of an electric
15 plant, sell an existing plant or any portion thereof which is included in the retail rate
16 base or which has been certified, enter into a long-term purchase of electric power,
17 or make expenditures for a demand-side capacity option for serving the utility's
18 Georgia retail customers without having first obtained from the commission a
19 certificate that public convenience and necessity requires, or will require, such
20 construction, sale, purchase, or expenditure.

21 (b) No utility shall increase or decrease the capacity of:

22 (1) A generating unit of an electric power plant;

23 (2) A long-term power purchase; or

24 (3) A demand-side capacity option

25 by more than 15 percent of its demonstrated capacity in megawatts for serving the
26 utility's Georgia retail customers without first obtaining a certificate or an
27 amendment to a certificate, as appropriate, that public convenience or necessity
28 requires or will require such increase or decrease; provided, however, no certificate
29 shall be required if the increase or decrease is caused by a rule, regulation, or law
30 mandated by any duly constituted local, state, or federal governmental body or
31 agency or is caused by power pooling, forced or maintenance outages, or short-term
32 sales for a period of less than one year.

1 46-3A-3.1.

2 (a) The commission shall issue a certificate of public convenience and necessity for
3 a transmission facility and any associated corridor specified in a siting permit
4 application filed pursuant to Chapter 17 of Title 12 if such facility and corridor are:

5 (1) Required to meet the demand for electric service, which could not otherwise
6 be provided in a cost-effective manner through one or more of the following
7 alternatives:

8 (A) End-use energy efficiency programs;

9 (B) Load management;

10 (C) Distributed generation facilities and advanced technologies;

11 (D) Distribution system upgrades;

12 (E) Use of one or more public utility corridors already in existence; or

13 (F) Multiple power delivery network configurations; and

14 (2) Consistent with the utility's integrated resource plan if the utility is required
15 to file such a plan pursuant to this chapter.

16 (b) Within 21 days after a siting permit application is filed, the commission shall
17 schedule a date for a public hearing on whether it should grant a certificate of public
18 convenience and necessity for any transmission facility and associated corridors
19 specified in the application. Within ten days after scheduling the hearing, the
20 commission shall provide written notice of the hearing to any person who has
21 requested notice of any hearing of this type before the commission. The hearing
22 shall be held within 180 days of the filing of the siting permit application but no
23 sooner than 120 days after such a filing.

24 (c) The commission shall issue an order either granting or denying the certificate
25 of public convenience and necessity within 90 days after the hearing required by
26 this Code section. If the commission decides to grant the certificate of public
27 convenience and necessity, it shall also include in the order required by this
28 subsection a determination as to whether it would be cost-effective to construct any
29 part or all of the transmission line specified in the order underground. The starting
30 and ending points of a transmission line must be specified in the certificate of public
31 convenience and necessity.

32 (d) A utility shall file an application for a certificate of public convenience and
33 necessity within five days of filing a siting permit application under Chapter 17 of
34 Title 12. The application shall contain the following:

35 (1) A description of the need for any transmission facility and associated
36 corridors proposed in the siting permit;

1 (2) The data supporting the assertion that the transmission facility proposed in the
 2 siting permit is needed, including load forecast data;

3 (3) A description of the alternatives to the transmission facility and any associated
 4 corridor proposed in the siting permit, including the alternatives specified in
 5 subsection (a) of this Code section, considered by the applicant and why these
 6 alternatives are insufficient or inappropriate;

7 (4) If the utility is required to file an integrated resource plan pursuant to this
 8 chapter, the utility's current integrated resource plan, whether or not previously
 9 filed;

10 (5) Any update to the description of projects required by subsection (j) of this
 11 Code section; and

12 (6) Any other information as may be required by the commission.

13 (e) An order entered pursuant to this Code section shall constitute the final decision
 14 of the commission.

15 (f) Any of the following persons shall have the unconditional right to intervene in
 16 the certificate of public convenience and necessity proceeding required by this Code
 17 section:

18 (1) A local government; or

19 (2) Any domestic nonprofit corporation or association formed, in whole or in part,
 20 to promote conservation of natural beauty; to protect the environment, personal
 21 health, or other biological values; to preserve historical sites; to promote consumer
 22 interests; to represent labor, commercial, or industrial groups; or to promote
 23 comprehensive planning or orderly development of the area in which the proposed
 24 transmission facility and any associated corridors are to be located.

25 (g) A person is aggrieved for purposes of subsection (a) of Code Section 50-13-19
 26 if a final decision by the commission in a proceeding required by this Code section
 27 is adverse to a position taken by the person during the proceeding.

28 (h) The commission shall have the following powers and duties:

29 (1) To adopt or amend, pursuant to Chapter 13 of Title 50, the 'Georgia
 30 Administrative Procedure Act,' reasonable rules to implement the provisions of
 31 this Code section;

32 (2) To prescribe the form, content, necessary supporting documentation, and the
 33 required studies for the certificate of public convenience and necessity application;
 34 and

35 (3) To establish, within 60 days after filing of the siting permit application
 36 required under Chapter 17 of Title 12, a fee for the application filed pursuant to
 37 this Code section and notify the applicant of the fee. The fee established shall be

1 in an amount reasonably necessary to defray the expense of the commission in
 2 reviewing the application. If the applicant files an amendment, the commission
 3 may establish a fee for the amendment. If the commission establishes a fee for the
 4 amendment it shall notify the applicant of the fee within 30 days after the filing
 5 of the amendment.

6 (i) In determining cost-effectiveness for purposes of this Code section, the
 7 commission shall include externalities. The commission shall also include the
 8 following costs, in addition to other costs, associated with a proposed transmission
 9 line and associated corridor: property acquisition, condemnation proceedings costs
 10 and attorney's fees, and decline in property values.

11 (j) A utility shall file on an annual basis:

12 (1) A description of any projects of the utility related to the Integrated
 13 Transmission System, including projects within the utility's service territory and
 14 projects for which the utility is acting as a construction or project manager for
 15 another utility in the Integrated Transmission System;

16 (2) A description of its own transmission facility projects that are not related to
 17 the Integrated Transmission System; and

18 (3) Its transmission plan for the next ten years.

19 (k) For purposes of this Code section, 'utility' means a person, whether organized
 20 under the laws of this state or under the laws of any other state or country, engaged
 21 in producing, generating, transmitting, delivering, or furnishing electricity for
 22 private or public use within the state, including counties, municipalities, joint
 23 municipal power agencies, electric membership corporations, and public and private
 24 corporations.

25 46-3A-4.

26 (a) The commission shall issue a certificate upon a finding that there is or will be
 27 a need for the proposed capacity resource at the time that the proposed resource is
 28 proposed to be utilized to assure an economical and reliable supply of electric power
 29 and energy for the Georgia retail customers of a utility, that the certificate is
 30 required by the public convenience and necessity, and that the certificate complies
 31 with the provisions of this chapter and the rules of the commission.

32 (b) The utility's application for a certificate shall be accompanied by its current
 33 integrated resource plan, whether or not previously filed.

34 (c) The utility's application for a certificate shall contain a cost-benefit analysis
 35 covering the estimated useful life of all capacity resource options considered in
 36 developing its current integrated resource plan. The estimated cost of the capacity

1 resource proposed to be certificated shall be presented in such reasonable detail as
2 the commission may require.

3 (d) This Code section shall not apply to certificates of public convenience and
4 necessity for transmission facilities and associated corridors.

5 46-3A-5.

6 (a) A utility seeking a certificate or an amendment to a certificate shall make an
7 application to the commission which contains the information required by this
8 chapter.

9 (b) No sooner than 30 days after an application is made for a certificate or an
10 amendment, the commission shall conduct a public hearing on the application.
11 Within 300 days after filing of the first such application and within 180 days after
12 filing of each application thereafter, the commission shall issue an order adopting
13 a forecast of future Georgia retail electricity requirements of the utility and
14 describing in what manner the prospective certificate relates to the integrated
15 resource plan and either granting the requested certificate or denying the requested
16 certificate and authorizing a specific alternative means of supplying the
17 requirements found by the commission to exist. Each certificate shall describe the
18 capacity resource, its approximate construction or implementation schedule, and its
19 approved cost. If the commission fails to so act within 300 days after the first such
20 application has been made and within 180 days after each subsequent application
21 has been made, the forecast application and certificate shall be deemed granted by
22 operation of law.

23 (c) Within 60 days after the filing of an integrated resource plan or an application
24 has been made with the commission for a certificate or amendment, the commission
25 shall establish a fee therefor and notify the applicant thereof. The fee amount so
26 established shall be in an amount reasonably necessary to defray the expense of the
27 commission in reviewing the plan or determining whether to grant the application,
28 including but not limited to the expense of conducting any certification proceedings
29 required for such application. The fee so established shall not be recoverable from
30 ratepayers of the applicant if the application or certification is denied nor shall the
31 fee for review of the plan or any subsequent amendment thereto be recoverable from
32 ratepayers. Such fee must be remitted to the commission before the commission
33 may take any further action upon the application. For purposes of any time periods
34 established in subsection (b) of this Code section and subsection (c) of Code Section
35 46-3A-2, an application shall be deemed to have been filed only when the fee
36 established therefor has been remitted to the commission. In the event a joint

1 application is filed by more than one utility, a single such fee only shall be required.
2 The funds assessed and collected pursuant to this subsection shall be deposited in
3 the state's general fund.

4 (d) This Code section shall not apply to certificates of public convenience and
5 necessity for transmission facilities and associated corridors.

6 46-3A-6.

7 Upon application of a utility or upon its own motion, the commission may
8 reexamine any certificate granted under this chapter to determine whether new
9 forecasts of future requirements require the modification of the construction,
10 purchase, sale, or expenditure for a certificated capacity resource. If upon such
11 reexamination the commission finds that the certificated capacity resource is no
12 longer needed or that any additional certificated capacity resource is needed to
13 assure a reliable supply of electric power and energy for the utility's Georgia retail
14 customers, the commission may modify or revoke the certificate. If the utility
15 cancels, abandons, or increases some or all of the capacity resource as a result of
16 such modification or revocation of the certificate, it may recover through any
17 rate-making vehicle over a reasonable period of time, absent fraud, concealment,
18 failure to disclose a material fact, imprudence, or criminal misconduct, the amount
19 of its investment in such capacity resource, along with the cost of carrying the
20 unamortized portion of that investment, net of actual salvage value, to the extent
21 such investment is verified as made pursuant to the certificate. The commission
22 shall disallow such investment and costs resulting from fraud, concealment, failure
23 to disclose a material fact, imprudence, or criminal misconduct. This Code section
24 shall not apply to certificates of public convenience and necessity for transmission
25 facilities and associated corridors.

26 46-3A-7.

27 (a) So long as the commission has not modified or revoked the certificate for an
28 electric plant under Code Section 46-3A-6 and to the extent the utility seeks to add
29 to its rate base upon completion of the plant construction costs that do not exceed
30 100 percent of those approved by the commission under Code Section 46-3A-5,
31 Code Section 46-3A-6, or subsection (b) of this Code section, that construction cost
32 amount may be excluded from the rate base only on the basis of fraud, concealment,
33 failure to disclose a material fact, imprudence, or criminal misconduct. Inclusion of
34 costs in excess of 100 percent of those approved by the commission shall not be
35 permitted unless shown by the utility to have been reasonable and prudent.

1 (b) In addition to the review of the continuing need for an electric plant under
 2 construction prescribed in Code Section 46-3A-6, the commission, upon its own
 3 motion, may conduct or the utility may request that the commission conduct an
 4 ongoing review of such construction as it proceeds. Every one to three years, or at
 5 such lesser intervals upon the direction of the commission or request of the utility,
 6 the applicant shall file a progress report and any proposed revisions in the cost
 7 estimates, construction schedule, or project configuration. Within 180 days of such
 8 filing, the commission shall verify and approve or disapprove expenditures made
 9 pursuant to the certificate and shall approve, disapprove, or modify any proposed
 10 revisions. If the commission fails to so act within 180 days after such filing, the
 11 previous expenditures and any proposed revisions shall be deemed approved by
 12 operation of law.

13 (c) If the commission verifies expenditures as made pursuant to a certificated
 14 capacity resource, that verification forecloses subsequent exclusion of those costs
 15 from the utility's rate base, absent fraud, concealment, failure to disclose a material
 16 fact, imprudence, or criminal misconduct.

17 (d) If the commission disapproves of all or part of the proposed revisions and the
 18 utility cancels construction of some or all of the facility as a result of the
 19 disapproval, the utility may recover through any rate-making vehicle over a
 20 reasonable period of time, absent fraud, concealment, failure to disclose a material
 21 fact, imprudence, or criminal misconduct, the amount of its actual investment, net
 22 of actual salvage value, in the partially completed portion of the facility along with
 23 the cost of carrying the unamortized balance of that investment to the extent such
 24 investment is verified as made pursuant to the certificate.

25 (e) This Code section shall not apply to certificates of public convenience and
 26 necessity for transmission facilities and associated corridors.

27 46-3A-8.

28 The approved or actual cost, whichever is less, of purchase of any certificated
 29 long-term power purchase shall be recovered in rates by the utility, along with an
 30 additional sum as determined by the commission to encourage such purchases. The
 31 commission shall consider lost revenues, if any, changed risks, and an equitable
 32 sharing of benefits between the utility and its retail customers.

33 46-3A-9.

34 The approved or actual cost, whichever is less, of any certificated demand-side
 35 capacity option shall be recovered by the utility in rates, along with an additional

1 sum as determined by the commission to encourage the development of such
 2 resources. The commission shall consider lost revenues, if any, changed risks, and
 3 an equitable sharing of benefits between the utility and its retail customers.

4 46-3A-9.1.

5 The approved or actual cost, whichever is less, of construction of a transmission
 6 facility and the acquisition of any associated corridor shall be recovered in rates by
 7 the utility.

8 46-3A-10.

9 In setting rates for any certificated capacity resource, the commission shall consider
 10 changed revenues and changed risks, if any. The commission's decision in any
 11 certification, recertification, modification, or construction review proceeding shall
 12 be based on evidence of record. Compliance with the provisions of the certificate
 13 as approved or modified by the commission shall result in a presumption of
 14 prudence. The commission's findings, although subject to judicial review, shall not
 15 be subject to relitigation in any other proceeding; provided, however, the issuance
 16 of a certificate under this Code section shall not preempt any duly constituted local,
 17 state, or federal governmental body or agency from its regulation of environmental
 18 or safety matters incidental to construction of electric generating plants. This Code
 19 section shall not apply to certificates of public convenience and necessity for
 20 transmission facilities and associated corridors.

21 46-3A-11.

22 ~~This chapter shall not apply to any provider of wholesale or retail electric service~~
 23 ~~whose rates are not fixed by the commission.~~ All information provided by a utility
 24 to the commission for purposes of obtaining a certificate of public convenience and
 25 necessity for a transmission facility and associated corridor shall be made available
 26 to the public.

27 ARTICLE 2

28 46-3A-20.

29 (a) With respect to the planning of electric utilities in the State of Georgia on how
 30 to meet the requirements of their customers, the General Assembly finds that:

31 (1) The natural resources, environment, public health, homeland security, and
 32 property values are of a vital importance to the state and its citizens and the State

1 of Georgia has an essential public interest in establishing minimum requirements
2 for utility planning in order to protect and preserve its natural resources,
3 environment, public health, homeland security, and property values;

4 (2) The generation, transmission, and distribution infrastructure of utilities in the
5 State of Georgia has significant impacts on the state's natural resources,
6 environment, public health, homeland security, and property values. These
7 impacts include air pollution produced by power plants, large quantities of water
8 consumed by power plants for cooling purposes, property values diminished by
9 nearby construction of transmission lines, disruption of sensitive natural areas by
10 transmission lines, and vulnerability of the infrastructure to terrorist attacks;

11 (3) The need for additional generation, transmission, and distribution
12 infrastructure in the State of Georgia is driven primarily by the increased electrical
13 demand of the state resulting from population growth and higher per capita energy
14 consumption. The electric utilities in the state are doing little to reduce demand
15 for electricity;

16 (4) Article 1 of this chapter requires any electric supplier whose rates are fixed
17 by the commission to file an integrated resource plan with the commission that
18 contains the supplier program for meeting the requirements of its customers over
19 at least a 20 year period. A substantial amount of Georgia's electricity demand
20 is served by utilities that are not such suppliers;

21 (5) The electric utilities in the State of Georgia that are required to comply with
22 the integrated resource planning provisions of Article 1 of this chapter developed
23 and implemented significant energy efficiency programs during the early 1990s
24 pursuant to these provisions. These programs, however, were eliminated in the
25 mid 1990s; and

26 (6) The electric transmission system in the State of Georgia is jointly owned by
27 Georgia Power Company, Georgia Transmission Corporation, City of Dalton, and
28 the Municipal Electric Authority of Georgia. The system is called the Integrated
29 Transmission System. There is no state government oversight of the planning for
30 the Integrated Transmission System.

31 (b) For purposes of this article, 'utility' means a person, whether organized under
32 the laws of this state or under the laws of any other state or country, engaged in
33 producing, generating, transmitting, delivering, or furnishing electricity for private
34 or public use within the state, including counties, municipalities, joint municipal
35 power agencies, electric membership corporations, and public and private
36 corporations.

1 46-3A-21.

2 There is created the Electric Utility Infrastructure Planning Study Committee to be
3 composed of three members of the House of Representatives to be appointed by the
4 Speaker of the House of Representatives; three members of the Senate to be
5 appointed by the Senate Committee on Assignments; the chairman of the
6 commission or his or her designee; and seven members to be appointed by the
7 Governor, which members shall represent a cross section of interests including local
8 government, property owners, business, utilities, public health, and environment.
9 One of the seven members appointed by the Governor shall be a representative of
10 a nonprofit corporation that represents the interests of homeowners concerned about
11 transmission lines. One of the seven members appointed by the Governor shall be
12 a representative of a nonprofit corporation that promotes the adoption of clean
13 energy policies. The Speaker of the House of Representatives and the Senate
14 Committee on Assignments shall each select a cochairperson. The cochairpersons
15 shall call all meetings of the committee. Technical support for the committee shall
16 be provided by the staff of the commission or by consultants retained by the
17 committee.

18 46-3A-22.

19 (a) The Electric Utility Infrastructure Planning Study Committee shall perform the
20 following by December 31, 2003:

21 (1) Examine the impacts on the natural resources, environment, public health,
22 homeland security, and property values associated with the construction and
23 operation of the generation, transmission, and distribution infrastructure of electric
24 utilities in Georgia;

25 (2) Examine the possible impacts of transmission facilities in Georgia on public
26 health and, if appropriate, consider legal and regulatory mechanisms by which
27 reasonable standards could be adopted that protect sensitive locations such as
28 schools, child care centers, hospitals, nursing homes, and cancer treatment centers;

29 (3) Examine the current legal and regulatory requirements pertinent to the
30 planning of utilities in Georgia on how they will meet the electricity needs of their
31 customers;

32 (4) Consider legal and regulatory mechanisms by which requirements can be
33 established for utility planning processes, specifically including integrated
34 resource planning and transmission and distribution planning, that would ensure
35 that impacts of electric utility infrastructure on the natural resources, environment,
36 public health, homeland security, and property values are kept to a minimum;

