

House Bill 373 (COMMITTEE SUBSTITUTE) (AM)

By: Representative Twiggs of the 8<sup>th</sup>

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 public hearings, the authority of the hearing officer,  
8 administrative determinations, final decision by the commission, appeals, and grounds for  
9 setting aside the commission's final decision; to provide for requirements before construction  
10 of electric transmission lines and procedures for alleged noncompliance; to provide for  
11 related matters; to provide for an effective date and applicability; to repeal conflicting laws;  
12 and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

15 Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the exercise of  
16 the power of eminent domain, is amended by striking in its entirety Code Section 22-3-20,  
17 relating to condemnation for running power lines, and inserting in lieu thereof the following:

18 "22-3-20.

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

**SECTION 2.**

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

**"ARTICLE 8**

22-3-160.

As used in this article, the term:

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

(2) 'Director' means the director of the consumers' utility counsel division of the Governor's Office of Consumer Affairs.

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

(4) '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.

(5) '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. The electric transmission line company, at the same time it files such application with the commission,

1 shall serve a copy of the application on the director of the consumers' utility counsel  
2 division of the Governor's Office of Consumer Affairs.

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

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

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

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

13 (4) Criteria, in keeping with sound engineering practices and principles for electric  
14 system reliability and integrity, that when satisfied shall establish public necessity for an  
15 electric transmission line. Such criteria shall include the electric transmission needs of  
16 the state as a whole, the electric transmission needs of the geographic area primarily to  
17 be served by the proposed electric transmission line, the costs associated with  
18 constructing and maintaining the proposed electric transmission line, and other factors  
19 reasonably affecting the reliability and integrity of the electric system;

20 (5) Rules of procedure and the rules for the taking of evidence in the public hearing  
21 required by Code Section 22-3-163. In such public hearing, the commission shall not be  
22 bound by the strict technical rules of pleading and evidence but may exercise such  
23 discretion as will facilitate its efforts to ascertain the facts bearing upon the right and  
24 justice of the matter before it; and

25 (6) A uniform fee schedule in amounts reasonably necessary to defray the expense of the  
26 commission in reviewing the application and determining whether to grant the  
27 application.

28 (c) Within 20 days after the filing of an application for a certificate of need, the  
29 commission shall set a date, time, and location for a public hearing on the application,  
30 which may be no sooner than 60 days after the date on which the application was filed.

31 (d) Within ten days after the commission sets a date, time, and location for the public  
32 hearing on the application, the electric transmission line company that filed the application  
33 shall publish notice of the application and the date, time, and location for the public hearing  
34 in the legal organ of each county through which the proposed electric transmission line  
35 might run.

36 22-3-163.

1 (a) No sooner than 60 days after the filing of an application as described in Code Section  
2 22-3-162, the commission, through a hearing officer it appoints, shall conduct a public  
3 hearing on the application in the county through which the majority of the proposed electric  
4 transmission line most likely will be located. The public hearing shall be transcribed and  
5 the transcription of the public hearing shall be made a part of the administrative record.

6 (b) Any interested person may make a limited appearance by making an oral or written  
7 statement of his or her position on the public necessity of the project proposed in the  
8 application within such limits and on such conditions as may be fixed by the hearing  
9 officer, but no such person shall be considered a party to the commission's proceedings or  
10 otherwise participate in such proceedings. The electric transmission line company that  
11 filed the application shall appear at the hearing to present its case on the application, and  
12 the director or his or her representative shall appear at the hearing on behalf of this state's  
13 consumers of services provided by the electric transmission line company.

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

18 (d) In conducting the public hearing, the hearing officer shall have authority to:

19 (1) Administer oaths and affirmations;

20 (2) Sign and issue subpoenas for discovery or trial of the hearing;

21 (3) Rule upon offers of proof;

22 (4) Regulate the course of the hearing, setting the time and place for continued hearings;

23 (5) Permit persons to make limited appearances as provided for in this Code section;

24 (6) Take official notice of judicially recognizable facts;

25 (7) Reprimand or exclude from the hearing any person for any indecorous or improper  
26 conduct committed at or during the hearing; and

27 (8) Exercise such other powers necessary for the efficient and expeditious conduct of the  
28 hearing, to the end that a complete and orderly record may be developed.

29 (e) The hearing officer shall permit only the commissioners, the hearing officer, the  
30 parties, or the attorneys of record of the commissioners, hearing officers, or parties to  
31 examine or cross-examine witnesses.

32 22-3-164.

33 (a) The hearing officer, within 30 days after the close of the public hearing, shall issue an  
34 administrative determination, which determination shall include:

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

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

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

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

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

10 (c) The hearing officer's determination, along with the administrative record, shall be  
 11 transmitted to the commission, which must issue a final decision adopting or rejecting the  
 12 recommendation of the hearing officer no sooner than 30 days after issuance of the hearing  
 13 officer's determination. Either party may file with the commission written objections or  
 14 comments to the hearing officer's determination within 30 days after issuance of such  
 15 determination.

16 (d) If the commission fails to issue a final decision on the application within 180 days from  
 17 the date on which the application was filed, then the application shall be deemed approved  
 18 and the certificate of need shall be issued by operation of law.

19 (e) Issuance of a certificate of need shall constitute conclusive evidence of public necessity  
 20 in any condemnation proceeding related to the electric transmission line for which the  
 21 certificate of need was issued. Except as otherwise provided in Code Section 22-3-166, the  
 22 issuance of a certificate of need shall not be subject to relitigation or review in any other  
 23 administrative or judicial proceeding and shall not create a cause of action in any person,  
 24 corporation, association, county, municipal corporation, or agency or department of the  
 25 state.

26 22-3-165.

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

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

31 (2) The construction of any line less than one mile in length;

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

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

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

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

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

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

13 22-3-166.

14 (a) The decision of the commission adopting or rejecting the recommendation of the  
 15 hearing officer, and that decision only, shall constitute the final decision of the  
 16 commission. Any findings made by the commission, including findings by the hearing  
 17 officer that are adopted by the commission, shall be conclusive and binding as to all  
 18 questions of fact.

19 (b) Either party to the commission's proceedings may, within 20 days from the date of the  
 20 final decision of the commission, but not thereafter, appeal the final decision of the  
 21 commission to the Superior Court of Fulton County. Said appeal shall be filed with the  
 22 commission in writing stating generally the grounds upon which such appeal is sought. In  
 23 the event of an appeal, the commission shall, within 30 days of the filing of the notice of  
 24 appeal with the commission, transmit certified copies of all documents and papers in its file  
 25 together with a transcript of the testimony taken by the administrative determination of the  
 26 hearing officer, and the final decision of the commission to the clerk of the Superior Court  
 27 of Fulton County. The costs of certifying and transmitting the record shall be paid by the  
 28 appellant. Within 20 days after the date of certification and transmittal of the record by the  
 29 commission to the clerk of the Superior Court of Fulton County, the appellant may file a  
 30 brief and request a hearing before the court. Upon the appellant's failure to file a brief and  
 31 request a hearing, the court may adjudicate the matter on the record. If the court does not  
 32 hear the case, or adjudicate the case without a hearing, within 60 days of the date of  
 33 docketing in the superior court, the final decision of the commission shall be considered  
 34 affirmed by operation of law unless a hearing originally scheduled to be heard within the  
 35 60 days has been continued to a date certain, not to exceed 90 days from the date of  
 36 continuance, by order of the court. In the event a hearing is held later than 60 days after

1 the date of docketing in the superior court because same has been continued to a date  
 2 certain, not to exceed 90 days from the date of continuance by order of the court, the final  
 3 decision of the commission shall be considered affirmed by operation of law if no order of  
 4 the court disposing of the issues on appeal has been entered within 20 days after the date  
 5 of the continued hearing. If a case is heard within 60 days from the date of docketing in  
 6 the superior court, the decision of the board shall be considered affirmed by operation of  
 7 law if no order of the court disposing of the issues on appeal has been entered within 20  
 8 days of the date of the hearing.

9 (c) The final decision of the commission shall be affirmed if supported by any evidence,  
 10 but the court shall set aside the decision if it is found that:

11 (1) The commission or the hearing officer acted without or in excess of its powers;

12 (2) The decision was procured by fraud;

13 (3) The facts found by the commission, including any facts found by the hearing officer  
 14 that are adopted by the commission, do not support the decision;

15 (4) There is no evidence in the record to warrant the decision; or

16 (5) The decision is contrary to law.

17 (d) No decision of the commission shall be set aside by the court upon any grounds other  
 18 than one or more of the grounds stated in subsection (c) of this Code section. Upon the  
 19 setting aside of any such decision of the commission, the court may recommit the matter  
 20 to the commission for further hearing or proceedings in conformity with the judgment and  
 21 opinion of the court, or the court may enter the proper judgment upon the findings, as the  
 22 nature of the case may demand.

23 (e) Either party who is aggrieved by a judgment entered by the Superior Court of Fulton  
 24 County upon an appeal from a decision of the commission to the Superior Court of Fulton  
 25 County may have such judgment reviewed by the Court of Appeals within the time and in  
 26 the manner provided by law.

27 22-3-167.

28 (a) An electric transmission line company that has obtained a certificate of need for an  
 29 electric transmission line as provided in this article shall comply with the following  
 30 requirements before constructing the electric transmission line:

31 (1) The electric transmission line company shall select a practical and feasible route for  
 32 the location of the electric transmission line. In selecting the route, the electric  
 33 transmission line company shall consider existing land uses in the geographic area where  
 34 the line is to be located, existing environmental conditions in the area, engineering  
 35 practices related to the construction and operation of the line, and costs associated with  
 36 the construction, operation, and maintenance of the line. The electric transmission line

1 company shall also take into account any findings made by the hearing officer or the  
2 commission pursuant to Code Section 22-3-164 regarding the location of the line;

3 (2) After the electric transmission line company has selected the preferred route for the  
4 location of the electric transmission line, the electric transmission line company shall  
5 identify the owner of each parcel of land, any portion of which intersects with the route,  
6 and shall attempt in good faith to notify each owner that the electric transmission line  
7 company's employees, agents, and contractors may need to enter onto the owner's land  
8 for the purpose of inspecting, surveying, and appraising the property; and

9 (3) The electric transmission line company shall attempt in good faith to negotiate a  
10 settlement with each property owner from whom property rights need to be acquired for  
11 the electric transmission line. In connection with the negotiations, the electric  
12 transmission line company shall provide the property owner with a written offer to  
13 purchase the property rights, a document that describes the property rights, and an  
14 engineering drawing that shows the location of the line on the owner's property.

15 (b) Any issues regarding the electric transmission line company's compliance with the  
16 requirements of this Code section may be raised and decided in a proceeding before a  
17 special master that is brought pursuant to Chapter 2 of this title to condemn property rights  
18 for the electric transmission line."

### 19 SECTION 3.

20 This Act shall become effective on July 1, 2003, and shall apply only with respect to  
21 condemnations filed on or after January 1, 2004, but shall not be implemented until fully  
22 funded by the General Assembly.

### 23 SECTION 4.

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