

**ADOPTED**

Representatives Parsons of the 44<sup>th</sup>, Burns of the 159<sup>th</sup>, and Hitchens of the 161<sup>st</sup> offer the following amendment:

1 *Amend the Senate substitute to HB 413 by deleting lines 1 to the end and inserting in lieu*  
2 *thereof the following:*

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

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

17 **SECTION 1.**

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

20 "CHAPTER 17

21 12-17-1.

22 As used in this chapter, the term:

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

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

26 (3) 'Division' means the Environmental Protection Division within the Department of  
27 Natural Resources.

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

30 (5) 'Expansion' means a modification to an existing petroleum pipeline within the  
31 existing easement or right of way that increases the supply of petroleum by:

32 (A) Increasing the diameter of an existing petroleum pipeline; or

33 (B) Constructing a parallel petroleum pipeline.

34 (6) 'Extension' means a modification to an existing petroleum pipeline that increases the  
35 length or footprint of the existing petroleum pipeline by a distance greater than one linear  
36 mile.

37 (7) 'Maintenance' means:

38 (A) The care or upkeep of an existing petroleum pipeline and its appurtenances;

39 (B) The replacement of an existing petroleum pipeline within the same easement or  
40 right of way; or

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

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

46 (9) 'Parallel petroleum pipeline' means a petroleum pipeline that runs side by side to an  
47 existing petroleum pipeline.

48 (10) 'Petroleum pipeline' means a fixed conduit constructed to transport petroleum or  
49 petroleum products in or through this state.

50 (11) 'Petroleum pipeline company' means a corporation organized under the laws of this  
51 state or which is organized under the laws of another state and is authorized to do  
52 business in this state and which is specifically authorized by its charter or articles of  
53 incorporation to construct and operate petroleum pipelines for the transportation of  
54 petroleum and petroleum products.

55 12-17-2.

56 On or after July 1, 2017, any construction of a new petroleum pipeline or an extension in  
57 this state shall require a permit from the director as provided in this chapter. 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. Such permit shall be required without  
60 regard to whether the petroleum pipeline company intends to exercise any power of  
61 eminent domain pursuant to Article 4 of Chapter 3 of Title 22 and shall be in addition to  
62 any other permits or authorization required under this title or any other provision of state  
63 or federal law.

64 12-17-3.

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

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

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

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

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

75 (5) Environmental information described in 40 C.F.R. Sections 1502.12 through 1502.18  
 76 as such provisions existed on January 1, 2017, to the extent required by rules and  
 77 regulations of the board;

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

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

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

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

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

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

99 12-17-4.

100 (a) In making the decision as to whether to grant any permits required by this chapter, the  
101 director shall determine whether the portion of the petroleum pipeline for which the permit  
102 is sought is consistent with and not an undue hazard to the environment and natural  
103 resources of this state after consideration of the following factors:

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

106 (2) The direct environmental impacts of the proposed new petroleum pipeline or the  
107 proposed extension;

108 (3) Alternative alignments to the proposed new petroleum pipeline or the proposed  
109 extension;

110 (4) Public comment; and

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

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

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

119 12-17-5.

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

124 (b) Any person who is aggrieved or adversely affected by a decision or action of the  
125 director under this chapter shall, upon filing a petition within 30 days after the issuance of  
126 such order or taking of such action, have a right to a hearing before an administrative law  
127 judge appointed by the board. The hearing before the administrative law judge shall be  
128 conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative  
129 Procedure Act.' The decision of the administrative law judge shall constitute the final  
130 decision of the director, and any party to the hearing, including the department, shall have  
131 the right of judicial review thereof in accordance with Chapter 13 of Title 50, the 'Georgia  
132 Administrative Procedure Act.'

133 (c) In the event the director asserts in response to the petition before the administrative law  
134 judge that the petitioner is not aggrieved or adversely affected, the administrative law judge

135 shall take evidence and hear arguments on this issue and thereafter make a ruling on same  
 136 before continuing with the hearing. The burden of going forward with evidence on this  
 137 issue shall rest with the petitioner.

138 12-17-6.

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

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

145 (2) Provisions for a nonrefundable application fee which shall be sufficient to defray the  
 146 administrative costs of review of the application by the division;

147 (3) Reasonable public notice of the filing of permit applications to any landowner who,  
 148 after reasonable efforts, cannot personally be given the notice required in subsection (b)  
 149 of Code Section 12-17-3;

150 (4) Provisions for public meetings to be held prior to any action on any permits; and

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

153 (b) No permit shall be granted by the division prior to the promulgation of rules and  
 154 regulations as provided for in this Code section; provided, however, that once such rules  
 155 and regulations have been promulgated and applications are accepted for filing, if any  
 156 application is not approved or is denied within 150 days of the date such application is filed  
 157 with the division under Code Section 12-17-3, the application shall be deemed to be  
 158 approved by operation of law."

159 **SECTION 2.**

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

164 "ARTICLE 4

165 22-3-80.

166 As used in this article, the term:

- 167        (1) 'Existing petroleum pipeline' shall have the same meaning as set forth in Code  
 168        Section 12-17-1.
- 169        (2) 'Expansion' shall have the same meaning as set forth in Code Section 12-17-1.
- 170        (3) 'Extension' shall have the same meaning as set forth in Code Section 12-17-1.
- 171        (4) 'Maintenance' shall have the same meaning as set forth in Code Section 12-17-1.
- 172        (5) 'New petroleum pipeline' shall have the same meaning as set forth in Code Section  
 173        12-17-1.
- 174        (6) 'Parallel petroleum pipeline' shall have the same meaning as set forth in Code Section  
 175        12-17-1.
- 176        (7) 'Petroleum pipeline' shall have the same meaning as set forth in Code  
 177        Section 12-17-1.
- 178        (8) 'Petroleum pipeline company' shall have the same meaning as set forth in  
 179        Code Section 12-17-1.

180        22-3-81.

181        Subject to the provisions, conditions, and restrictions of this article, petroleum pipeline  
 182        companies are granted the power to acquire property or interests in property by eminent  
 183        domain for the purpose of an expansion, an extension, maintenance, or construction of a  
 184        new petroleum pipeline.

185        22-3-82.

186        (a) A petroleum pipeline company shall not exercise the power of eminent domain granted  
 187        in Code Section 22-3-81 for the purpose of constructing a new petroleum pipeline or for  
 188        an extension unless and until a certificate of public convenience and necessity is issued by  
 189        the commissioner of transportation as provided in Code Section 22-3-83 and a permit is  
 190        issued by the director of the Environmental Protection Division of the Department of  
 191        Natural Resources as provided in Chapter 17 of Title 12.

192        (b) No certificate of public convenience and necessity or permit as provided in Code  
 193        Section 22-3-83 shall be required of a petroleum pipeline company that is:

194        (1) Not exercising the power of eminent domain to acquire property; or

195        (2) Exercising the power of eminent domain for the purpose of maintenance or  
 196        expansion.

197        22-3-83.

198        (a) On or after July 1, 2017, a petroleum pipeline company desiring to use the power of  
 199        eminent domain granted under this article to acquire property for a new petroleum pipeline

200 or an extension shall be required to obtain a certificate of public convenience and necessity  
 201 from the commissioner of transportation as provided in this Code section.

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

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

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

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

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

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

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

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

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

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

225 'YOUR PROPERTY IS LOCATED WITHIN THE PROPOSED ROUTE OF A  
 226 PETROLEUM PIPELINE FOR WHICH AN APPLICATION FOR A CERTIFICATE  
 227 OF PUBLIC CONVENIENCE AND NECESSITY HAS BEEN FILED PURSUANT  
 228 TO ARTICLE 4 OF CHAPTER 3 OF TITLE 22 OF THE OFFICIAL CODE OF  
 229 GEORGIA ANNOTATED. SAID ARTICLE ALONG WITH CHAPTER 17 OF  
 230 TITLE 12 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED PROVIDE  
 231 SPECIFIC REQUIREMENTS WHICH MUST BE FOLLOWED BY PETROLEUM  
 232 PIPELINE COMPANIES BEFORE THEY MAY BUILD A NEW PETROLEUM  
 233 PIPELINE OR MODIFY AN EXISTING PETROLEUM PIPELINE. THESE  
 234 PROVISIONS OF THE OFFICIAL CODE OF GEORGIA ANNOTATED ALSO  
 235 PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU SHOULD

236 FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND YOUR  
237 RIGHTS.'

238 (d)(1) In making a decision as to whether to grant a certificate of public convenience and  
239 necessity, the commissioner of transportation shall consider the following:

240 (A) Whether existing petroleum pipelines or distribution systems are adequate to meet  
241 the reasonable public needs;

242 (B) The volume of demand for such petroleum, and whether such demand and that  
243 reasonably to be anticipated in the future can support already existing petroleum  
244 pipelines and distribution systems, if any, and also the petroleum pipeline or  
245 distribution system proposed by the applicant;

246 (C) The financial ability of the applicant to furnish adequate continuous service and to  
247 meet the financial obligations of the service which the applicant proposes to perform;

248 (D) The adequacy of the supply of petroleum to serve the public;

249 (E) The economic feasibility of the petroleum pipeline or distribution system and the  
250 propriety of the engineering and contracting fees, the expenses, and the financing  
251 charges and costs connected with the petroleum pipeline or distribution system; and

252 (F) The effect on existing revenues and service of other petroleum pipelines or  
253 distribution systems, and particularly whether the granting of such certificate of public  
254 convenience and necessity will or may seriously impair existing public service.

255 (2) This subsection shall not be construed as exhaustively describing all factors which  
256 the commissioner of transportation may consider in his or her decision to grant or deny  
257 a certificate of public convenience and necessity.

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

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

271 (g)(1) No later than July 1, 2018, the Department of Transportation shall, pursuant to  
272 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' promulgate such rules

273 and regulations as are necessary and reasonable for purposes of enforcement of this Code  
 274 section, which shall include, but may not be limited to:

275 (A) The submission of an application for a certificate of public convenience and  
 276 necessity and provisions for the application review process, not to exceed 120 days in  
 277 length;

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

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

284 (D) Provisions for public meetings to be held prior to any action on any certificates of  
 285 public convenience and necessity.

286 (2) No certificate of public convenience and necessity shall be granted by the  
 287 commissioner of transportation prior to the promulgation of rules and regulations as  
 288 provided for in this subsection; provided, however, that once such rules and regulations  
 289 have been promulgated and applications are accepted for filing, if any application is not  
 290 approved or is denied within 120 days of the date such application is filed with the  
 291 Department of Transportation under this Code section, the application shall be deemed  
 292 to be approved by operation of law.

293 22-3-84.

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

297 'CHAPTER 17 OF TITLE 12 AND ARTICLE 4 OF CHAPTER 3 OF TITLE 22 OF THE  
 298 OFFICIAL CODE OF GEORGIA ANNOTATED PROVIDE SPECIFIC  
 299 REQUIREMENTS WHICH MUST BE FOLLOWED BY PETROLEUM PIPELINE  
 300 COMPANIES BEFORE THEY MAY EXERCISE THE RIGHT TO CONDEMN YOUR  
 301 PROPERTY. THOSE PROVISIONS OF THE OFFICIAL CODE OF GEORGIA  
 302 ANNOTATED ALSO PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION.  
 303 YOU SHOULD FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND  
 304 YOUR RIGHTS PRIOR TO CONTINUING NEGOTIATIONS CONCERNING THE  
 305 SALE OF YOUR PROPERTY TO A PETROLEUM PIPELINE COMPANY.'

306 22-3-85.  
307 When a petroleum pipeline company that has met all the requirements of this article is  
308 unable to acquire the property or interest required for the purpose of an expansion, an  
309 extension, maintenance, or construction of a new petroleum pipeline, after reasonable  
310 negotiation with the owner of such property or interest, the petroleum pipeline company  
311 may acquire such property or interest by the use of the condemnation procedures  
312 authorized by Chapter 2 of this title."

313 **SECTION 3.**

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

317 **SECTION 4.**

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