

House Bill 413 (AS PASSED HOUSE AND SENATE)

By: Representatives Parsons of the 44<sup>th</sup> and Burns of the 159<sup>th</sup>

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 require certain notices; to provide for the Department of Transportation to  
12 promulgate certain rules and regulations; to provide for related matters; to provide for  
13 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) '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. No  
 56 construction activity on any portion of a new petroleum pipeline or any extension shall  
 57 occur unless and until such permit is obtained. Such permit shall be required without  
 58 regard to whether the petroleum pipeline company intends to exercise any power of  
 59 eminent domain pursuant to Article 4 of Chapter 3 of Title 22 and shall be in addition to

60 any other permits or authorization required under this title or any other provision of state  
 61 or federal law.

62 12-17-3.

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

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

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

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

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

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

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

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

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

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

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

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

95 PROTECTION. YOU SHOULD FAMILIARIZE YOURSELF WITH THOSE  
96 REQUIREMENTS AND YOUR RIGHTS.'

97 12-17-4.

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

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

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

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

108 (4) Public comment; and

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

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

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

117 12-17-5.

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

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

129 the right of judicial review thereof in accordance with Chapter 13 of Title 50, the 'Georgia  
 130 Administrative Procedure Act.'  
 131 (c) In the event the director asserts in response to the petition before the administrative law  
 132 judge that the petitioner is not aggrieved or adversely affected, the administrative law judge  
 133 shall take evidence and hear arguments on this issue and thereafter make a ruling on same  
 134 before continuing with the hearing. The burden of going forward with evidence on this  
 135 issue shall rest with the petitioner.

136 12-17-6.

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

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

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

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

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

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

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

157 **SECTION 2.**

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

162 "ARTICLE 4

163 22-3-80.

164 As used in this article, the term:

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

167 (2) 'Expansion' shall have the same meaning as set forth in Code Section 12-17-1.

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

169 (4) 'Maintenance' shall have the same meaning as set forth in Code Section 12-17-1.

170 (5) 'New petroleum pipeline' shall have the same meaning as set forth in Code Section  
 171 12-17-1.

172 (6) 'Parallel petroleum pipeline' shall have the same meaning as set forth in Code Section  
 173 12-17-1.

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

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

178 22-3-81.

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

183 22-3-82.

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

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

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

193 (2) Exercising the power of eminent domain for the purpose of maintenance or  
 194 expansion.

195 22-3-83.

196 (a) On or after July 1, 2017, a petroleum pipeline company desiring to use the power of  
 197 eminent domain granted under this article to acquire property for a new petroleum pipeline  
 198 or an extension shall be required to obtain a certificate of public convenience and necessity  
 199 from the commissioner of transportation as provided in this Code section.

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

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

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

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

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

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

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

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

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

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

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

232 PROVISIONS OF THE OFFICIAL CODE OF GEORGIA ANNOTATED ALSO  
 233 PROVIDE SPECIFIC RIGHTS FOR YOUR PROTECTION. YOU SHOULD  
 234 FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND YOUR  
 235 RIGHTS.'

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

291 22-3-84.

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

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

304 22-3-85.  
305 When a petroleum pipeline company that has met all the requirements of this article is  
306 unable to acquire the property or interest required for the purpose of an expansion, an  
307 extension, maintenance, or construction of a new petroleum pipeline, after reasonable  
308 negotiation with the owner of such property or interest, the petroleum pipeline company  
309 may acquire such property or interest by the use of the condemnation procedures  
310 authorized by Chapter 2 of this title."

311 **SECTION 3.**

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

315 **SECTION 4.**

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