

Senate Bill 191

By: Senators Jeffares of the 17th, Hill of the 4th, Stone of the 23rd, Watson of the 1st, Ligon, Jr. of the 3rd and others

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 construction, expansion, and extension of petroleum pipelines; to
9 provide for the issuance of certificates of need by the Georgia Environmental Finance
10 Authority; to provide for appeals of the decision of the executive director; to provide for
11 related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

16 style="text-align:center">"CHAPTER 17

17 12-17-1.

18 As used in this chapter, the term:

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

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

22 (3) 'Division' means the Environmental Protection Division within the Department of
23 Natural Resources.

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

26 (5) 'Expansion' means a modification to an existing petroleum pipeline within the
 27 existing easement that increases the supply of petroleum by:

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

29 (B) Constructing a parallel petroleum pipeline.

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

33 (7) 'Maintenance' means:

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

35 (B) The replacement of an existing petroleum pipeline within the same easement; or

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

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

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

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

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

50 12-17-2.

51 (a) On or after July 1, 2017, any construction of a new petroleum pipeline, any expansion
 52 or an extension this state shall require a permit from the director as provided in this chapter.

53 Such permit shall be required without regard to whether the petroleum pipeline company
 54 intends to exercise any power of eminent domain pursuant to Part 1 of Article 4 of
 55 Chapter 3 of Title 22. No construction activity on any portion of a new petroleum pipeline
 56 or any such expansion or extension shall occur unless and until such permit is obtained;
 57 provided, however, that no permit shall be issued for any new petroleum pipeline or any
 58 such expansion or extension within 50 miles of the presence of a salt marsh.

59 (b) No permit from the director as provided in this chapter shall be required for a
60 petroleum pipeline company to perform maintenance.

61 12-17-3.

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

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

66 (2) Information obtained from a cultural resource assessment, including, but not limited
67 to, historical properties and archaeological interests along the proposed route of the new
68 petroleum pipeline or of the expansion or extension;

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

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

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

75 (b) Within five days of applying for a permit, the applicant shall provide notice of the
76 filing of an application under this Code section to all landowners whose property may be
77 condemned, purchased, or otherwise acquired for purposes of constructing a new petroleum
78 pipeline or for any expansion or extension.

79 12-17-4.

80 (a) In making the decision as to whether to grant the permit required by this chapter, the
81 director shall determine after a hearing whether the location and construction of the portion
82 of the petroleum pipeline for which the permit is sought are consistent with and not an
83 undue hazard to the environment and natural resources of this state in accordance with the
84 following factors:

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

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

89 (3) Alternatives to the proposed new petroleum pipeline or the proposed expansion or
90 extension, including denial of the permit;

91 (4) Whether the proposed route of the new petroleum pipeline or the expansion or
92 extension is the least damaging environmental alternative;

93 (5) That ample opportunity has been afforded for public comment, specifically including,
 94 but not limited to, comment by the governing body of any municipality or county within
 95 which the proposed petroleum pipeline, the expansion, or the extension, or any part
 96 thereof is to be located;

97 (6) Additional protection measures for areas included within the Georgia coastal zone
 98 management program and other areas that could impact water supplies and withdrawals,
 99 including, but not limited to, areas that are considered as significant ground-water
 100 recharge areas; and

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

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

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

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

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

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

116 (d) 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 statutes that the
 123 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 shall pursuant to this chapter, upon filing a petition within 30 days after the
 126 issuance of such order or taking of such action, have a right to a hearing before an
 127 administrative law judge appointed by the board. The hearing before the administrative
 128 law judge shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia

129 Administrative Procedure Act.' The decision of the administrative law judge shall
 130 constitute the final decision of the director, and any party to the hearing, including the
 131 department, shall have the right of judicial review thereof in accordance with Chapter 13
 132 of Title 50, the 'Georgia 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 December 31, 2017, the board shall, pursuant to Chapter 13 of Title 50,
 140 the '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, the following:

143 (1) The submission of a permit application:

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

147 (3) Provisions for hearings on all permit applications; and

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

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

152 **SECTION 2.**

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

156 "Part 1

157 22-3-80.

158 As used in this part, the term:

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

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

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

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

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

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

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

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

172 22-3-81.

173 Subject to the provisions, conditions, and restrictions of this part, petroleum pipeline
174 companies are granted the power to acquire property or interests in property by eminent
175 domain for the purpose of constructing, modifying, or maintaining petroleum pipelines.

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 expansion or extension unless and until a permit is issued by the director of the
180 Environmental Protection Division of the Department of Natural Resources as provided in
181 Chapter 17 of Title 12 and a certificate of need is issued by the executive director of the
182 Georgia Environmental Finance Authority as provided in Code Section 50-23-32.1. No
183 such permit or certificate of need shall be required of a petroleum pipeline company
184 exercising the power of eminent domain for the purpose of maintenance.

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 modifications to an existing petroleum
 201 pipeline after reasonable negotiation with the owner of such property or interest, the
 202 petroleum pipeline company may acquire such property or interest by the use of the
 203 condemnation procedures authorized by Chapter 2 of this title.

204 22-3-85.

205 If any portion of the petroleum pipeline route chosen and approved for a permit or
 206 certificate of need pursuant to Code Section 22-3-82, Chapter 17 of Title 12, or Code
 207 Section 50-23-32.1 unreasonably impacts any other property of the same owner which is
 208 not acquired by eminent domain as a part of such portion of the project, there shall be a
 209 right of compensation available under the laws of eminent domain for the fair market value
 210 of any such damage upon the trial of the case of the parcel taken."

211 **SECTION 3.**

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

217 "(14) Review and consider applications for the issuance of a certificate of need to a
 218 petroleum pipeline company for the construction of a new petroleum pipeline or an
 219 expansion or extension."

220 **SECTION 4.**

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

222 "50-23-32.1.

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

224 (1) 'Executive director' means the executive director of the Georgia Environmental
 225 Finance Authority.

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

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

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

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

231 (6) 'New petroleum pipeline' shall have the same meaning as set forth in Code Section
 232 12-17-1.

233 (7) 'Parallel petroleum pipeline' shall have the same meaning as set forth in Code
 234 Section 12-17-1.

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

237 (9) 'Petroleum pipeline company' shall have the same meaning as set forth in Code
 238 Section 12-17-1.

239 (b) On or after July 1, 2017, a petroleum pipeline company desiring to use the power of
 240 eminent domain, granted under Article 4 of Chapter 3 of Title 22, to acquire property for
 241 a new petroleum pipeline or an expansion or extension shall be required to obtain a
 242 certificate of need from the executive director as provided in this Code section. No
 243 construction activity on any portion of such new petroleum pipeline or any such expansion
 244 or extension shall occur unless and until such certificate of need is obtained; provided,
 245 however, that no certificate of need shall be issued for any new petroleum pipeline or any
 246 such expansion or extension within 50 miles of the presence of a salt marsh. No certificate
 247 of need from the executive director as provided in this Code section shall be required for
 248 a petroleum pipeline company to perform maintenance.

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

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

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

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

257 (d) In making a decision as to whether to grant a certificate of need, the executive director
 258 shall determine after a hearing whether such proposed new petroleum pipeline or such
 259 proposed expansion or extension is necessary in order to serve the best interests of this state
 260 in accordance with the following factors:

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

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

266 (3) The adequacy of the supply of petroleum to serve the public in this state; and
 267 (4) Any other factors which the executive director deems relevant to the analysis of the
 268 necessity for the proposed new petroleum pipeline or proposed expansion or extension.
 269 (e)(1) As used in this Code section, the term 'aggrieved or adversely affected' means a
 270 challenged action has caused or will cause persons injury in fact and where the injury is
 271 to an interest within the zone of interests to be protected or regulated by the statutes that
 272 the executive director is empowered to administer and enforce.
 273 (2) Any person who is aggrieved or adversely affected by a decision or action of the
 274 executive director pursuant to this Code section shall, upon filing a petition within 30
 275 days after the issuance of such order or taking of such action, have a right to a hearing
 276 before an administrative law judge appointed by the authority. The hearing before the
 277 administrative law judge shall be conducted in accordance with Chapter 13 of this title,
 278 the 'Georgia Administrative Procedure Act.' The decision of the administrative law judge
 279 shall constitute the final decision of the executive director, and any party to the hearing,
 280 including the department, shall have the right of judicial review thereof in accordance
 281 with Chapter 13 of this title, the 'Georgia Administrative Procedure Act.'
 282 (3) In the event the executive director asserts in response to the petition before the
 283 administrative law judge that the petitioner is not aggrieved or adversely affected, the
 284 administrative law judge shall take evidence and hear arguments on this issue and
 285 thereafter make a ruling on same before continuing with the hearing. The burden of
 286 going forward with evidence on this issue shall rest with the petitioner.
 287 (f) No certificate of need shall be issued under this Code section unless and until the
 288 applicant has been issued a permit by the director of the Environmental Protection Division
 289 of the Department of Natural Resources as provided in Chapter 17 of Title 12."

290 **SECTION 5.**

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

294 **SECTION 6.**

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