

House Bill 1283

By: Representatives Ralston of the 7th, Roberts of the 154th, Shaw of the 176th, and Hatfield of the 177th

A BILL TO BE ENTITLED
AN ACT

1 To provide for legislative findings and purpose; to amend Article 2 of Chapter 4 of Title 24
2 of the Official Code of Georgia Annotated, relating to presumptions and estoppel, so as to
3 provide that occupancy of a railroad right of way is with the permission of the railroad
4 corporation or railroad company, but such presumption may be rebutted; to amend Chapter
5 5 of Title 44 of the Official Code of Georgia Annotated, relating to acquisition and loss of
6 property, so as to change provisions relating to the law regarding the alienability of future
7 interests; to change provisions relating to how actual possession of lands is evidenced so as
8 to provide special provisions for railroad corporations or companies; to change provisions
9 relating to constructive possession of lands so as to provide special provisions for railroad
10 corporations or companies; to change provisions relating to the extent of constructive
11 possession under deed so as to so as to provide special provisions for railroad corporations
12 or companies; to amend Code Section 46-8-100 of the Official Code of Georgia Annotated,
13 relating to the general powers of railroad companies, so as to provide that issues arising as
14 to the dimensions of property acquired by a railroad corporation or railroad company prior
15 to 1913 shall be determined by reference to the official map filed with the Interstate
16 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913; to provide
17 for each railroad corporation and railroad company to record such official map in the superior
18 court in which the land is situated; to provide for courts to take judicial notice of the
19 information on such official map that has been properly filed and recorded; to provide for
20 certain property interest for vested interest in property; to provide for related matters; to
21 repeal conflicting laws; and for other purposes.

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

23 **SECTION 1.**

- 24 (a) The General Assembly finds that the railroads and their rights of way in Georgia:
25 (1) Are essential to the continued viability of this state;
26 (2) Are valuable resources which must be preserved and protected;

- 1 (3) Are essential for the economic growth and development of this state;
 2 (4) Provide a necessary means of transporting raw materials, agricultural products, other
 3 finished products, and consumer goods and are also essential for the safe passage of
 4 hazardous materials;
 5 (5) Relieve congestion on the highways and keep dangerous products and materials off
 6 our highways;
 7 (6) Are vital for national defense and national security; and
 8 (7) Provide the most energy efficient means of transportation through this state, thus
 9 minimizing air pollution and fuel consumption.
- 10 (b) The purpose of this Act is to protect the rights of way of railroads from loss by claims
 11 of adverse possession or other claims by prescription and to recognize the dimensions of
 12 these rights of way as they were identified and defined nearly 100 years ago.

13 SECTION 2.

14 Article 2 of Chapter 4 of Title 24 of the Official Code of Georgia Annotated, relating to
 15 presumptions and estoppel, is amended by adding a new Code section to read as follows:

16 "24-4-23.2.

17 In any action to establish a right, title, or interest in or to real property that is a part of a
 18 railroad right of way, including a right of ingress or egress, where such action is based
 19 upon occupancy of the railroad right of way by a person or entity other than the railroad
 20 corporation or railroad company, there shall be a presumption that any such occupancy of
 21 the railroad right of way is with the permission of the railroad corporation or railroad
 22 company. Such presumption may be rebutted."

23 SECTION 3.

24 Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to acquisition and
 25 loss of property, is amended by revising Code Section 44-5-40, relating to conveyance of
 26 future interests or estates, as follows:

27 "44-5-40.

28 Future and vested interests in property or estates are descendible, devisable, and alienable
 29 in the same manner as estates in possession."

30 SECTION 4.

31 Said chapter is further amended by revising Code Section 44-5-165, relating to actual
 32 possession of lands, as follows:

1 "44-5-165.

2 Actual possession of lands may be evidenced by enclosure, cultivation, or any use and
 3 occupation of the lands which is so notorious as to attract the attention of every adverse
 4 claimant and so exclusive as to prevent actual occupation by another. No party shall
 5 attempt to establish possession of lands for purposes of this article for any lands depicted
 6 within the applicable tract identified on the official map of any railroad filed with the
 7 Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1,
 8 1913, Stat. 701, as amended, unless such party establishes that such occupancy interferes
 9 with the operations of such railroad corporation or railroad company; provided, however,
 10 that each railroad corporation and railroad company shall file and record such official map
 11 of the railroad with the superior court for the county in which such land depicted on such
 12 official railroad map is situated. Any court of this state shall take judicial notice of the
 13 information set forth in any such official map properly filed and recorded by such railroad
 14 corporation or railroad company."

15 SECTION 5.

16 Said chapter is further amended by revising subsection (a) of Code Section 44-5-166, relating
 17 to the constructive possession of lands, as follows:

18 "(a) Constructive possession of lands exists where a person who has paper title to a tract
 19 of land is in actual possession of only a part of ~~the~~ such tract. In such a case, his or her
 20 possession shall be construed to extend to the boundary of ~~the~~ such tract. With respect to
 21 a railroad corporation or railroad company, construction of the road bed and track on the
 22 railroad right of way shall constitute actual possession and occupancy of all lands depicted
 23 within the applicable tract identified on the official map of the railroad filed with the
 24 Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1,
 25 1913, Stat. 701, as amended; provided, however, that each railroad corporation and railroad
 26 company shall file and record such official map of the railroad with the superior court for
 27 the county in which such land depicted on such official railroad map is situated. Any court
 28 of this state shall take judicial notice of the information set forth in any such official map
 29 properly filed and recorded by such railroad corporation or railroad company."

30 SECTION 6.

31 Said chapter is further amended by revising Code Section 44-5-167, relating to the extent of
 32 constructive possession under deed, as follows:

33 "44-5-167.

34 Possession under a duly recorded deed ~~with~~ shall be construed to extend to all the
 35 contiguous property embraced in ~~the~~ such deed. To the extent that any such property is

1 bounded on one or more sides by a railroad, and the description of the property contained
 2 in such deed makes reference to the railroad or the railroad right of way as a boundary for
 3 such property, such reference shall be construed to mean that the boundary line is located
 4 at the edge of the tract depicted on the official map of the railroad filed with the Interstate
 5 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat.
 6 701, as amended, and such depictions contained on such official railroad map shall be
 7 conclusive as to the location of the boundary line between the property of the railroad and
 8 any adjoining property owner as of the date of such railroad map; provided, however, that
 9 each railroad corporation and railroad company shall file and record such official map of
 10 the railroad with the superior court for the county in which such land depicted on such
 11 official railroad map is situated. Any court of this state shall take judicial notice of the
 12 information set forth in any such official map properly filed and recorded by such railroad
 13 corporation or railroad company."

14 **SECTION 7.**

15 Code Section 46-8-100 of the Official Code of Georgia Annotated, relating to the general
 16 powers of railroad companies, is amended by revising paragraph (3) as follows:

17 "(3) To acquire, purchase, hold, and use all such real estate and other property as may be
 18 necessary for the construction and maintenance of said road and of the stations, wharves,
 19 docks, terminal facilities, and all other accommodations necessary to accomplish the
 20 object of the corporation; and to condemn, lease, or buy any land necessary for its use;
 21 provided, however, that to the extent an issue arises over the dimensions of any such
 22 acquisition by a railroad corporation or railroad company which occurred prior to 1913,
 23 such dimensions shall be determined by reference to the documents evidencing any such
 24 transaction and by examining the official map of the railroad filed with the Interstate
 25 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat.
 26 701, as amended, and such depictions contained on such official railroad map shall be
 27 conclusive as to the dimensions of any acquisition as of the date of such railroad map;
 28 provided, further, that each railroad corporation and railroad company shall file and
 29 record such official map of the railroad with the superior court for the county in which
 30 such land depicted on such official railroad map is situated. Any court of this state shall
 31 take judicial notice of the information set forth in any such official map properly filed and
 32 recorded by such railroad corporation or railroad company;"

33 **SECTION 8.**

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