

Senate Bill 105

By: Senators Shafer of the 48th, Balfour of the 9th, Chapman of the 3rd and Seabaugh of the 28th

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 require that charges by electric suppliers to communications
3 companies and cable companies for accessing poles, ducts, conduits, and rights of way shall
4 be uniform; to provide legislative findings; to provide definitions; to provide procedures and
5 remedies; to provide for related matters; to provide for a repeal under certain circumstances;
6 to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 The General Assembly finds that:

- 10 (1) Eminent domain should not be unnecessarily used to take private property;
- 11 (2) Telecommunications and cable companies should be encouraged to attach their
12 facilities to poles already existing in current rights of way rather than acquiring or
13 condemning additional property to construct duplicative sets of poles; and
- 14 (3) The pole attachment formula set forth in this Act will encourage collocation of
15 facilities and discourage the unnecessary use of eminent domain.

16 **SECTION 2.**

17 Chapter 3 of Title 46 of the Official Code of Georgia Annotated, relating to electrical service,
18 is amended by revising Code Section 46-3-13, relating to enforcement of part by
19 commission, as follows:

20 "46-3-13.

21 Except as provided in Code Section 46-3-16, at ~~At~~ any time, upon its own complaint or the
22 complaint of any other electric supplier or any other interested party, the commission shall
23 have the authority and jurisdiction, after notice to all affected electric suppliers and other
24 interested parties, and after a hearing, to enforce the provisions of this part by appropriate
25 orders."

SECTION 3.

Said chapter is further amended by adding at the end of Part 1 of Article 1 a new Code Section 46-3-16 to read as follows:

"46-3-16.

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

(1) 'Cable company' means a cable television operator as defined in Section 602(5) of the federal Communications Act of 1934 or any individual or entity that offers or provides, or intends to offer or provide, cable television service, including any broadband cable communications services, telephone service, Internet access service, or any other service similar to such services, including the transport or delivery of services between or to cable companies or end users.

(2) 'Communications company' means a telecommunications carrier as defined in Section 3 of the federal Communications Act of 1934 or any individual or entity that offers or provides, or intends to offer or provide, any telephone service, telegraph service, paging service, Internet access service, or any other service similar to such services, including the transport or delivery of services between or to communications companies or end users.

(3) 'Electric supplier' shall include electric membership corporations as defined in Code Section 46-3-171; without limitation, any corporation or utility that is cooperatively organized; and any public utility that is owned or authorized by the state or a political subdivision thereof.

(b)(1) No electric supplier, other than a public utility that is owned or authorized by the state or a political subdivision thereof as provided in Code Section 46-3-15, shall request or receive from a cable company that is providing cable television, information, Internet, or voice services more than the rate of cable services provided by 47 U.S.C. Section 224(d) for accessing any pole, duct, conduit, or right of way, including transmission poles or towers.

(2) No electric supplier, other than a public utility that is owned or authorized by the state or a political subdivision thereof as provided in Code Section 46-3-15, shall request or receive from a communications company providing telecommunication services more than the rate provided by 47 U.S.C. Section 224(e) for accessing any pole, duct, conduit, or right of way, including transmission poles or towers.

(c) No electric supplier shall request or receive from a communications company or a cable company any in-kind payment in exchange for or as a condition upon a grant of permission for pole attachments.

1 (d) An electric supplier shall provide communications companies and cable companies
2 with nondiscriminatory access to any pole, duct, conduit, or right of way owned or
3 controlled by it.

4 (e) An electric supplier may deny a communications company or cable company access
5 to its poles, ducts, conduits, or rights of way on a nondiscriminatory basis where there is
6 insufficient capacity and for reasons of safety, reliability, and generally applicable
7 engineering principles. An electric supplier shall apportion the costs of providing usable
8 space required for each entity, but the costs of any relocation of existing users shall be
9 borne by the entity or entities creating the necessity for such relocation including the owner
10 of the pole, duct, conduit, or right of way. No electric supplier may deny a
11 communications company or cable company access to its poles, ducts, conduits, or rights
12 of way, including transmission poles and towers, on the ground that there is insufficient
13 capacity or for reasons of safety, reliability, and generally applicable engineering principles
14 if:

15 (1) Those limitations can be remedied by rearranging, expanding, or otherwise
16 reengineering facilities; and

17 (2) The communications company or cable company agrees to pay the reasonable, actual
18 costs to expand an electric supplier's capacity or to resolve those capacity, safety,
19 reliability, or engineering issues.

20 (f) An electric supplier shall provide communications companies and cable companies no
21 less than 60 days' written notice prior to removal of facilities or termination of any service
22 to those facilities which arises out of a breach of a rate, term, or condition of a pole
23 attachment agreement.

24 (g) An electric supplier shall not require any communications company or cable company
25 having or seeking pole attachments to dedicate any such communications company's or
26 cable company's current or future facilities or the capacity thereof to the utility or any other
27 entity as a condition to granting such communications company or cable company the right
28 to make or maintain pole attachments.

29 (h) Except as otherwise provided in this Code section, an electric supplier shall not impose
30 requirements or conditions upon overlapping activities of a communications company or
31 cable company.

32 (i) An electric supplier shall approve or deny in writing any pole attachment application
33 no later than 14 days after the receipt thereof. Any denial shall include, in sufficient detail,
34 the grounds therefor not inconsistent with the provisions of this Code section.

35 (j) Any communications company or cable company that is aggrieved by conduct of an
36 electric supplier that is in violation of any provision of this Code section may bring a suit
37 for declaratory, injunctive, or monetary relief in any court of competent jurisdiction to

1 determine and enforce its rights under this Code section. In any suit, the electric supplier,
 2 other than a public utility that is owned or authorized by the state or a political subdivision
 3 thereof as provided in Code Section 46-3-15, must provide information at least sufficient
 4 to perform calculations to compute the applicable pole attachment rate under 47 U.S.C.
 5 Section 224(d).

6 (k) All other terms and provisions of any agreement with electric suppliers governing or
 7 affecting a communications company's or cable company's pole attachments must be fair,
 8 reasonable, and consistent with the provisions in this Code section.

9 (l) This Code section does not constitute certification as defined by federal law. If a court
 10 of competent jurisdiction determines that this Code section is tantamount to certification,
 11 this Code section shall become null and void.

12 (m) This Code section shall not apply to any pole attachment regulated by the Federal
 13 Communications Commission under Section 224 of the federal Communications Act of
 14 1934, as amended."

15 **SECTION 4.**

16 Said chapter is further amended by revising paragraph (24) of subsection (b) of Code Section
 17 46-3-201, relating to the powers of electric membership corporations generally, as follows:

18 "(24) To fix, regulate, and collect rates, fees, rents, or other charges for electric energy
 19 and any other facilities, supplies, equipment, or services furnished by the electric
 20 membership corporation, except that all rates, fees, or other charges for cable television
 21 operators or telecommunications carriers to have access to poles, ducts, conduits, or
 22 rights of way shall be consistent with Code Section 46-3-16;".

23 **SECTION 5.**

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

26 **SECTION 6.**

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