

The House Committee on Judiciary offers the following substitute to HB 1283:

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 how actual possession of lands is evidenced
7 so as to provide special provisions for railroad corporations or companies; to change
8 provisions relating to constructive possession of lands so as to provide special provisions for
9 railroad corporations or companies; to change provisions relating to the extent of constructive
10 possession under deed so as to so as to provide special provisions for railroad corporations
11 or companies; to amend Code Section 46-8-100 of the Official Code of Georgia Annotated,
12 relating to the general powers of railroad companies, so as to provide that issues arising as
13 to the dimensions of property acquired by a railroad corporation or railroad company prior
14 to 1913 shall be determined by reference to the official map filed with the Interstate
15 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913; to provide
16 for each railroad corporation and railroad company to record such official map in the superior
17 court in which the land is situated; to provide for courts to take judicial notice of the
18 information on such official map that has been properly filed and recorded; to provide for
19 certain property interest for vested interest in property; to provide for related matters; to
20 repeal conflicting laws; and for other purposes.

21 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

22 **SECTION 1.**

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

1 (4) Provide a necessary means of transporting raw materials, agricultural products, other
 2 finished products, and consumer goods and are also essential for the safe passage of
 3 hazardous materials;

4 (5) Relieve congestion on the highways and keep dangerous products and materials off
 5 our highways;

6 (6) Are vital for national defense and national security; and

7 (7) Provide the most energy efficient means of transportation through this state, thus
 8 minimizing air pollution and fuel consumption.

9 (b) The purpose of this Act is to protect the rights of way of railroads from loss by claims
 10 of adverse possession or other claims by prescription and to recognize the dimensions of
 11 these rights of way as they were identified and defined nearly 100 years ago.

12 SECTION 2.

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

15 "24-4-23.2.

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

22 SECTION 3.

23 Chapter 5 of Title 44 of the Official Code of Georgia Annotated, relating to acquisition and
 24 loss of property, is amended by revising Code Section 44-5-165, relating to actual possession
 25 of lands, as follows:

26 "44-5-165.

27 Actual possession of lands may be evidenced by enclosure, cultivation, or any use and
 28 occupation of the lands which is so notorious as to attract the attention of every adverse
 29 claimant and so exclusive as to prevent actual occupation by another. As to any claim
 30 which is not vested under this chapter prior to July 1, 2008, no party shall attempt to
 31 establish possession of lands for purposes of this article for any lands depicted within the
 32 applicable tract identified on the official map of any railroad filed with the Interstate
 33 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat.
 34 701, as amended, unless such party establishes that such occupancy interferes with the
 35 operations of such railroad corporation or railroad company; provided, however, that each

1 railroad corporation and railroad company shall file and record such official map of the
 2 railroad with the superior court for the county in which such land depicted on such official
 3 railroad map is situated. Any court of this state shall take judicial notice of the information
 4 set forth in any such official map properly filed and recorded by such railroad corporation
 5 or railroad company."

6 SECTION 4.

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

9 "(a) Constructive possession of lands exists where a person who has paper title to a tract
 10 of land is in actual possession of only a part of ~~the~~ such tract. In such a case, his or her
 11 possession shall be construed to extend to the boundary of ~~the~~ such tract. With respect to
 12 a railroad corporation or railroad company, construction of the road bed and track on the
 13 railroad right of way shall constitute actual possession and occupancy of all lands depicted
 14 within the applicable tract identified on the official map of the railroad filed with the
 15 Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1,
 16 1913, Stat. 701, as amended; provided, however, that each railroad corporation and railroad
 17 company shall file and record such official map of the railroad with the superior court for
 18 the county in which such land depicted on such official railroad map is situated. Any court
 19 of this state shall take judicial notice of the information set forth in any such official map
 20 properly filed and recorded by such railroad corporation or railroad company."

21 SECTION 5.

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

24 "44-5-167.

25 Possession under a duly recorded deed ~~with~~ shall be construed to extend to all the
 26 contiguous property embraced in ~~the~~ such deed. To the extent that any such property is
 27 bounded on one or more sides by a railroad, and the description of the property contained
 28 in such deed makes reference to the railroad or the railroad right of way as a boundary for
 29 such property, such reference shall be construed to mean that the boundary line is located
 30 at the edge of the tract depicted on the official map of the railroad filed with the Interstate
 31 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat.
 32 701, as amended, and such depictions contained on such official railroad map shall be
 33 conclusive as to the location of the boundary line between the property of the railroad and
 34 any adjoining property owner as of the date of such railroad map; provided, however, that
 35 each railroad corporation and railroad company shall file and record such official map of

1 the railroad with the superior court for the county in which such land depicted on such
 2 official railroad map is situated. Any court of this state shall take judicial notice of the
 3 information set forth in any such official map properly filed and recorded by such railroad
 4 corporation or railroad company."

5 **SECTION 6.**

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

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

24 **SECTION 7.**

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