

The Senate Committee on Natural Resources and the Environment offered the following substitute to SB 191:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 12, 22, and 50 of the Official Code of Georgia Annotated, relating to
2 conservation and natural resources, eminent domain, and state government, respectively, so
3 as to provide for the regulation and permitting of petroleum pipelines in this state; to provide
4 for definitions; to provide for the issuance of certain permits by the director of the
5 Environmental Protection Division of the Department of Natural Resources; to provide for
6 appeals of the decision of the director; to require certain notices; to provide for the Board of
7 Natural Resources to promulgate certain rules and regulations; to place conditions on the use
8 of eminent domain for new construction and extension of petroleum pipelines; to provide for
9 the issuance of certificates of need by the Georgia Environmental Finance Authority under
10 certain circumstances; to provide for the Georgia Environmental Finance Authority to
11 promulgate certain rules and regulations; to provide for appeals of the decision of the
12 executive director of the Georgia Environmental Finance Authority; to provide for related
13 matters; to provide for effective dates; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 SECTION 1.

16 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
17 resources, is amended by adding a new chapter to read as follows:

18 "CHAPTER 17

19 12-17-1.

20 As used in this chapter, the term:

21 (1) 'Board' means the Board of Natural Resources.

22 (2) 'Director' means the director of the Environmental Protection Division of the
23 Department of Natural Resources.

24 (3) 'Division' means the Environmental Protection Division within the Department of
 25 Natural Resources.

26 (4) 'Existing petroleum pipeline' means a petroleum pipeline constructed and in use prior
 27 to January 1, 2016.

28 (5) 'Extension' means a modification to an existing petroleum pipeline that increases the
 29 length or footprint of the existing petroleum pipeline by a distance greater than one linear
 30 mile.

31 (6) 'New petroleum pipeline' means a petroleum pipeline that was not constructed and in
 32 use prior to January 1, 2016. The term 'new petroleum pipeline' shall not include an
 33 expansion, an extension, or any maintenance.

34 (7) 'Petroleum pipeline' means a fixed conduit constructed to transport petroleum or
 35 petroleum products in or through this state.

36 (8) 'Petroleum pipeline company' means a corporation organized under the laws of this
 37 state or which is organized under the laws of another state and is authorized to do
 38 business in this state and which is specifically authorized by its charter or articles of
 39 incorporation to construct and operate petroleum pipelines for the transportation of
 40 petroleum and petroleum products.

41 12-17-2.

42 On or after July 1, 2017, any construction of a new petroleum pipeline or an extension in
 43 this state shall require a permit from the director as provided in this chapter. Such permit
 44 shall be required without regard to whether the petroleum pipeline company intends to
 45 exercise any power of eminent domain pursuant to Part 1 of Article 4 of Chapter 3 of
 46 Title 22. No construction activity on any portion of a new petroleum pipeline or any
 47 extension shall occur unless and until such permit is obtained.

48 12-17-3.

49 (a) Any application to the division for a permit under this chapter shall contain, at a
 50 minimum, the following:

51 (1) Siting information, including, but not limited to, a map showing the proposed
 52 location of the route of the new petroleum pipeline or of the extension;

53 (2) Information obtained from a cultural resource assessment conducted along the
 54 proposed route of the new petroleum pipeline or of the extension;

55 (3) Information as to geological and hydrologic features along the proposed route of the
 56 new petroleum pipeline or of the extension;

57 (4) Information on the presence of threatened and endangered species along the proposed
 58 route of the new petroleum pipeline or of the extension;

59 (5) Evidence of financial responsibility by the petroleum pipeline company; and

60 (6) Any other information that the board may require by rules and regulations.

61 (b) Within ten days of applying for a permit, the applicant shall provide:

62 (1) Notice of the filing of an application under this Code section to all landowners whose
 63 property may be condemned, purchased, or otherwise acquired for purposes of
 64 constructing a new petroleum pipeline or for any extension; and

65 (2) Public notice in the legal organ of each county through which the proposed route of
 66 the new petroleum pipeline or of the extension is to be located.

67 12-17-4.

68 (a) In making the decision as to whether to grant the permit required by this chapter, the
 69 director shall determine after a hearing whether the location and construction of the portion
 70 of the petroleum pipeline for which the permit is sought are consistent with and not an
 71 undue hazard to the environment and natural resources of this state after consideration of
 72 the following factors:

73 (1) The information required to be contained in the petroleum pipeline company's
 74 application under Code Section 12-17-3;

75 (2) The direct, indirect, and cumulative environmental impacts of the proposed new
 76 petroleum pipeline or the proposed extension;

77 (3) Alternative alignments to the proposed new petroleum pipeline or the proposed
 78 extension;

79 (4) That ample opportunity has been afforded for public comment, specifically including,
 80 but not limited to, comment by the governing body of any municipality or county within
 81 which the proposed petroleum pipeline or the extension or any part thereof is to be
 82 located; and

83 (5) Such other factors the director deems reasonable and applicable or that the board by
 84 rules and regulations has established in order to protect the best interests of this state, its
 85 citizens, and its natural resources.

86 (b) All landowners subject to notice pursuant to subsection (b) of Code Section 12-17-3
 87 may intervene in the permit administrative process by filing with the division a notice of
 88 intervention, which shall include:

89 (1) The intervenor's name and the address of the property giving rise to the intervenor's
 90 right of intervention;

91 (2) A copy of the notice pursuant to subsection (b) of Code Section 12-17-3 delivered
 92 to the intervenor; and

93 (3) The intervenor's evidence regarding the factors set forth in subsection (a) of this Code
94 section to be considered by the director in determining whether to issue a permit under
95 this chapter.

96 (c) The applicant shall bear the burden of proof to demonstrate that the director should
97 issue a permit as provided under this chapter.

98 (d) The director's decision shall be based on the record before the director, which shall
99 include, but not be limited to, the applicant's submissions, written comments submitted to
100 the director, and research the director may conduct in analyzing the application.

101 (e) For any new petroleum pipeline or an extension that utilizes eminent domain, no permit
102 shall be issued under this Code section unless and until the applicant has been issued a
103 certificate of need by the executive director of the Georgia Environmental Finance
104 Authority as provided in Code Section 50-23-32.1.

105 12-17-5.

106 (a) As used in this Code section, the term 'aggrieved or adversely affected' means a
107 challenged action has caused or will cause persons injury in fact and where the injury is to
108 an interest within the zone of interests to be protected or regulated by the statutes that the
109 director is empowered to administer and enforce.

110 (b) Any person who is aggrieved or adversely affected by a decision or action of the
111 director shall pursuant to this chapter, upon filing a petition within 30 days after the
112 issuance of such order or taking of such action, have a right to a hearing before an
113 administrative law judge appointed by the board. The hearing before the administrative
114 law judge shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia
115 Administrative Procedure Act.' The decision of the administrative law judge shall
116 constitute the final decision of the director, and any party to the hearing, including the
117 department, shall have the right of judicial review thereof in accordance with Chapter 13
118 of Title 50, the 'Georgia Administrative Procedure Act.'

119 (c) In the event the director asserts in response to the petition before the administrative law
120 judge that the petitioner is not aggrieved or adversely affected, the administrative law judge
121 shall take evidence and hear arguments on this issue and thereafter make a ruling on same
122 before continuing with the hearing. The burden of going forward with evidence on this
123 issue shall rest with the petitioner.

124 12-17-6.

125 (a) No later than July 1, 2018, the board shall, pursuant to Chapter 13 of Title 50, the
126 'Georgia Administrative Procedure Act,' promulgate such rules and regulations as are

127 necessary and reasonable for purposes of enforcement of this chapter, which shall include,
 128 but may not be limited to, the following:

129 (1) The submission of a permit application and provisions for the application review
 130 process, not to exceed 180 days in length;

131 (2) Provisions for a nonrefundable application fee which shall be sufficient to defray the
 132 administrative costs of review of the application by the division and of the cost to the
 133 division of monitoring and inspection of compliance with any such permit that may be
 134 issued;

135 (3) Reasonable public notice of the filing of an application of a permit to an owner of
 136 property who, after reasonable efforts, cannot personally be given the notice required in
 137 subsection (b) of Code Section 12-17-3;

138 (4) Provisions for hearings to be held prior to any action on any permit; and

139 (5) Evidence of financial responsibility as required pursuant to paragraph (5) of
 140 subsection (a) of Code Section 12-17-3.

141 (b) No permit shall be granted by the division prior to the promulgation of rules and
 142 regulations as provided for in this Code section."

143 **SECTION 2.**

144 Article 4 of Chapter 3 of Title 22 of the Official Code of Georgia Annotated, relating to the
 145 construction, operation, etc., of petroleum pipelines, is amended by repealing Part 1 and
 146 enacting a new Part 1 to read as follows:

147 "Part 1

148 22-3-80.

149 As used in this part, the term:

- 150 (1) 'Existing petroleum pipeline' shall have the same meaning as set forth in Code
 151 Section 12-17-1.
- 152 (2) 'Expansion' means a modification to an existing petroleum pipeline within the
 153 existing easement or right of way that increases the supply of petroleum by:
- 154 (A) Increasing the diameter of an existing petroleum pipeline; or
 155 (B) Constructing a parallel petroleum pipeline.
- 156 (3) 'Extension' shall have the same meaning as set forth in Code Section 12-17-1.
- 157 (4) 'Maintenance' means:
- 158 (A) The care or upkeep of an existing petroleum pipeline and its appurtenances;
 159 (B) The replacement of an existing petroleum pipeline within the same easement or
 160 right of way; or

161 (C) The relocation of an existing petroleum pipeline for repair within one linear mile
 162 of the existing petroleum pipeline's alignment.

163 (5) 'New petroleum pipeline' shall have the same meaning as set forth in Code Section
 164 12-17-1.

165 (6) 'Parallel petroleum pipeline' means a petroleum pipeline that runs side by side to an
 166 existing petroleum pipeline.

167 (7) 'Petroleum pipeline' shall have the same meaning as set forth in Code
 168 Section 12-17-1.

169 (8) 'Petroleum pipeline company' shall have the same meaning as set forth in
 170 Code Section 12-17-1.

171 22-3-81.

172 Subject to the provisions, conditions, and restrictions of this part, petroleum pipeline
 173 companies are granted the power to acquire property or interests in property by eminent
 174 domain for the purpose of an expansion, an extension, maintenance, or constructing a new
 175 petroleum pipeline.

176 22-3-82.

177 A petroleum pipeline company shall not exercise the power of eminent domain granted in
 178 Code Section 22-3-81 for the purpose of constructing a new petroleum pipeline or for
 179 extension unless and until a certificate of need is issued by the executive director of the
 180 Georgia Environmental Finance Authority as provided in Code Section 50-23-32.1 and a
 181 permit is issued by the director of the Environmental Protection Division of the Department
 182 of Natural Resources as provided in Chapter 17 of Title 12. No such certificate of need or
 183 permit shall be required of a petroleum pipeline company exercising the power of eminent
 184 domain for the purpose of maintenance or expansion.

185 22-3-83.

186 Prior to initiating eminent domain proceedings or threatening to do so, the petroleum
 187 pipeline company shall cause to be delivered to each landowner whose property may be
 188 condemned a written notice containing the following language in boldface type:

189 'CHAPTER 17 OF TITLE 12, PART 1 OF ARTICLE 4 OF CHAPTER 3 OF TITLE 22,
 190 AND CODE SECTION 50-23-32.1 OF THE OFFICIAL CODE OF GEORGIA
 191 ANNOTATED PROVIDE SPECIFIC REQUIREMENTS WHICH MUST BE
 192 FOLLOWED BY PETROLEUM PIPELINE COMPANIES BEFORE THEY MAY
 193 EXERCISE THE RIGHT TO CONDEMN YOUR PROPERTY. THOSE CODE
 194 SECTIONS ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU

195 SHOULD FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND YOUR
 196 RIGHTS PRIOR TO CONTINUING NEGOTIATIONS CONCERNING THE SALE OF
 197 YOUR PROPERTY TO A PETROLEUM PIPELINE COMPANY.'

198 22-3-84.

199 When a petroleum pipeline company that has met all the requirements of this part is unable
 200 to acquire the property or interest required for the purpose of an expansion, an extension,
 201 maintenance, or constructing a new petroleum pipeline, after reasonable negotiation with
 202 the owner of such property or interest, the petroleum pipeline company may acquire such
 203 property or interest by the use of the condemnation procedures authorized by Chapter 2 of
 204 this title."

205 **SECTION 3.**

206 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 207 by revising subsection (b) of Code Section 50-23-32, relating to powers and duties of the
 208 Division of Energy Resources of the Georgia Environmental Finance Authority, by deleting
 209 "and" at the end of paragraph (12), by replacing the period with "; and" at the end of
 210 paragraph (13), and by adding a new paragraph to read as follows:

211 "(14) Review and consider applications for the issuance of a certificate of need to a
 212 petroleum pipeline company for the construction of a new petroleum pipeline or an
 213 extension."

214 **SECTION 4.**

215 Said title is further amended by adding a new Code section to read as follows:

216 "50-23-32.1.

217 (a) As used in this Code section, the term:

218 (1) 'Executive director' means the executive director of the Georgia Environmental
 219 Finance Authority.

220 (2) 'Existing petroleum pipeline' shall have the same meaning as set forth in Code
 221 Section 12-17-1.

222 (3) 'Extension' shall have the same meaning as set forth in Code Section 12-17-1.

223 (4) 'New petroleum pipeline' shall have the same meaning as set forth in Code
 224 Section 12-17-1.

225 (5) 'Petroleum pipeline' shall have the same meaning as set forth in Code
 226 Section 12-17-1.

227 (6) 'Petroleum pipeline company' shall have the same meaning as set forth in Code
 228 Section 12-17-1.

229 (b) On or after July 1, 2017, a petroleum pipeline company desiring to use the power of
230 eminent domain, granted under Article 4 of Chapter 3 of Title 22, to acquire property for
231 a new petroleum pipeline or an extension shall be required to obtain a certificate of need
232 from the executive director as provided in this Code section. No construction activity on
233 any portion of such new petroleum pipeline or any such extension shall occur unless and
234 until such certificate of need is obtained.

235 (c) Any application for a certificate of need shall contain, at a minimum, the following:

236 (1) Siting information, including, but not limited to, a map showing the proposed
237 location of the route of the new petroleum pipeline or of the proposed extension;

238 (2) Information as to the need for such proposed new petroleum pipeline or proposed
239 extension, including, but not limited to, what interests will be served by such proposed
240 new petroleum pipeline or proposed extension, the current demand, and the anticipated
241 future demand for petroleum in this state; and

242 (3) Any other information that the authority may require by rules and regulations.

243 (d) Within ten days of applying for a certificate of need, the applicant shall provide:

244 (1) Notice of the filing of an application under this Code section to all landowners whose
245 property may be condemned, purchased, or otherwise acquired for purposes of
246 constructing a new petroleum pipeline or for any extension; and

247 (2) Public notice in the legal organ of each county through which the proposed route of
248 the new petroleum pipeline or of the extension is to be located.

249 (e) In making a decision as to whether to grant a certificate of need, the executive director
250 shall determine after a hearing whether such proposed new petroleum pipeline or such
251 proposed extension is necessary in order to serve the best interests of this state in
252 accordance with the following factors:

253 (1) Whether petroleum pipelines currently within this state are adequate to meet the
254 reasonable public needs in this state;

255 (2) The volume of demand for petroleum in this state, and whether the present demand
256 and that reasonably to be anticipated in the future can be supported through petroleum
257 pipelines and other means of distribution currently within this state, if any;

258 (3) The benefit of the proposed additional supply of petroleum relative to the risks that
259 would be created; and

260 (4) Any other factors which the executive director deems relevant to the analysis of the
261 necessity for the proposed new petroleum pipeline or proposed extension.

262 (f)(1) As used in this Code section, the term 'aggrieved or adversely affected' means a
263 challenged action has caused or will cause persons injury in fact and where the injury is
264 to an interest within the zone of interests to be protected or regulated by the statutes that
265 the executive director is empowered to administer and enforce.

266 (2) Any person who is aggrieved or adversely affected by a decision or action of the
 267 executive director pursuant to this Code section shall, upon filing a petition within 30
 268 days after the issuance of such order or taking of such action, have a right to a hearing
 269 before an administrative law judge appointed by the authority. The hearing before the
 270 administrative law judge shall be conducted in accordance with Chapter 13 of this title,
 271 the 'Georgia Administrative Procedure Act.' The decision of the administrative law judge
 272 shall constitute the final decision of the executive director, and any party to the hearing,
 273 including the authority, shall have the right of judicial review thereof in accordance with
 274 Chapter 13 of this title, the 'Georgia Administrative Procedure Act.'

275 (3) In the event the executive director asserts in response to the petition before the
 276 administrative law judge that the petitioner is not aggrieved or adversely affected, the
 277 administrative law judge shall take evidence and hear arguments on this issue and
 278 thereafter make a ruling on same before continuing with the hearing. The burden of
 279 going forward with evidence on this issue shall rest with the petitioner.

280 (g) No later than July 1, 2018, the authority shall, pursuant to Chapter 13 of Title 50, the
 281 'Georgia Administrative Procedure Act,' promulgate such rules and regulations as are
 282 necessary and reasonable for purposes of enforcement of this Code section, which shall
 283 include, but may not be limited to, the following:

284 (1) The submission of a certificate of need application and provisions for the application
 285 review process, not to exceed 180 days in length;

286 (2) Provisions for a nonrefundable application fee which shall be sufficient to defray the
 287 administrative costs of review of the application by the authority;

288 (3) Reasonable public notice of the filing of an application of a permit to an owner of
 289 property who, after reasonable efforts, cannot personally be given the notice required in
 290 subsection (d) of this Code section; and

291 (4) Provisions for hearings on any action to be taken as to a certificate of need.

292 (h) No certificate of need shall be granted by the executive director prior to the
 293 promulgation of rules and regulations as provided for in this Code section."

294 **SECTION 5.**

295 For purposes of proposing rules and regulations, this Act shall become effective upon its
 296 approval by the Governor or upon its becoming law without such approval. For all other
 297 purposes, this Act shall become effective on July 1, 2017.

298 **SECTION 6.**

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