

Senate Bill 2

By: Senators Gooch of the 51st, Wilkinson of the 50th, Harper of the 7th, Hill of the 4th, Kirk of the 13th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to
 2 electrical service, so as to allow electric membership corporations to engage in certain
 3 activities in order to facilitate the provision of broadband services; to specifically authorize
 4 electric membership corporations and their affiliates to provide broadband services; to
 5 provide for and revise definitions; to authorize certain financing and partnerships for the
 6 provision of broadband services; to prohibit cross-subsidization between the provision of
 7 broadband services and an electric membership corporation's natural gas activities or certain
 8 electricity services activities; to authorize the Public Service Commission to have jurisdiction
 9 over compliance with the cross-subsidization prohibitions and to provide for expedited
 10 adjudication of any complaints related thereto; to provide certain rights, powers, and benefits
 11 to broadband affiliates of electric membership corporations; to provide for applicability; to
 12 require certain rates, terms, and conditions for pole attachments between communications
 13 service providers and electric membership corporations and their broadband affiliates; to
 14 permit the use of electric easements for broadband services; to provide for legislative
 15 findings and declarations as to certain utility easements; to provide for related matters; to
 16 provide for an effective date; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to electrical service,
 20 is amended by revising Code Section 46-3-171, relating to definitions relative to electric
 21 membership corporations and foreign electric cooperatives, as follows:

22 "46-3-171.

23 As used in this article, the term:

24 (1) 'Address' means a complete mailing address, including, whenever practicable, street
 25 and number or building and floor.

26 (2) 'Articles of incorporation' means the original or restated articles of incorporation or
 27 articles of consolidation and all the amendments thereto, including articles of merger, and

28 also includes what have been designated by the laws of this state prior to July 1, 1981,
29 as charters.

30 (2.1) 'Broadband affiliate' means any person which directly or indirectly controls, is
31 controlled by, or is under common control of one or more electric membership
32 corporations and which is used to provide broadband services.

33 (2.2) 'Broadband facilities' means any facilities and equipment utilized to provide or
34 support broadband services.

35 (2.3) 'Broadband services' means a wired or wireless service that consists of the
36 capability to transmit data at a rate not less than 200 kilobits per second to and from end
37 users and in combination with such service provides:

38 (A) Access to the internet;

39 (B) Computer processing, information storage, or protocol conversion; or

40 (C) Any application or information content to be provided over or through broadband.

41 Such term shall include any broadband facilities and equipment associated with providing
42 such a service.

43 (2.4) 'Communications service provider' means a provider of cable service as defined in
44 47 U.S.C. Section 522(6), telecommunications service as defined in 47 U.S.C. Section
45 153(53), or information service as defined in 47 U.S.C. Section 153(24), as each such
46 term existed on January 1, 2019.

47 (2.5) 'Electric easement' means a right of way or an easement, whether acquired by
48 eminent domain, prescription, or conveyance, that is used or may be used for
49 transmitting, distributing, or providing electrical energy and services by utilizing
50 aboveground or underground wires, cables, lines, or similar facilities.

51 (3) 'Electric membership corporation' or 'EMC' means an electric membership
52 corporation organized under this article or any prior electric membership corporation law
53 of this state, or a corporation which elected, in accordance with the provisions thereof,
54 to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

55 (4) 'Federal agency' includes the United States of America and any department,
56 administration, commission, board, bureau, office, establishment, agency, authority, or
57 instrumentality thereof.

58 (5) 'Foreign electric cooperative' means a cooperative, nonprofit membership corporation
59 organized under laws other than the laws of this state for the same or similar purposes for
60 which an electric membership corporation may be organized under this article.

61 (5.1) 'Gas activities' shall have the same meaning as provided for in Code
62 Section 46-4-152.

63 (5.2) 'Gas affiliate' shall have the same meaning as the term 'EMC gas affiliate' provided
64 in Code Section 46-4-152.

65 (6) 'Insolvent' means that an electric membership corporation is unable to pay its debts
 66 as they become due in the usual course of its business or that it has liabilities in excess
 67 of assets.

68 (7) 'Member' means a person ~~who~~ that has met the requirements and conditions of
 69 membership in an electric membership corporation which are set forth in this article and
 70 in the articles of incorporation and bylaws of an electric membership corporation.

71 (8) 'Person' includes any natural person; firm; association; electric membership
 72 corporation; ~~foreign electric cooperative; corporation, either domestic or foreign;~~ business
 73 or other trust; partnership; limited liability company; federal agency; state or political
 74 subdivision thereof; ~~or~~ body politic; or other entity recognized by law.

75 (8.1) 'Retail broadband services' means any broadband services other than those provided
 76 for:

77 (A) The internal use of an electric membership corporation;

78 (B) The internal use of another electric membership corporation;

79 (C) Resale by another electric membership corporation or other communications
 80 service providers; or

81 (D) Use as a component part of communications services that other communications
 82 service providers offer to their customers.

83 (9) 'Service' means any service or commodity which an electric membership corporation
 84 may provide under this article for which value is paid."

85 SECTION 2.

86 Said chapter is further amended by revising Code Section 46-3-200, relating to purposes of
 87 electric membership corporations, as follows:

88 "46-3-200.

89 An electric membership corporation may serve any one or more of the following purposes:

90 (1) Furnish ~~To furnish~~ electrical energy and service;

91 (2) Assist ~~To assist~~ its members in the efficient and economical use of energy;

92 (3) Engage ~~To engage~~ in research and ~~to~~ promote and develop energy conservation and
 93 sources and methods of conserving, producing, converting, and delivering energy; ~~and~~

94 (4) Provide and operate broadband facilities and provide and use the broadband services
 95 described in subparagraphs (A) and (B) of paragraph (8.1) of Code Section 46-3-171;

96 (5) Furnish on a nondiscriminatory basis the broadband services described in
 97 subparagraphs (C) and (D) of paragraph (8.1) of Code Section 46-3-171;

98 (6) Form, fund, support, and operate a broadband affiliate, directly or indirectly,
 99 contingent upon compliance with Code Sections 46-5-163 and 46-3-200.2; and

100 ~~(4)(7) Engage~~ To engage in any lawful act or activity necessary or convenient to effect
 101 the foregoing purposes."

102 **SECTION 3.**

103 Said chapter is further amended by adding new Code sections to read as follows:

104 "46-3-200.1.

105 In order to assist a broadband affiliate in the planning, engineering, construction, extension,
 106 provision, operation, repair, and maintenance of broadband services, an electric
 107 membership corporation or its broadband affiliate shall be authorized to:

108 (1) Apply for, accept, repay, and utilize loans, grants, and other financing from any
 109 person; and

110 (2) Enter into contracts, agreements, partnerships, or other types of business relationships
 111 with any person.

112 46-3-200.2.

113 (a) No electric membership corporation, broadband affiliate, or gas affiliate shall permit
 114 cross-subsidization between its electricity services activities, its broadband services
 115 activities, or its gas activities. To prevent cross-subsidization between broadband services
 116 activities and gas activities and between broadband services activities and electricity
 117 services activities, any electric membership corporation with a broadband affiliate that
 118 provides retail broadband services shall:

119 (1) Fully allocate all costs of electricity services activities and broadband services
 120 activities, including costs of any shared services, between electricity services activities
 121 and such broadband affiliate's broadband services activities, in accordance with:

122 (A) The provisions of this Code section; and

123 (B) The applicable uniform system of accounts and generally accepted accounting
 124 principles that are applicable to electric membership corporations under federal and
 125 state laws, rules, and regulations;

126 (2) Not charge any costs of electricity services activities or gas activities to the
 127 broadband services customers of the broadband affiliate;

128 (3) Not charge any costs of broadband services activities to the electricity services
 129 customers of such electric membership corporation or to the gas activities customers of
 130 its gas affiliate; and

131 (4) Not use below-market loans or below-market funding from programs that are not
 132 intended to support the deployment of broadband facilities or broadband services in order
 133 to support broadband facilities or to provide broadband services unless the electric
 134 membership corporation or its broadband affiliate imputes the difference between market

135 rates and the below-market loans or below-market funding into the costs of its broadband
136 facilities and broadband services. The provisions of this paragraph shall not apply to
137 loans or funding from programs that are intended to support the deployment of broadband
138 facilities or broadband services.

139 (b) An electric membership corporation that has a broadband affiliate that provides retail
140 broadband services shall:

141 (1) Not condition the receipt of electricity services upon, nor provide more favorable
142 terms for electricity services in exchange for, persons that receive broadband services
143 from the electric membership corporation or its broadband affiliate;

144 (2) Have a duty to provide access to the poles, ducts, conduits, and easements of such
145 electric membership corporation to all communications service providers on rates, terms,
146 and conditions that are just, reasonable, and nondiscriminatory;

147 (3) Not provide its broadband affiliate or any communications service provider any
148 information obtained from other communications service providers in the pole attachment
149 request and approval process, including without limitation the requested locations for
150 pole attachments, the locations of the customers to be served, or any identifying
151 information regarding such customers;

152 (4) When such electric membership corporation is assisting a customer or potential
153 customer seeking to initiate electricity services and there is any inquiry or discussion
154 regarding the availability of retail broadband services, in the course of the same
155 discussion or transaction in which such assistance is being provided, inform such
156 customer or potential customer of other providers offering broadband services in such
157 customer's area based on any service map of a provider of broadband services or similar
158 resource maintained by any department of the state or federal government and inform
159 such customer or potential customer that broadband services may be obtained from such
160 electric membership corporation's broadband affiliate or such other providers of
161 broadband services. Such information shall be provided only with regard to other
162 providers of broadband services that have notified the electric membership corporation's
163 broadband affiliate, in writing and in a commercially reasonable manner, that such
164 provider of broadband services is able and willing to provide broadband services to
165 customers located within all or a portion of the electric membership corporation's
166 designated electricity service territory; and

167 (5) Develop and maintain a cost allocation manual, to be approved by the commission,
168 describing the electric membership corporation's methods of cost allocation and such
169 other information and policies reasonably required to ensure compliance with this article.
170 Such manual shall:

171 (A) Establish rules for the pricing of transactions between an electric membership
 172 corporation and its gas affiliates and broadband affiliates, as applicable, including the
 173 transfer of assets between such electric membership corporation and its gas affiliates
 174 and broadband affiliates;

175 (B) Require the electric membership corporation and its gas affiliates and broadband
 176 affiliates, as applicable, to maintain separate books of accounts and records which shall
 177 be subject to inspection to confirm compliance with this article and the cost allocation
 178 manual; and

179 (C) Require that all services that an electric membership corporation provides to its gas
 180 affiliates and broadband affiliates, as applicable, be provided at the same rates and on
 181 the same terms and conditions as any other similarly situated retail customer or
 182 communications service provider. Any such services provided to any communications
 183 service provider shall be on a strictly confidential basis, such that the electric
 184 membership corporation does not share information regarding any communications
 185 service provider with any other communications service provider, including a
 186 broadband affiliate.

187 (c) The commission shall have jurisdiction over each broadband affiliate and each electric
 188 membership corporation that has a broadband affiliate that provides retail broadband
 189 services to enforce compliance within the provisions of this Code section. The commission
 190 shall provide for an expedited adjudication of any complaint as to a failure to comply with
 191 this Code section and may engage an administrative law judge for purposes of such
 192 adjudication.

193 (d) Except as provided in subsection (e) of this Code section, this Code section shall only
 194 apply to electric membership corporations with a broadband affiliate offering retail
 195 broadband services.

196 (e) As to an electric membership corporation that was offering retail broadband services
 197 on or before January 1, 2019, whether directly through the electric membership corporation
 198 or indirectly through a broadband affiliate, this Code section shall only apply to retail
 199 broadband services offered on or after January 1, 2021, and such electric membership
 200 corporation shall have until January 1, 2021, to develop and maintain the cost allocation
 201 manual required in paragraph (5) of subsection (b) of this Code section.

202 46-3-200.3.

203 Broadband affiliates shall have all of the rights, powers, and benefits granted to other
 204 entities under the provisions of Title 14 and shall not be subject to any restrictions
 205 contained in this article, except that a broadband affiliate shall:

206 (1) Only serve the purposes of developing, providing, furnishing, or promoting
207 broadband facilities and broadband services, or a combination of such purposes; and
208 (2) Be subject to the provisions of Code Section 46-3-200.2.

209 46-3-200.4.

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

211 (1) 'Existing agreement' means a pole attachment agreement or joint use agreement in
212 effect as of January 1, 2019.

213 (2) 'New agreement' means a pole attachment agreement or joint use agreement that was
214 not in effect as of January 1, 2019.

215 (b) Except as required by the Tennessee Valley Authority for its distributors in this state,
216 a communications service provider that has an existing agreement with an electric
217 membership corporation shall have the right, through December 31, 2034, to attach to
218 poles of the electric membership corporation and its broadband affiliate after the expiration
219 of the original period of such existing contract:

220 (1) Upon terms and conditions that are no less favorable than those in such existing
221 agreement; and

222 (2) At rates that shall not exceed the rates in such existing agreement, subject to annual
223 rate adjustments based on the Handy-Whitman Index of Public Utility Construction
224 Costs, and based upon the Consumer Price Index in the event the Handy-Whitman Index
225 of Public Utility Construction Costs is no longer available.

226 (c) Except as required by the Tennessee Valley Authority for its distributors in this state,
227 any new agreement between an electric membership corporation and a communications
228 service provider shall provide for attachments to poles of the electric membership
229 corporation and its broadband affiliate:

230 (1) Upon terms and conditions that are no less favorable than those in existing
231 agreements; and

232 (2) At rates that shall not exceed the highest of those rates in any existing agreement,
233 subject to annual rate adjustments based on the Handy-Whitman Index of Public Utility
234 Construction Costs, and based upon the Consumer Price Index in the event the
235 Handy-Whitman Index of Public Utility Construction Costs is no longer available.

236 (d) An electric membership corporation that terminates, without cause, an existing
237 agreement or new agreement with a communications service provider shall not be
238 permitted to form or utilize a broadband affiliate for a period of one year from the date of
239 the termination of any such agreement, if the number of poles with attachments under such
240 terminated agreement constitutes one-half or more of all electric membership corporations'
241 poles containing an attachment by a communications service provider."

242

SECTION 4.

243 Said chapter is further amended by adding a new Code section to read as follows:

244 "46-3-205.

245 (a) The General Assembly finds that electric membership corporations providing
246 broadband services should be permitted to use existing electric easements to provide or
247 expand access to broadband services. The General Assembly also finds that utilizing
248 existing electric easements to provide broadband services, without the placement of
249 additional poles or other ground based structures, does not change the physical use of the
250 easement, interfere with or impair any vested rights of the owner or occupier of the real
251 property subject to the electric easement, or place any additional burden on the property
252 interests of such owner or occupier. Consequently, the installation and operation of
253 broadband services within any electric easement are merely changes in the manner or
254 degree of the granted use as appropriate to accommodate a new technology and, absent any
255 applicable express prohibition contained in the instrument conveying or granting the
256 electric easement, shall be deemed as a matter of law to be a permitted use within the scope
257 of every electric easement.

258 (b) Subject to compliance with any express prohibitions in an electric easement, the owner
259 of an electric easement may use an electric easement to install, maintain, lease, and operate
260 broadband services without incurring liability to the owner or occupant of the real property
261 subject to the electric easement or paying additional compensation to the owner or
262 occupant of the real property subject to the electric easement, so long as no additional poles
263 or other ground based structures are installed; provided, however, that any electric utility
264 owning an electric easement may assess fees and charges and impose reasonable conditions
265 on the use of its facilities within an electric easement for the purpose of providing or
266 supporting broadband services."

267

SECTION 5.

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

270

SECTION 6.

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