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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

As used in this article, the term:

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

(2) 'Articles of incorporation' means the original or restated articles of incorporation or articles of consolidation and all the amendments thereto, including articles of merger, and
also includes what have been designated by the laws of this state prior to July 1, 1981, as charters.

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

(2.2) ‘Broadband facilities’ means any facilities and equipment utilized to provide or support broadband services.

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

(A) Access to the internet;

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

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

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

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

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

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

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

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

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

(5.2) ‘Gas affiliate’ shall have the same meaning as the term 'EMC gas affiliate' provided in Code Section 46-4-152.
(6) 'Insolvent' means that an electric membership corporation is unable to pay its debts as they become due in the usual course of its business or that it has liabilities in excess of assets.

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

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

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

(A) The internal use of an electric membership corporation;
(B) The internal use of another electric membership corporation;
(C) Resale by another electric membership corporation or other communications service providers; or
(D) Use as a component part of communications services that other communications service providers offer to their customers.

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

SECTION 2.

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

(1) Furnish electrical energy and service;
(2) Assist its members in the efficient and economical use of energy;
(3) Engage in research and to promote and develop energy conservation and sources and methods of conserving, producing, converting, and delivering energy; and
(4) Provide and operate broadband facilities and provide and use the broadband services described in subparagraphs (A) and (B) of paragraph (8.1) of Code Section 46-3-171;
(5) Furnish on a nondiscriminatory basis the broadband services described in subparagraphs (C) and (D) of paragraph (8.1) of Code Section 46-3-171;
(6) Form, fund, support, and operate a broadband affiliate, directly or indirectly, contingent upon compliance with Code Sections 46-5-163 and 46-3-200.2; and
(4) Engage to engage in any lawful act or activity necessary or convenient to effect the foregoing purposes."

SECTION 3.

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

"46-3-200.1. In order to assist a broadband affiliate in the planning, engineering, construction, extension, provision, operation, repair, and maintenance of broadband services, an electric membership corporation or its broadband affiliate shall be authorized to:

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

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

46-3-200.2. (a) No electric membership corporation, broadband affiliate, or gas affiliate shall permit cross-subsidization between its electricity services activities, its broadband services activities, or its gas activities. To prevent cross-subsidization between broadband services activities and gas activities and between broadband services activities and electricity services activities, any electric membership corporation with a broadband affiliate that provides retail broadband services shall:

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

(A) The provisions of this Code section; and

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

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

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

(4) Not use below-market loans or below-market funding from programs that are not intended to support the deployment of broadband facilities or broadband services in order to support broadband facilities or to provide broadband services unless the electric membership corporation or its broadband affiliate imputes the difference between market..."
rates and the below-market loans or below-market funding into the costs of its broadband facilities and broadband services. The provisions of this paragraph shall not apply to loans or funding from programs that are intended to support the deployment of broadband facilities or broadband services.

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

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

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

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

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

(5) Develop and maintain a cost allocation manual, to be approved by the commission, describing the electric membership corporation's methods of cost allocation and such other information and policies reasonably required to ensure compliance with this article. Such manual shall:
(A) Establish rules for the pricing of transactions between an electric membership corporation and its gas affiliates and broadband affiliates, as applicable, including the transfer of assets between such electric membership corporation and its gas affiliates and broadband affiliates;

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

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

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

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

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

46-3-200.3.

Broadband affiliates shall have all of the rights, powers, and benefits granted to other entities under the provisions of Title 14 and shall not be subject to any restrictions contained in this article, except that a broadband affiliate shall:
(1) Only serve the purposes of developing, providing, furnishing, or promoting broadband facilities and broadband services, or a combination of such purposes; and

(2) Be subject to the provisions of Code Section 46-3-200.2.

46-3-200.4.

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

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

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

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

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

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

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

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

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

(d) An electric membership corporation that terminates, without cause, an existing agreement or new agreement with a communications service provider shall not be permitted to form or utilize a broadband affiliate for a period of one year from the date of the termination of any such agreement, if the number of poles with attachments under such terminated agreement constitutes one-half or more of all electric membership corporations' poles containing an attachment by a communications service provider."
SECTION 4.

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

"46-3-205.

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

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

SECTION 5.

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

SECTION 6.

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