

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to HB 972:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 5 of Chapter 2 of Title 46 of the Official Code of Georgia Annotated,
2 relating to miscellaneous offenses and penalties, so as to provide for penalties for violations
3 of pipeline safety standards and regulations prescribed and enforced by the Public Service
4 Commission; to provide for a definition; to provide for related matters; to provide for an
5 effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 5 of Chapter 2 of Title 46 of the Official Code of Georgia Annotated, relating to
9 miscellaneous offenses and penalties, is amended by revising Code Section 46-2-91, relating
10 to penalties recoverable before commission, superior court filing of certain commission
11 orders, venue, and effect of judgment, as follows:

12 "46-2-91.

13 (a) Except as provided in subsection (b) of this Code section, any ~~Any~~ person, firm, or
14 corporation (referred to in this Code section as a 'utility') subject to the jurisdiction of the
15 commission, which utility willfully violates any law administered by the commission or
16 any duly promulgated regulation issued thereunder or which fails, neglects, or refuses to
17 comply with any order after notice thereof, shall be liable to a penalty not to exceed
18 \$15,000.00 for such violation and an additional penalty not to exceed \$10,000.00 for each
19 day during which such violation continues.

20 (b) Any operator which violates any rule or regulation of the commission prescribed
21 pursuant to subsection (i) of Code Section 46-2-20, or which fails, neglects, or refuses to
22 comply with any order after notice thereof, shall be liable to a penalty not to exceed the
23 maximum penalties provided for in 49 C.F.R. Section 190.223. As used in this subsection,
24 the term 'operator' means any person who engages in the transportation of natural gas by
25 pipeline.

26 ~~(b)~~(c)(1) The commission, after a hearing conducted after not less than 30 days' notice,
 27 shall determine whether any utility has willfully violated any law administered by the
 28 commission or any duly promulgated regulation issued thereunder, or has failed,
 29 neglected, or refused to comply with any order of the commission. Upon an appropriate
 30 finding of a violation, the commission may impose by order such civil penalties as are
 31 provided by either subsection (a) or ~~(b)~~ of this Code section, but not both. In each such
 32 proceeding, the commission shall maintain a record as provided in paragraph (8) of
 33 subsection (a) of Code Section 50-13-13 including all pleadings, a transcript of
 34 proceedings, a statement of each matter of which the commission takes official notice,
 35 and all staff memoranda or data submitted to the commission in connection with its
 36 consideration of the case. All penalties and interest thereon (at the rate of 10 percent per
 37 annum) recovered by the commission shall be paid into the general fund of the state
 38 treasury.

39 (2) Any party aggrieved by a decision of the commission may seek judicial review as
 40 provided in subsection ~~(c)~~ (d) of this Code section.

41 ~~(c)~~(d)(1) Any party who has exhausted all administrative remedies available before the
 42 commission and who is aggrieved by a final decision of the commission in a proceeding
 43 described in subsection ~~(b)~~ (c) of this Code section may seek judicial review of the final
 44 order of the commission in the Superior Court of Fulton County.

45 (2) Proceedings for review shall be instituted by filing a petition within 30 days after the
 46 service of the final decision of the commission or, if a rehearing is requested, within 30
 47 days after the decision thereon. A motion for rehearing or reconsideration after a final
 48 decision by the commission shall not be a prerequisite to the filing of a petition for
 49 review. Copies of the petition shall be served upon the commission and all parties of
 50 record before the commission.

51 (3) The petition shall state the nature of the petitioner's interest, the facts showing that
 52 the petitioner is aggrieved by the decision, and the ground, as specified in paragraph (6)
 53 of this subsection, upon which the petitioner contends that the decision should be
 54 reversed. The petition may be amended by leave of court.

55 (4) Within 30 days after service of the petition, or within such further time as is
 56 stipulated by the parties or as is allowed by the court, the agency shall transmit to the
 57 reviewing court the original or a certified copy of the entire record of the proceedings
 58 under review. By stipulation of all parties to the review proceedings, the record may be
 59 shortened. A party unreasonably refusing to stipulate that the record be limited may be
 60 taxed for the additional costs. The court may require or permit subsequent corrections
 61 or additions to the record.

62 (5) If, before the date set for hearing, application is made to the court for leave to present
 63 additional evidence, and it is shown to the satisfaction of the court that the additional
 64 evidence is material and there were good reasons for failure to present it in the
 65 proceedings before the agency, the court may order that the additional evidence be taken
 66 before the commission upon such procedure as is determined by the court. The
 67 commission may modify its findings and decision by reason of the additional evidence
 68 and shall file that evidence and any modifications, new findings, or decisions with the
 69 reviewing court.

70 (6) The review shall be conducted by the court without a jury and shall be confined to
 71 the record. The court shall not substitute its judgment for that of the commission as to
 72 the weight of the evidence on questions of fact. The court may affirm the decision of the
 73 commission or remand the case for further proceedings. The court may reverse the
 74 decision of the commission if substantial rights of the petitioner have been prejudiced
 75 because the commission's findings, inferences, conclusions, or decisions are:

- 76 (A) In violation of constitutional or statutory provisions;
- 77 (B) In excess of the statutory authority of the commission;
- 78 (C) Made upon unlawful procedure;
- 79 (D) Clearly not supported by any reliable, probative, and substantial evidence on the
 80 record as a whole; or
- 81 (E) Arbitrary or capricious.

82 (7) A party aggrieved by an order of the court in a proceeding authorized under
 83 subsection ~~(b)~~ (c) of this Code section may appeal to the Supreme Court of Georgia or
 84 to the Court of Appeals of Georgia in accordance with Article 2 of Chapter 6 of Title 5,
 85 the 'Appellate Practice Act.'

86 ~~(d)~~(e) The commission may file in the superior court in the county in which the person
 87 under order resides or in the county in which the violation occurred or, if the person is a
 88 corporation, in the county in which the corporation maintains its principal place of business
 89 a certified copy of a final order of the commission unappealed or of a final order of the
 90 commission affirmed upon appeal, whereupon the court shall render judgment in
 91 accordance therewith and notify the parties. The judgment shall have the same effect, and
 92 all proceedings in relation thereto shall thereafter be the same, as though the judgment had
 93 been rendered in an action duly heard and determined by the court."

94 **SECTION 2.**

95 This Act shall become effective upon its approval by the Governor or upon its becoming law
 96 without such approval.

97

SECTION 3.

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