

The Senate Committee on Regulated Industries and Utilities offered the following substitute to HB 413:

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 12 and 22 of the Official Code of Georgia Annotated, relating to
2 conservation and natural resources and eminent domain, respectively, so as to provide for the
3 regulation and permitting of petroleum pipelines in this state; to provide for definitions; to
4 provide for the issuance of certain permits by the director of the Environmental Protection
5 Division of the Department of Natural Resources; to provide for appeals of the decision of
6 the director; to require certain notices; to provide for the Board of Natural Resources to
7 promulgate certain rules and regulations; to place conditions on the use of eminent domain
8 for new construction and extension of petroleum pipelines; to provide for the issuance of
9 certificates of public convenience and necessity by the commissioner of transportation under
10 certain circumstances; to provide for appeals of the decision of the commissioner of
11 transportation; to provide for the Department of Transportation to promulgate certain rules
12 and regulations; to provide for related matters; to provide for effective dates; to repeal
13 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) 'Expansion' means a modification to an existing petroleum pipeline within the
 29 existing easement or right of way that increases the supply of petroleum by:
 30 (A) Increasing the diameter of an existing petroleum pipeline; or
 31 (B) Constructing a parallel petroleum pipeline.
- 32 (6) 'Extension' means a modification to an existing petroleum pipeline that increases the
 33 length or footprint of the existing petroleum pipeline by a distance greater than one linear
 34 mile.
- 35 (7) 'Maintenance' means:
 36 (A) The care or upkeep of an existing petroleum pipeline and its appurtenances;
 37 (B) The replacement of an existing petroleum pipeline within the same easement or
 38 right of way; or
 39 (C) The relocation of an existing petroleum pipeline for repair within one linear mile
 40 of the existing petroleum pipeline's alignment.
- 41 (8) 'New petroleum pipeline' means a petroleum pipeline that was not constructed and in
 42 use prior to January 1, 2016. The term 'new petroleum pipeline' shall not include an
 43 expansion, an extension, or any maintenance.
- 44 (9) 'Parallel petroleum pipeline' means a petroleum pipeline that runs side by side to an
 45 existing petroleum pipeline.
- 46 (10) 'Petroleum pipeline' means a fixed conduit constructed to transport petroleum or
 47 petroleum products in or through this state.
- 48 (11) 'Petroleum pipeline company' means a corporation organized under the laws of this
 49 state or which is organized under the laws of another state and is authorized to do
 50 business in this state and which is specifically authorized by its charter or articles of
 51 incorporation to construct and operate petroleum pipelines for the transportation of
 52 petroleum and petroleum products.

53 12-17-2.

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

60 12-17-3.

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

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

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

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

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

71 (5) An environmental impact statement that contains the information described in 40
 72 C.F.R. Sections 1502.12 through 1502.18 as such provisions existed on January 1, 2017,
 73 to the extent required by rules and regulations of the board;

74 (6) Evidence of financial responsibility by the petroleum pipeline company; and

75 (7) Any other information that the board may require by rules and regulations.

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

77 (1) Public notice in the legal organ of each county through which the proposed route of
 78 the new petroleum pipeline or of the extension is to be located; and

79 (2) Written notice of the filing of an application under this Code section to all
 80 landowners whose property is located within 1,000 feet of the proposed route of the new
 81 petroleum pipeline or of the extension. Such notice shall be delivered to each landowner
 82 and contain the following language in boldface type:

83 'YOUR PROPERTY IS LOCATED WITHIN 1,000 FEET OF A PROPOSED
 84 PETROLEUM PIPELINE FOR WHICH AN APPLICATION FOR A PERMIT HAS
 85 BEEN FILED PURSUANT TO CHAPTER 17 OF TITLE 12 OF THE OFFICIAL
 86 CODE OF GEORGIA ANNOTATED. SAID CHAPTER ALONG WITH ARTICLE
 87 4 OF CHAPTER 3 OF TITLE 22 OF THE OFFICIAL CODE OF GEORGIA
 88 ANNOTATED PROVIDE SPECIFIC REQUIREMENTS WHICH MUST BE
 89 FOLLOWED BY PETROLEUM PIPELINE COMPANIES BEFORE THEY MAY
 90 BUILD A NEW PETROLEUM PIPELINE OR MODIFY AN EXISTING
 91 PETROLEUM PIPELINE. THESE PROVISIONS OF THE OFFICIAL CODE OF
 92 GEORGIA ANNOTATED ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR
 93 PROTECTION. YOU SHOULD FAMILIARIZE YOURSELF WITH THOSE
 94 REQUIREMENTS AND YOUR RIGHTS.'

95 12-17-4.

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

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

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

105 (3) Alternative alignments to the proposed new petroleum pipeline or the proposed
106 extension;

107 (4) Public comment, specifically including, but not limited to, comment by the governing
108 body of any municipality or county within which the proposed petroleum pipeline or the
109 extension or any part thereof is to be located; and

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

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

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

118 (d) For any new petroleum pipeline or any extension that utilizes eminent domain, no
119 permit shall be issued under this Code section unless and until the applicant has been issued
120 a certificate of public convenience and necessity by the commissioner of transportation as
121 provided in Code Section 22-3-83.

122 12-17-5.

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

127 (b) Any person who is aggrieved or adversely affected by a decision or action of the
128 director under this chapter shall, upon filing a petition within 30 days after the issuance of
129 such order or taking of such action, have a right to a hearing before an administrative law
130 judge appointed by the board. The hearing before the administrative law judge shall be

131 conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
 132 Procedure Act.' The decision of the administrative law judge shall constitute the final
 133 decision of the director, and any party to the hearing, including the department, shall have
 134 the right of judicial review thereof in accordance with Chapter 13 of Title 50, the 'Georgia
 135 Administrative Procedure Act.'

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

141 12-17-6.

142 (a) No later than July 1, 2018, the board shall, pursuant to Chapter 13 of Title 50, the
 143 'Georgia Administrative Procedure Act,' promulgate such rules and regulations as are
 144 necessary and reasonable for purposes of enforcement of this chapter, which shall include,
 145 but may not be limited to:

146 (1) The submission of a permit application and provisions for the application review
 147 process, not to exceed 150 days in length;

148 (2) Provisions for a nonrefundable application fee which shall be sufficient to defray the
 149 administrative costs of review of the application by the division and of the costs to the
 150 division of monitoring and inspection of compliance with any such permit that may be
 151 issued;

152 (3) Reasonable public notice of the filing of an application of a permit to a landowner
 153 who, after reasonable efforts, cannot personally be given the notice required in subsection
 154 (b) of Code Section 12-17-3;

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

156 (5) Evidence of financial responsibility as required by paragraph (6) of subsection (a) of
 157 Code Section 12-17-3.

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

160 **SECTION 2.**

161 Title 22 of the Official Code of Georgia Annotated, relating to eminent domain, is amended
 162 in Chapter 3, relating to the exercise of power of eminent domain for special purposes, by
 163 repealing Article 4, relating to the construction, operation, etc., of petroleum pipelines, and
 164 enacting a new Article 4 to read as follows:

"ARTICLE 4

165

166 22-3-80.167 As used in this article, the term:168 (1) 'Existing petroleum pipeline' shall have the same meaning as set forth in Code
169 Section 12-17-1.170 (2) 'Expansion' shall have the same meaning as set forth in Code Section 12-17-1.171 (3) 'Extension' shall have the same meaning as set forth in Code Section 12-17-1.172 (4) 'Maintenance' shall have the same meaning as set forth in Code Section 12-17-1.173 (5) 'New petroleum pipeline' shall have the same meaning as set forth in Code Section
174 12-17-1.175 (6) 'Parallel petroleum pipeline' shall have the same meaning as set forth in Code Section
176 12-17-1.177 (7) 'Petroleum pipeline' shall have the same meaning as set forth in Code
178 Section 12-17-1.179 (8) 'Petroleum pipeline company' shall have the same meaning as set forth in
180 Code Section 12-17-1.181 22-3-81.182 Subject to the provisions, conditions, and restrictions of this article, petroleum pipeline
183 companies are granted the power to acquire property or interests in property by eminent
184 domain for the purpose of an expansion, an extension, maintenance, or construction of a
185 new petroleum pipeline.186 22-3-82.187 (a) A petroleum pipeline company shall not exercise the power of eminent domain granted
188 in Code Section 22-3-81 for the purpose of constructing a new petroleum pipeline or for
189 an extension unless and until a certificate of public convenience and necessity is issued by
190 the commissioner of transportation as provided in Code Section 22-3-83 and a permit is
191 issued by the director of the Environmental Protection Division of the Department of
192 Natural Resources as provided in Chapter 17 of Title 12.193 (b) No certificate of public convenience and necessity or permit as provided in Code
194 Section 22-3-83 shall be required of a petroleum pipeline company that is:195 (1) Not exercising the power of eminent domain to acquire property; or196 (2) Exercising the power of eminent domain for the purpose of maintenance or
197 expansion.

198 22-3-83.

199 (a) On or after July 1, 2017, a petroleum pipeline company desiring to use the power of
 200 eminent domain as granted under this article to acquire property for a new petroleum
 201 pipeline or an extension shall be required to obtain a certificate of public convenience and
 202 necessity from the commissioner of transportation as provided in this Code section prior
 203 to beginning any construction activity on any portion of such new petroleum pipeline or
 204 any such extension.

205 (b) Any application for a certificate of public convenience and necessity shall contain, at
 206 a minimum:

207 (1) A description of the proposed project together with its siting information, including,
 208 but not limited to, a map showing the proposed location of the route of the new petroleum
 209 pipeline or of the proposed extension;

210 (2) A description of the public convenience and necessity that support the proposed
 211 location of the route of the new petroleum pipeline or of the proposed extension;

212 (3) The width of the proposed petroleum pipeline corridor up to a maximum width of
 213 one-third mile;

214 (4) A showing that the use of the power of eminent domain may be necessary for
 215 construction of the new petroleum pipeline or for the proposed extension;

216 (5) A showing that the public convenience and necessity for the petroleum pipeline
 217 justifies the use of the power of eminent domain; and

218 (6) Any other information that the Department of Transportation may require by rules
 219 and regulations.

220 (c) Within ten days of applying for a certificate of public convenience and necessity, the
 221 applicant shall provide:

222 (1) Public notice in the legal organ of each county through which the proposed route of
 223 the new petroleum pipeline or of the extension is to be located; and

224 (2) Written notice of the filing of an application under this Code section to all
 225 landowners whose property is located within 1,000 feet of the proposed route of the new
 226 petroleum pipeline or of the extension. Such notice shall be delivered to each landowner
 227 and contain the following language in boldface type:

228 'YOUR PROPERTY IS LOCATED WITHIN 1,000 FEET OF A PROPOSED
 229 PETROLEUM PIPELINE FOR WHICH AN APPLICATION FOR A CERTIFICATE
 230 OF PUBLIC CONVENIENCE AND NECESSITY HAS BEEN FILED PURSUANT
 231 TO ARTICLE 4 OF CHAPTER 3 OF TITLE 22 OF THE OFFICIAL CODE OF
 232 GEORGIA ANNOTATED. SAID ARTICLE ALONG WITH CHAPTER 17 OF
 233 TITLE 12 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED PROVIDE
 234 SPECIFIC REQUIREMENTS WHICH MUST BE FOLLOWED BY PETROLEUM

235 PIPELINE COMPANIES BEFORE THEY MAY BUILD A NEW PETROLEUM
 236 PIPELINE OR MODIFY AN EXISTING PETROLEUM PIPELINE. THESE
 237 PROVISIONS OF THE OFFICIAL CODE OF GEORGIA ANNOTATED ALSO
 238 PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU SHOULD
 239 FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND YOUR
 240 RIGHTS.'

241 (d) All landowners subject to notice pursuant to subsection (c) of this Code section may
 242 intervene in the certificate of public convenience and necessity administrative process by
 243 filing with the Department of Transportation a notice of intervention, which shall include:

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

246 (2) A copy of the notice pursuant to subsection (c) of this Code section received by the
 247 intervenor; and

248 (3) The intervenor's arguments and evidence in support thereof showing that the use of
 249 the power of eminent domain is not justified for the new petroleum pipeline or for the
 250 new extension that is the subject of the application for the certificate of public
 251 convenience and necessity.

252 (e) The applicant shall bear the burden of proof to demonstrate that the commissioner of
 253 transportation should issue a certificate of public convenience and necessity as provided
 254 under this Code section. The decision to issue or deny a certificate of public convenience
 255 and necessity shall be based on the record before the commissioner of transportation, which
 256 shall include, but not be limited to, the applicant's submissions, any documents submitted
 257 to the Department of Transportation pursuant to subsection (d) of this Code section, and
 258 research the commissioner of transportation may conduct in analyzing the application.

259 (f) The issuance or denial of a certificate of public convenience and necessity may be
 260 reviewed by a judge of the superior court of the county in which the pipeline company has
 261 an agent and place of doing business. The review shall be by petition filed within 30 days
 262 of the date of approval or disapproval of the application and shall be determined on the
 263 basis of the record before the commissioner of transportation. The action of the
 264 commissioner of transportation shall be affirmed if supported by substantial evidence.

265 (g)(1) No later than July 1, 2018, the Department of Transportation shall, pursuant to
 266 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' promulgate such rules
 267 and regulations as are necessary and reasonable for purposes of enforcement of this Code
 268 section, which shall include, but may not be limited to:

269 (A) The submission of an application for a certificate of public convenience and
 270 necessity and provisions for the application review process, not to exceed 150 days in
 271 length;

272 (B) Provisions for a nonrefundable application fee which shall be sufficient to defray
 273 the administrative costs of review of the application by the Department of
 274 Transportation;

275 (C) Reasonable public notice of the filing of an application for a certificate of public
 276 convenience and necessity to a landowner who, after reasonable efforts, cannot
 277 personally be given the notice required in subsection (c) of this Code section; and

278 (D) Provisions for a hearing on any action to be taken as a result of the filing of an
 279 application for a certificate of public convenience and necessity and for the intervention
 280 provided in subsection (d) of this Code section.

281 (2) No certificate of public convenience and necessity shall be granted by the
 282 commissioner of transportation prior to the promulgation of rules and regulations as
 283 provided for in this subsection.

284 22-3-84.

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

288 'CHAPTER 17 OF TITLE 12 AND ARTICLE 4 OF CHAPTER 3 OF TITLE 22 OF THE
 289 OFFICIAL CODE OF GEORGIA ANNOTATED PROVIDE SPECIFIC
 290 REQUIREMENTS WHICH MUST BE FOLLOWED BY PETROLEUM PIPELINE
 291 COMPANIES BEFORE THEY MAY EXERCISE THE RIGHT TO CONDEMN YOUR
 292 PROPERTY. THOSE PROVISIONS OF THE OFFICIAL CODE OF GEORGIA
 293 ANNOTATED ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION.
 294 YOU SHOULD FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND
 295 YOUR RIGHTS PRIOR TO CONTINUING NEGOTIATIONS CONCERNING THE
 296 SALE OF YOUR PROPERTY TO A PETROLEUM PIPELINE COMPANY.'

297 22-3-85.

298 When a petroleum pipeline company that has met all the requirements of this article is
 299 unable to acquire the property or interest required for the purpose of an expansion, an
 300 extension, maintenance, or construction of a new petroleum pipeline, after reasonable
 301 negotiation with the owner of such property or interest, the petroleum pipeline company
 302 may acquire such property or interest by the use of the condemnation procedures
 303 authorized by Chapter 2 of this title."

304

SECTION 3.

305

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

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307

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SECTION 4.

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