

House Bill 1283 (AS PASSED HOUSE AND SENATE)

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

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 provide special provisions for railroad corporations or  
12 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;

(3) Are essential for the economic growth and development of this state;

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

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

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

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

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

## **SECTION 2.**

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

"24-4-23.2.

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

## **SECTION 3.**

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

"44-5-40.

Future interests or estates are descendible, devisable, and alienable in the same manner as estates in possession. Vested interests in property stemming from the approval of land disturbance, building, construction or other development plans, permits or entitlements in accordance with a schedule or time frame approved or adopted by the local government shall be descendible, devisable and alienable in the same manner as estates in possession."

**SECTION 4.**

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

"44-5-165.

Actual possession of lands may be evidenced by enclosure, cultivation, or any use and occupation of the lands which is so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another. As to any claim which is not vested under this chapter prior to July 1, 2008, no party shall attempt to establish possession of lands for purposes of this article for any lands depicted within the applicable tract identified on the official map of any railroad filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat. 701, as amended, unless such party establishes that such occupancy interferes with the operations of such railroad corporation or railroad company; provided, however, that each railroad corporation and railroad company shall file and record such official map of the railroad with the superior court for the county in which such land depicted on such official railroad map is situated. Any court of this state shall take judicial notice of the information set forth in any such official map properly filed and recorded by such railroad corporation or railroad company. This Code section shall not be applied to adverse claims of aboveground utilities which have been initiated but which have not vested prior to July 1, 2008; provided, however, that a railroad corporation or railroad company shall not be precluded from enforcing rights of ownership against any adverse claims which have not vested."

**SECTION 5.**

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

"(a) Constructive possession of lands exists where a person who has paper title to a tract of land is in actual possession of only a part of ~~the~~ such tract. In such a case, his or her possession shall be construed to extend to the boundary of ~~the~~ such tract. With respect to a railroad corporation or railroad company, construction of the road bed and track on the railroad right of way shall constitute actual possession and occupancy of all lands depicted within the applicable tract identified on the official map of the railroad filed with the Interstate Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat. 701, as amended; provided, however, that each railroad corporation and railroad company shall file and record such official map of the railroad with the superior court for the county in which such land depicted on such official railroad map is situated. Any court

1 of this state shall take judicial notice of the information set forth in any such official map  
2 properly filed and recorded by such railroad corporation or railroad company."

### 3 SECTION 6.

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

6 "44-5-167.

7 Possession under a duly recorded deed ~~with~~ shall be construed to extend to all the  
8 contiguous property embraced in ~~the~~ such deed. To the extent that any such property is  
9 bounded on one or more sides by a railroad, and the description of the property contained  
10 in such deed makes reference to the railroad or the railroad right of way as a boundary for  
11 such property, such reference shall be construed to mean that the boundary line is located  
12 at the edge of the tract depicted on the official map of the railroad filed with the Interstate  
13 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat.  
14 701, as amended, and such depictions contained on such official railroad map shall be  
15 conclusive as to the location of the boundary line between the property of the railroad and  
16 any adjoining property owner as of the date of such railroad map; provided, however, that  
17 each railroad corporation and railroad company shall file and record such official map of  
18 the railroad with the superior court for the county in which such land depicted on such  
19 official railroad map is situated. Any court of this state shall take judicial notice of the  
20 information set forth in any such official map properly filed and recorded by such railroad  
21 corporation or railroad company."

### 22 SECTION 7.

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

25 "(3) To acquire, purchase, hold, and use all such real estate and other property as may be  
26 necessary for the construction and maintenance of said road and of the stations, wharves,  
27 docks, terminal facilities, and all other accommodations necessary to accomplish the  
28 object of the corporation; and to condemn, lease, or buy any land necessary for its use;  
29 provided, however, that to the extent an issue arises over the dimensions of any such  
30 acquisition by a railroad corporation or railroad company which occurred prior to 1913,  
31 such dimensions shall be determined by reference to the documents evidencing any such  
32 transaction and by examining the official map of the railroad filed with the Interstate  
33 Commerce Commission pursuant to the Railroad Valuation Act of March 1, 1913, Stat.  
34 701, as amended, and such depictions contained on such official railroad map shall be  
35 conclusive as to the dimensions of any acquisition as of the date of such railroad map;

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

6 **SECTION 8.**

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