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EMINENT DOMAIN AND UTILITIES Condemnation Procedures: Change the Time for Hearing Before a Special Master and to Require Notice by Certified Mail in Condemnations for Certain Purposes; Prohibit the Use of the Power of Eminent Domain to Acquire Any Property for the Construction of Certain Electric Transmission Lines Without Prior Public Notice and One or More Public Meetings with an Opportunity for Comment or Questions; Provide for Exceptions; Provide for Factors to Be Considered in Selecting a Route for Electric Transmission Lines; Provide Procedures for Good Faith Negotiations; Provide

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EMINENT DOMAIN AND UTILITIES

Condemnation Procedures: Change the Time for Hearing Before a Special Master and to Require Notice by Certified Mail in Condemnations for Certain Purposes; Prohibit the Use of the Power of Eminent Domain to Acquire Any Property for the Construction of Certain Electric Transmission Lines Without Prior Public Notice and One or More Public Meetings with an Opportunity for Comment or Questions; Provide for Exceptions; Provide for Factors to Be Considered in Selecting a Route for Electric Transmission Lines; Provide Procedures for Good Faith Negotiations; Provide for Additional Compensation for, or Reconveyance or Quitclaim of, an Easement or Other Property Interest Acquired Through the Exercise of Eminent Domain in Certain Circumstances; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 22-2-102 (amended), 22-3-160 to -162 (new)
BILL NUMBER:	HB 373
ACT NUMBER:	536
GEORGIA LAWS:	2004 Ga. Laws 568
SUMMARY:	The Act adds new law in an area previously lacking regulation. Previously, utility companies had no restrictions on the exercise of their eminent domain power. The Act requires utility companies to use particular procedures before invoking their right of eminent domain. The Act provides for limited state oversight in the siting of electric transmission lines and represents a compromise between Georgia landowners and utility companies.
EFFECTIVE DATE:	July 1, 2004

History

Members of the General Assembly designed HB 373 to protect property owners from eminent domain actions that occur without notice and without opportunity for public comments and questions.¹ As Georgia's population continues to grow, the need for high voltage power lines grows as well, leading to conflicts between power companies and landowners.² In Georgia, utilities have had the power to condemn land through eminent domain since the early 20th century.³ The perceived arrogance on the part of the utilities in taking land has increasingly frustrated homeowners.⁴ Throughout the past century, utilities have retained relatively unchecked eminent domain power, allowing them to place power lines wherever they wished.⁵

According to some critics, HB 373 is a "rubber stamp" on the utilities' unchecked eminent domain power.⁶ Other bills, particularly those proposed by the homeowner's lobby, never made it out of committee.⁷ Several counties issued moratoriums on the eminent domain power until the General Assembly had the opportunity to provide hearings for homeowners.⁸ The moratoriums caused the General Assembly to pass HB 373, and while the bill gives the appearance of a fair hearing and notice to homeowners, some believe the bill changes very little.⁹

In at least ten counties, residents have challenged the utilities' right to exercise eminent domain power for construction of new, high-power overhead electric transmission lines.¹⁰ According to Georgia Power spokesman John Sell, "The problem is that nobody likes transmission lines in their back yard, and most people would tell you

1. See HB 373, as introduced, 2004 Ga. Gen. Assem.

2. See Don Plummer, *Residents Take on Electric Utilities: Power-Line Paths: Companies' Right of Eminent Domain Challenged*, ATLANTA J. CONST., Oct. 7, 2002, at 1E, available at 2002 WL 3740947.

3. *Id.*

4. See *id.*

5. See *id.*

6. See Editorial, *Our Opinions: Power Rests With Utility Lobbyists*, ATLANTA J. CONST., Apr. 15, 2003, at 18A, available at 2003 WL 16551484 [hereinafter *Power Rests*].

7. *Id.*

8. See Plummer, *supra* note 2.

9. See Mia Taylor, *Lawmakers Face Hectic Session: Power Lines a Top Priority for County*, ATLANTA J. CONST., Jan. 2, 2003, at JF1, available at 2003 WL 2927768 [hereinafter *Hectic Session*]; *Power Rests*, *supra* note 6.

10. Plummer, *supra* note 2.

to pick a route that is most convenient to them We try to pick the best sites from both an engineering and cost standpoint because the money comes from ratepayers.”¹¹ Sell disputed the allegation that the utilities are “arrogant” in their negotiations with landowners; he asserted that Georgia Power attempts to visit owners personally to provide information regarding transmission lines rather than allowing owners to learn of upcoming dealings by reading of it in a newspaper.¹²

Georgia’s Electric Membership Corporations formed the Georgia Transmission Corporation (“GTC”) in 1997 for the purpose of building new lines and transfer stations, and the GTC has led the utilities’ lobby.¹³ Regardless of the particular utility, the growing number and power of homeowners’ groups battling with power companies caught the attention of lawmakers.¹⁴

The GTC has led the utilities in resisting legislation favorable to homeowners and in offering legislation that would have allowed the Public Service Commission much less power than other proposed bills.¹⁵ The GTC believed that it was “not subject to state or local regulation”¹⁶ GTC spokeswoman Jeannine Rispin confirmed the GTC’s position, adding, “We are granted the right of eminent domain by the state constitution and the federal Constitution We operate within the state law and will continue to do so, should the law change.”¹⁷ Meanwhile, Representative Judy Manning of the 32nd district drafted pro-homeowner legislation to limit the eminent domain power of electrical companies.¹⁸ Manning explained:

This is not about diminishing their ability to build lines They need though, to establish a need to build the lines that will give the community a little better feeling. The problem is

11. *Id.*

12. *Id.*; Editorial, *Our Opinions: Senate Power-Line Bill Stronger*, ATLANTA J. CONST., Mar. 28, 2003, at 18A, available at 2003 WL 16548941 [hereinafter *Power-Line Bill Stronger*].

13. *See id.*

14. Plummer, *supra* note 2.

15. *See Power-Line Bill Stronger, supra* note 12.

16. *Hectic Session, supra* note 9.

17. *Id.*

18. *Id.*

they go in, select a path for the lines and hand out condemnation notices and folks have no opportunity for input.¹⁹

Manning's proposed legislation died in committee.²⁰

Bill Tracking of HB 373

Consideration by the House

Representative Ralph Twiggs of the 8th district sponsored HB 373.²¹ The House first read HB 373 on February 13, 2003, and the Speaker assigned the bill to the Public Utilities and Telecommunication Committee.²² The Committee favorably reported on the bill, by substitute, on April 7, 2003.²³

House Committee Substitute

The Committee substitute proposed amending Code section 22-3-20.²⁴ This Committee substitute would have changed the word "plant" to "facilities" in relation to the exercise of eminent domain powers.²⁵ During the floor debate, legislators raised the issue of substations.²⁶ Representative Nick Moraitakis of the 42nd district proposed a floor amendment to add "including substations" after the word "facilities."²⁷ A substation built by a utility company in the Morningside neighborhood in Atlanta triggered the desire for the added language.²⁸ Although the community has been developed since the 1920s, the utility company put a substation in for a single user—the Center for Disease Control and Prevention.²⁹ The amendment

19. *Id.*

20. *Power Rests*, *supra* note 6.

21. HB 373, as introduced, 2004 Ga. Gen. Assem.

22. State of Georgia Final Composite Status Sheet, HB 373, Feb. 13, 2003 (May 19, 2004).

23. State of Georgia Final Composite Status Sheet, HB 373, Apr. 7, 2003 (May 19, 2004).

24. HB 373 (HCS), 2004 Ga. Gen. Assem.

25. HB 373 (HCS), 2004 Ga. Gen. Assem.

26. See Audio Recording of House Proceedings, Apr. 8, 2003 (remarks by Rep. Pat Gardner), at http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html [hereinafter House Audio].

27. SB 373 (SFA), 2004 Ga. Gen. Assem.

28. See House Audio, *supra* note 26 (remarks by Rep. Doug Stoner).

29. See *id.*

passed by a vote of 111 to 53.³⁰ The House passed the Committee substitute, as amended on the floor, by a vote of 146 to 44 on April 8, 2003.³¹

Consideration by the Senate

The Senate read and referred HB 373 to the Regulated Industries and Utilities Committee on April 8, 2003.³² The Senate Committee favorably reported on the bill, by substitute, on January 14, 2004.³³

Senate Committee Substitute

The Senate Committee substitute removed the language amending Code section 22-3-20.³⁴ Additionally, the Senate Committee changed three sentences in Code section 22-2-102.³⁵ These changes allowed for different treatment with relation to condemnation procedures when the condemnations at issue are “for purposes of constructing or expanding one or more electric transmission lines.”³⁶ The substitute provided that in these situations “the hearing before the special master shall take place not less than 30 days and not more than 40 days after the date of service”³⁷ Finally, the substitute provided that in these condemnations, the utility company should send a copy of the order by certified mail to all parties with an interest in the property.³⁸

Passage of HB 373

The Senate passed the bill on January 16, 2004 by a vote of 35 to 5, and on January 29, 2004, the House agreed to the Senate

30. Georgia House of Representatives Voting Record, HB 373 (Apr. 8, 2003).

31. *Id.*

32. State of Georgia Final Composite Status Sheet, HB 373, Apr. 8, 2003 (May 19, 2004).

33. State of Georgia Final Composite Status Sheet, HB 373, Jan. 14, 2004 (May 19, 2004).

34. HB 373 (SCS), 2004 Ga. Gen. Assem.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

Committee substitute.³⁹ On April 8, 2004, the House sent the bill to the Governor, and Governor Perdue signed it on May 13, 2004.⁴⁰ The Act became effective on July 1, 2004 and stated that “the provisions of this Act relating to additional compensation, reconveyance, and quitclaim shall apply to easement and other property interests acquired on or after July 1, 2004, through the exercise of eminent domain.”⁴¹

The Act

The Act amends Code section 22-2-102 relating to certain petitions of condemnation, and it requires a hearing before a special master “not less than 30 days and not more than 40 days” for condemnations constructing or expanding electric transmission lines.⁴²

The Act also adds Article 8 to Chapter 3 of Title 22.⁴³ Code section 22-3-160 requires that utilities hold a public meeting with opportunity for public comment before exercising their eminent domain power.⁴⁴ It also requires utilities to provide public notice of both the intent to build power lines and the public meeting.⁴⁵ The Act elaborates by stating that utilities shall provide notice “at least 30 days prior to the first public meeting” and shall include the time, place, and date of each meeting.⁴⁶ The utility company must provide notice by certified mail to persons having an interest in the affected property.⁴⁷ The Act requires that the utility hold “[a]t least one public meeting . . . in each county in which [lines] would be located” and at least two meetings where the utility “require[s] acquisition of property rights from more than 50 property owners”⁴⁸ The utility must provide information about the location of the lines, show

39. State of Georgia Final Composite Status Sheet, HB 373, Jan. 16, 2003 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 373, Jan. 29, 2003 (May 19, 2004).

40. State of Georgia Final Composite Status Sheet, HB 373, Apr. 8, 2003 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 373, May 13, 2003 (May 19, 2004).

41. See HB 373 (SCS), 2004 Ga. Gen. Assem.

42. O.C.G.A. § 22-2-102 (Supp. 2004).

43. O.C.G.A. § 22-3-160 (Supp. 2004).

44. O.C.G.A. § 22-3-160(a) (Supp. 2004).

45. O.C.G.A. § 22-3-160(b) (Supp. 2004).

46. O.C.G.A. § 22-3-160(b)(1) (Supp. 2004).

47. O.C.G.A. § 22-3-160(b)(2) (Supp. 2004).

48. O.C.G.A. § 22-3-160(c) (Supp. 2004).

alternative routes they considered, and provide an opportunity for public comment.⁴⁹ However, the Act also provides exceptions to the requirement that utilities hold public meetings.⁵⁰

Code section 22-3-161 directs the utilities to select a “practical and feasible route” for the new power lines, and it requires utilities to negotiate in good faith with each affected property owner.⁵¹

Code section 22-3-162 allows a landowner to apply for a reconveyance, quitclaim, or additional compensation when a utility fails to use previously condemned land during a statutorily prescribed number of years.⁵² For power lines 230 kilovolts or less, the utility has 12 years to build; for power lines greater than 230 kilovolts, the utility has 15 years to utilize the land.⁵³

Analysis

Homeowners often seek to force the utilities to bury lines or at least move the lines to minimize their intrusion; however, homeowners often lack the funding, the resources, or a powerful political lobby to force the utilities to act differently.⁵⁴ Homeowner lobbyists argue that, because the Georgia Public Service Commission does not regulate the GTC, no one objectively reviews the GTC’s decisions.⁵⁵ The GTC responds that it exerts great effort to avoid unnecessarily trampling homeowners’ rights.⁵⁶ Senator Renee Unterman of the 45th district noted that the tension between landowners and utilities continues, and she postulated that the issues created by utility companies’ exercise of eminent domain powers will remain even after the passage of HB 373.⁵⁷ Senator Unterman also noted that, if the utility companies no longer run rampant and

49. *Id.*

50. O.C.G.A. § 22-3-160(d) (Supp. 2004).

51. O.C.G.A. § 22-3-161 (Supp. 2004).

52. O.C.G.A. § 22-3-62 (Supp. 2004).

53. *Id.*

54. See Plummer, *supra* note 2.

55. See Editorial, *Our Opinions: Give PSC Power of Utility Lines*, ATLANTA J. CONST., Mar. 26, 2003, at 18A, available at 2003 WL 16548464 [hereinafter *Give PSC Power*].

56. Plummer, *supra* note 2.

57. See Audio Recording of Senate Proceedings, Jan. 16, 2004 (remarks by Sen. Renee Unterman), at http://www.georgia.gov/channel_title/0,2094,4802_6107103,00.html [hereinafter *Senate Audio*].

needlessly tread on landowners' rights but rather act in good faith, they would take "a step in the right direction."⁵⁸

The purpose of eminent domain is to "save[] communities in need of electric power from being held hostage by one or two property owners who refuse to allow a line to cross their land."⁵⁹ However, some believe landowners have a reasonable position; they only seek a more cooperative effort between the utilities and the landowners to negotiate the least obtrusive result.⁶⁰ "They also want the transmission companies to justify why the line cannot be buried, rather than strung above ground."⁶¹

Critics of HB 373 argue that it "gives only the illusion of a regulatory review by the Public Service Commission" when in reality the bill "is an empty shell that would guarantee a rubber stamp of industry decisions."⁶² Critics also argue that "money and power often speak louder than constituents," and the utilities have obtained their advantage by lobbying several members of the House Public Utilities and Communications Committee.⁶³

The Act adds law where none existed.⁶⁴ The change is minimal but is a step in the right direction.⁶⁵ However, homeowner lobby groups are gaining notoriety and support, indicating that there may be more meaningful changes in future sessions.⁶⁶ Further, as the population of Georgia and the demand for high-voltage electric transmission lines grow, the issue will likely gain prominence before the General Assembly.⁶⁷

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58. *See id.*

59. *See Give PSC Power, supra* note 55.

60. *Id.*

61. *Id.*

62. *Power Rests, supra* note 6.

63. *See id.*

64. *See* Senate Audio, *supra* note 57 (remarks by Sen. Renee Unterman).

65. *See id.*

66. *See id.*

67. *See* House Audio, *supra* note 26 (remarks by Rep. Penny Houston).