

House Bill 1036

By: Representatives Hitchens of the 161<sup>st</sup>, Stephens of the 164<sup>th</sup>, Petrea of the 166<sup>th</sup>, Williams of the 168<sup>th</sup>, Abrams of the 89<sup>th</sup>, and others

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 power of eminent domain for special purposes, so as to change certain provisions  
3 relating to the exercise of power of eminent domain for construction of petroleum pipelines  
4 and the environmental permitting requirements for petroleum pipelines; to enact a temporary  
5 moratorium on the use of eminent domain for construction of petroleum pipelines and the  
6 permitting for construction of such pipelines so that a commission of elected officials and  
7 field experts can conduct a detailed study; to ensure the exercise of eminent domain for  
8 petroleum pipelines and the permitting for such pipelines is carried out in a prudent and  
9 responsible manner consistent with this state's essential public interests; to provide for the  
10 membership, powers, duties, compensation, and allowances of the commission; to provide  
11 for the abolishment of the commission; to suspend the exercise of the power of eminent  
12 domain by pipeline companies for a certain period; to provide for an exception; to provide  
13 for related matters; to provide an effective date; to repeal conflicting laws; and for other  
14 purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

17 Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the exercise of  
18 power of eminent domain for special purposes, is amended by revising Article 4, relating to  
19 the construction and operation of petroleum pipelines and gas pipelines, as follows:

20 style="text-align:center">"ARTICLE 4

21 style="text-align:center">Part 1

22 22-3-80.

23 ~~The General Assembly finds and declares that, based on an authorized study by the~~  
24 ~~Petroleum Pipeline Study Committee created by the General Assembly, while petroleum~~

25 ~~pipelines are appropriate and valuable for use in the transportation of petroleum and~~  
26 ~~petroleum products, there are certain problems and characteristics indigenous to such~~  
27 ~~pipelines which require the enactment and implementation of special procedures and~~  
28 ~~restrictions on petroleum pipelines and related facilities as a condition of the grant of the~~  
29 ~~power of eminent domain to petroleum pipeline companies. With respect to the siting and~~  
30 ~~regulation of petroleum pipelines in this state, the General Assembly finds that:~~

31 (1) The natural resources, environment, and vital areas of the state are of utmost  
32 importance to the state and its citizens and the State of Georgia has an essential public  
33 interest in establishing minimum standards for land use in order to protect and preserve  
34 its natural resources, environment, and vital areas;

35 (2) The siting, construction, and operation of pipelines create significant impacts on land,  
36 including, among other things, the destruction of property, buildings, crops, forests,  
37 wetlands, and wildlife habitat associated with the construction of such pipelines; the  
38 permanent and continued clearing of the pipeline path necessary for aerial surveillance,  
39 thereby eliminating the possibility of many types of land use on such property, including  
40 the growth of trees; and restrictions on other land development on or along the pipeline  
41 path that may be inconsistent with the pipeline's operation and safety;

42 (3) The siting, construction, and operation of such pipelines further create significant  
43 potential impacts on land usage, including, among other things, impacts associated with  
44 slow leakage of product into ground water and surrounding areas that may go undetected  
45 for long periods of time; impacts associated with catastrophic spills and ruptures that may  
46 seriously pollute surface and ground waters, destroy wildlife and wildlife habitat, and  
47 threaten water supplies; and impacts associated with additional development in or around  
48 pipeline paths that may result in damage to pipelines and leakage or spilling of product;

49 (4) The impacts on land associated with the siting, construction, and operation of such  
50 pipelines may be inconsistent with standards for land use necessary to protect and  
51 preserve the State of Georgia's natural resources, environment, and vital areas and also  
52 may be inconsistent with any management plans developed for areas in which the  
53 development of pipelines may be sought;

54 (5) State law presently grants pipeline companies the power to acquire property or  
55 interests in property through the use of eminent domain;

56 (6) The procedures that pipeline companies are required to use to exercise such statutory  
57 powers of eminent domain have not been reviewed since the Petroleum Pipeline Study  
58 Committee created in an Act approved March 24, 1994 (Ga. L. 1994, p. 229) and  
59 abolished on January 1, 1995, studied the issue;

60 (7) Technology has significantly advanced in the past decade and the pipeline industry  
61 has also changed;

62 (8) Pipeline companies, located within and outside of the State of Georgia, have interests  
 63 in siting pipelines in this state using eminent domain to provide petroleum to customers  
 64 located outside of this state;

65 (9) One or more pipeline extensions or developments are under consideration for the  
 66 State of Georgia that may involve the exercise of powers under this article;

67 (10) Evidence is lacking as to a current public need for additional pipelines in Georgia  
 68 and whether alternative sources of delivery of petroleum products are presently serving  
 69 the public need in this state;

70 (11) The vitally important issue of land use impacts associated with pipelines that are  
 71 presently in use and being developed for future use merits a detailed study by elected  
 72 officials and experts in this field to ensure that the exercise of eminent domain by  
 73 pipeline companies and the environmental permitting of pipelines are carried out in a  
 74 prudent and responsible manner consistent with this state's essential public interest in  
 75 establishing minimum standards for land use in order to protect and preserve its natural  
 76 resources, environment, and vital areas; and

77 (12) A temporary moratorium on the eminent domain powers of pipeline companies and  
 78 the issuance of certain environmental permits to pipeline companies through June 30,  
 79 2017, would provide the General Assembly with time to study the need for any changes  
 80 to land use controls or restrictions related to pipeline companies seeking to deliver  
 81 petroleum to residents of this state or other states, including but not limited to those  
 82 related to siting of pipelines, and to assess various proposals relating to the eminent  
 83 domain powers that pipeline companies presently enjoy, the issuance of certain  
 84 environmental permits to pipeline companies, and the enactment of additional laws to  
 85 ensure the consistency of pipeline development and operation with the state's land use  
 86 goals and standards.

87 22-3-81.

88 As used in this article:

89 (1) 'Commission' means the State Commission on Petroleum Pipelines created pursuant  
 90 to Code Section 22-3-82.

91 ~~(1)~~(2) 'Pipeline' means a pipeline constructed or to be constructed as a common carrier  
 92 in interstate or intrastate commerce for the transportation of petroleum or petroleum  
 93 products in or through this state.

94 ~~(2)~~(3) 'Pipeline company' means a corporation organized under the laws of this state or  
 95 which is organized under the laws of another state and is authorized to do business in this  
 96 state and which is specifically authorized by its charter or articles of incorporation to

97 construct and operate pipelines for the transportation of petroleum and petroleum  
98 products.

99 ~~(3)~~(4) 'Pipeline facility' or 'pipeline facilities' means and includes the pipeline and all  
100 equipment or facilities, including lateral lines, essential to the operation of the pipeline  
101 but shall not include any storage tank or storage facility which is not being constructed  
102 as a part of the operation of the pipeline.

103 22-3-82.

104 There is created the State Commission on Petroleum Pipelines to be composed of three  
105 members of the House of Representatives to be appointed by the Speaker of the House of  
106 Representatives; three members of the Senate to be appointed by the President of the  
107 Senate; the commissioner of natural resources or his or her designee; the commissioner of  
108 community affairs or his or her designee; and five members to be appointed by the  
109 Governor, which members shall represent a cross section of the interests of local  
110 government, business, agriculture, and conservation. The Speaker of the House of  
111 Representatives and the President of the Senate shall each select a cochairperson. The  
112 cochairpersons shall call all meetings of the commission. Administrative support for the  
113 commission shall be provided by the staff of the Office of Planning and Budget, the staff  
114 of the Department of Natural Resources, or the staff of the Department of Community  
115 Affairs, as appropriate.

116 22-3-83.

117 (a) The commission shall perform the following by December 31, 2016:

118 (1) Examine the impacts on land associated with pipeline siting, construction, and  
119 operation, including impacts associated with potential leaks and spills;

120 (2) Examine the current legal and regulatory structure pertinent to the protection of land  
121 uses and natural resources from impacts associated with pipeline siting, construction, and  
122 operation;

123 (3) Examine the purposes behind and necessity, if any, of Part 2 of this article and the  
124 grant therein of eminent domain powers to pipeline companies and the siting procedures  
125 therein and weigh those with the rights of property owners affected by the use of such  
126 eminent domain powers;

127 (4) Consider the extent to which the powers granted pipeline companies under Part 2 of  
128 this article, and more broadly the existing legal and regulatory system pertinent to the  
129 siting, construction, and operation of pipelines, are consistent with and implement  
130 Georgia's essential public interest in establishing minimum standards for land use in order  
131 to protect and preserve its natural resources, environment, and vital areas;

132 (5) Consider legal and regulatory mechanisms by which the eminent domain powers of  
133 pipeline companies can be appropriately restricted or controlled in order to ensure siting  
134 of pipelines that is consistent with current state and local land use policies and the  
135 protection of natural resources;

136 (6) Consider whether any changes to the siting procedures in this article are necessary  
137 to protect the residents of this state in consideration of whether the pipeline is delivering  
138 petroleum to customers inside or outside this state;

139 (7) Prepare a report summarizing the findings of the commission and submit such report  
140 to the President of the Senate and the Speaker of the House of Representatives and to the  
141 chairpersons of each of the standing committees of the Senate and of the House of  
142 Representatives which regularly consider proposed legislation related to transportation,  
143 energy, or natural resources; and

144 (8) Recommend to the General Assembly proposed legislation as necessary to  
145 accomplish the continuing goal of ensuring that pipeline siting, construction, and  
146 operation are consistent with and implement the State of Georgia's essential public  
147 interest in establishing minimum standards for land use in order to protect and preserve  
148 its natural resources, environment, and vital areas and to best serve the residents of this  
149 state.

150 (b) The legislative members of the commission shall be entitled to receive the  
151 compensation and allowances provided for in Code Section 28-1-8. Members of the  
152 commission who are state officials, other than legislative members, or state employees  
153 shall receive no compensation for their services on the commission but may be reimbursed  
154 for expenses incurred by them in the performance of their duties as members of the  
155 commission in the same manner as they are reimbursed for expenses in their capacities as  
156 state officials or employees. Members of the commission who are not legislators, state  
157 officials, or state employees shall receive a daily expense allowance in an amount the same  
158 as that specified in subsection (b) of Code Section 45-7-21, as well as the mileage or  
159 transportation allowance authorized for state employees, and the funds for payment thereof  
160 shall come from funds of the Department of Natural Resources.

161 (c) The commission may conduct such meetings at such places and at such times as it may  
162 deem necessary or convenient to enable it to exercise fully and effectively its powers,  
163 perform its duties, and accomplish the objectives and purposes of this part.

164 (d) The commission shall stand abolished on January 1, 2017.

Part 2

165

166 22-3-85.

167 (a)(1) The powers of eminent domain granted by this part to pipeline companies shall be  
 168 temporarily suspended starting from the effective date of this Code section through and  
 169 including June 30, 2017, in order to permit the commission to complete its report and  
 170 recommendations and to permit the General Assembly to act on those recommendations  
 171 during the 2017 legislative session.

172 (2) Between the effective date of this Code section and June 30, 2017:

173 (A) No pipeline company shall exercise any eminent domain powers under this part,  
 174 including, without limitation, conducting surveying activities and condemning any  
 175 property through the exercise of eminent domain;

176 (B) No state officer, official, or employee or any state agency, department,  
 177 commission, or committee shall issue any approval, permit, or document necessary for  
 178 the construction of a pipeline, including, but not limited to, the granting of any  
 179 easement, deed, license, or permission to cross over, under, or through any:

180 (i) Body of water, state wildlife management areas, heritage or historic preserve  
 181 areas, or historical sites within this state;

182 (ii) Area of Particular Concern as set out in the State of Georgia Coastal Management  
 183 Program as such existed on January 1, 2016; or

184 (iii) Public road of the state highway system;

185 (C) The commissioner of transportation shall not accept any applications for or issue  
 186 any certificates of public convenience and necessity provided for in Code Section  
 187 22-3-87; and

188 (D) The Environmental Protection Division of the Department of Natural Resources  
 189 shall not accept any applications for or issue any permits provided for in Code Section  
 190 22-3-88.

191 (b) The temporary suspension of the power of eminent domain provided in subsection (a)  
 192 of this Code section shall not apply to acquisitions for the purpose of establishing the right  
 193 to maintain an existing pipeline in place or to acquisitions within 200 feet of an existing  
 194 pipeline for purposes of line replacements or relocations or for purposes of temporary work  
 195 space for repairs of existing pipelines.

196 ~~22-3-82~~ 22-3-86.

197 (a) Subject to the provisions and restrictions of this ~~article~~ part, pipeline companies are  
 198 granted the right power to acquire property or interests in property by eminent domain for  
 199 the construction, reconstruction, operation, and maintenance of pipelines in this state;

200 provided, however, that prior to instigating eminent domain proceedings or threatening to  
 201 do so, the pipeline company shall cause to be delivered to each landowner whose property  
 202 may be condemned a written notice containing the following language in boldface type:

203 'CODE SECTIONS ~~22-3-80~~ 22-3-86 THROUGH ~~22-3-87~~ 22-3-91 OF THE OFFICIAL  
 204 CODE OF GEORGIA ANNOTATED PROVIDE SPECIFIC REQUIREMENTS  
 205 WHICH MUST BE FOLLOWED BY PETROLEUM PIPELINE COMPANIES  
 206 BEFORE THEY MAY EXERCISE THE RIGHT TO CONDEMN YOUR PROPERTY.  
 207 THOSE CODE SECTIONS ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR  
 208 PROTECTION. YOU SHOULD MAKE YOURSELF FAMILIAR WITH THOSE  
 209 REQUIREMENTS AND YOUR RIGHTS PRIOR TO CONTINUING NEGOTIATIONS  
 210 CONCERNING THE SALE OF YOUR PROPERTY TO A PETROLEUM PIPELINE  
 211 COMPANY.'

212 (b) The restrictions and conditions imposed by this ~~article part~~ on the exercise of the power  
 213 of eminent domain by ~~petroleum~~ pipeline companies shall not apply to relocations of  
 214 pipelines necessitated by the exercise of a legal right by a third party or to any activities  
 215 incident to the maintenance of an existing pipeline or existing pipeline right of way. A  
 216 pipeline company shall have a right of reasonable access to property proposed as the site  
 217 of a pipeline for the purpose of conducting a survey of the surface of such property for use  
 218 in determining the suitability of such property for placement of a pipeline.

219 (c) After obtaining the certificate of convenience and necessity provided for in Code  
 220 Section ~~22-3-83~~ 22-3-87 and after complying with the notice requirements set forth in  
 221 subsection (a) of this Code section, a pipeline company shall have a right of reasonable  
 222 access to any property proposed as the site of a pipeline for the purpose of conducting  
 223 additional surveying which may be necessary in preparing its submission to the Department  
 224 of Natural Resources as provided for in Code Section ~~22-3-84~~ 22-3-88.

225 (d) The owner of any property or property interest which is entered by a pipeline company  
 226 for the purpose of surveying such property, as allowed in this Code section, or for access  
 227 to or maintenance or relocation of an existing pipeline shall have the right to be  
 228 compensated for any damage to such property incident to such entry. Any survey  
 229 conducted pursuant to this ~~article part~~ shall be conducted in such a fashion as to cause  
 230 minimal damage to the property surveyed.

231 ~~22-3-83~~ 22-3-87.

232 (a) Before exercising the ~~right power~~ of eminent domain as authorized in this ~~article part~~,  
 233 a pipeline company shall first obtain from the commissioner of transportation or the  
 234 commissioner's designee a certificate of public convenience and necessity that such action  
 235 by the pipeline company is authorized. Such certificate shall not be unreasonably withheld.

236 (b) The commissioner of transportation shall prescribe regulations pursuant to Chapter 13  
 237 of Title 50, the 'Georgia Administrative Procedure Act,' relative to the requirements for  
 238 obtaining a certificate of public convenience and necessity which shall include:

239 (1) A requirement that the application for such certificate shall include a description of  
 240 the proposed project including its general route, a description of the public convenience  
 241 and necessity which support the proposed pipeline route, the width of the proposed  
 242 pipeline corridor up to a maximum width of one-third mile, ~~and~~ a showing that use of the  
 243 power of eminent domain may be necessary ~~to~~ for construction of the pipeline, and a  
 244 showing that the public necessity for the ~~petroleum~~ pipeline justifies the use of the power  
 245 of eminent domain;

246 (2) A provision for reasonable public notice of the application and the proposed route;

247 (3) Provision for a hearing on the application and the filing and hearing of any objections  
 248 to such application;

249 (4) A requirement that all hearings shall be held and a final decision rendered on any  
 250 application not later than 90 days from the date of the publication of notice required in  
 251 paragraph (2) of this subsection; and

252 (5) Such other reasonable requirements as shall be deemed necessary or desirable to a  
 253 proper determination of the application.

254 (c) In the event the application is not approved or denied within the time period provided  
 255 for in paragraph (4) of subsection (b) of this Code section, the application shall be deemed  
 256 to be approved by operation of law.

257 (d) The approval and issuance of the certificate of public convenience and necessity shall  
 258 not be subject to review. The denial of the certificate may be reviewed by a judge of the  
 259 superior court of the county in which the pipeline company has an agent and place of doing  
 260 business. The review shall be by petition filed within 30 days of the date of disapproval of  
 261 the application and shall be determined on the basis of the record before the commissioner  
 262 of transportation. The action of the commissioner of transportation shall be affirmed if  
 263 supported by substantial evidence.

264 ~~22-3-84~~ 22-3-88.

265 (a) In addition to obtaining a certificate as required in Code Section ~~22-3-83~~ 22-3-87, a  
 266 pipeline company shall, prior to the exercise of the power of eminent domain, obtain a  
 267 permit from the director of the Environmental Protection Division of the Department of  
 268 Natural Resources as provided in this Code section.

269 (b) The Board of Natural Resources shall, pursuant to Chapter 13 of Title 50, the 'Georgia  
 270 Administrative Procedure Act,' issue rules and regulations governing the obtaining of the  
 271 permit provided for in subsection (a) of this Code section which shall include:



272 (1) Reasonable public notice to an owner of property who, after reasonable efforts,  
 273 cannot personally be given the notice in subsection (a) of Code Section ~~22-3-82~~ 22-3-86;  
 274 (2) Reasonable public notice of the filing of an application for a permit;  
 275 (3) Provisions for hearings on all applications for such permits; and  
 276 (4) A requirement that no such permit shall be granted by the division unless, prior to the  
 277 construction of any portion of the ~~petroleum~~ pipeline project for which the use of the  
 278 power of eminent domain may be required, the pipeline company has submitted the  
 279 proposed siting of such portion of the pipeline project to the division with appropriate  
 280 notices thereof to affected parties and unless the division director determines after a  
 281 hearing that the location, construction, and maintenance of such portion of the pipeline  
 282 ~~is~~ are consistent with and not an undue hazard to the environment and natural resources  
 283 of this state, determined in accordance with the factors set forth in subsection (c) of this  
 284 Code section.

285 (c) In making the decision required by paragraph (4) of subsection (b) of this Code section,  
 286 the director shall determine:

287 (1) Whether the proposed route of such portion of the pipeline is an environmentally  
 288 reasonable route;  
 289 (2) Whether other corridors of public utilities already in existence may reasonably be  
 290 used for the siting of such portion of the pipeline;  
 291 (3) The existence of any local zoning ordinances and that such portion of the project will  
 292 comply with those ordinances unless to require such compliance would impose an  
 293 unreasonable burden on the project as weighed against the purpose of such ordinances;  
 294 (4) That ample opportunity has been afforded for public comment, specifically including  
 295 but not limited to comment by the governing body of any municipality or county within  
 296 which the proposed project or any part thereof is to be located; and  
 297 (5) Such reasonable conditions to the permit as will allow the monitoring of the effect  
 298 of the ~~petroleum~~ pipeline upon the property subjected to eminent domain and the  
 299 surrounding environment and natural resources.

300 (d) In the event an application under this Code section is not approved or denied  
 301 within 120 days of the date of the publication of notice required in paragraph (2) of  
 302 subsection (b) of this Code section, the application shall be deemed to be approved by  
 303 operation of law.

304 ~~22-3-85~~ 22-3-89.

305 All hearings and appeals on applications for certificates and permits required under this  
 306 ~~article~~ part shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia  
 307 Administrative Procedure Act,' provided that if the final decision of the Administrative

308 Law Judge on any appeal is not rendered within 120 days from the date of filing of a  
 309 petition for review, the decision of the director shall be affirmed by operation of law; and  
 310 provided further that judicial review of the approval or denial of an application under Code  
 311 Section ~~22-3-84~~ 22-3-88 shall be governed by Code Section 12-2-1.

312 ~~22-3-86~~ 22-3-90.

313 When a pipeline company which has obtained the certification and permits required in this  
 314 ~~article~~ part is unable to acquire the property or interest required for such certified or  
 315 permitted project after reasonable negotiation with the owner of such property or interest,  
 316 the company may acquire such property or interest by the use of the condemnation  
 317 procedures authorized by Chapter 2 of this title.

318 ~~22-3-87~~ 22-3-91.

319 If the portion of the ~~petroleum~~ pipeline route chosen and approved pursuant to Code  
 320 Section ~~22-3-84~~ 22-3-88 unreasonably impacts any other property of the same owner which  
 321 is not acquired by eminent domain as a part of such portion of the project, there shall be  
 322 a right of compensation available under the laws of eminent domain for the fair market  
 323 value of any such damage upon the trial of the case of the parcel taken.

324 Part 3

325 ~~22-3-88~~ 22-3-95.

326 The power of eminent domain may be exercised by persons who are or may be engaged in  
 327 constructing or operating pipelines for the transportation or distribution of natural or  
 328 artificial gas and by persons who are or may be engaged in furnishing natural or artificial  
 329 gas for heating, lighting, or power purposes in the State of Georgia."

330 **SECTION 2.**

331 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 332 without such approval.

333 **SECTION 3.**

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