

Senate Bill 402

By: Senators Gooch of the 51st, Cowser of the 46th, Kennedy of the 18th, Miller of the 49th, Ginn of the 47th and others

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Achieving Connectivity Everywhere (ACE) Act"; to amend Titles 32, 36, 48,
2 and 50 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,
3 local government, revenue and taxation, and state government, respectively, so as to provide
4 for broadband services planning, deployment, and incentives; to provide authorization for
5 the Department of Transportation to take certain actions to enable the rights of way of
6 interstate highways to be used for the deployment of broadband and other communications
7 technologies; to establish certification of certain counties and municipal corporations as
8 broadband ready communities; to provide for duties and responsibilities of the Department
9 of Community Affairs; to provide a methodology for local governments to apply to the
10 department for certification as a broadband ready community; to provide for the
11 promulgation of certain rules and regulations; to provide for the creation and administration
12 of the Georgia Broadband Ready Community Site designation program by the Department
13 of Community Affairs; to require that any comprehensive plan of a local government provide
14 for the promotion of the availability and delivery of broadband services; to require that the
15 development of any service delivery strategy by a local government include the promotion
16 of the availability and delivery of broadband services; to create a tax exemption for certain
17 equipment used in the deployment of broadband technology in certain counties; to provide
18 for the annual designation of certain eligible counties and for a list of all eligible counties to
19 be published on the website of the Department of Community Affairs; to provide the Georgia
20 Technology Authority with the authority to establish and implement policies and programs
21 necessary to promote and facilitate universal broadband deployment and other
22 communications technologies in the state; to require the Georgia Technology Authority to
23 provide an annual report as to the status of attainment of state-wide broadband deployment;
24 to provide for the Department of Community Affairs to develop a grant program for the
25 provision of broadband services throughout the state; to change certain definitions relative
26 to the "OneGeorgia Authority Act" to include broadband services; to provide for related
27 matters; to provide for effective dates and applicability; to provide for a short title; to repeal
28 conflicting laws; and for other purposes.

29 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

30 PART I

31 SECTION 1-1.

32 This Act shall be known and may be cited as the "Achieving Connectivity Everywhere
33 (ACE) Act."

34 PART II

35 SECTION 2-1.

36 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,
37 is amended in Code Section 32-2-2, relating to powers and duties of department generally,
38 by revising paragraphs (18) and (19) of subsection (a) and adding a new paragraph to read
39 as follows;

40 "(18)(A) Subject to general appropriations and any provisions of Chapter 5 of this title
41 to the contrary notwithstanding, the department is authorized within the limitations
42 provided in subparagraph (B) of this paragraph to provide to municipalities, counties,
43 authorities, and state agencies financial support by contract for clearing, dredging, or
44 maintaining free from obstructions and for the widening, deepening, and improvement
45 of the ports, seaports, or harbors of this state.

46 (B)(i) Municipalities, counties, authorities, or state agencies may, by formal
47 resolution, apply to the department for financial assistance provided by this
48 paragraph.

49 (ii) The department shall review the proposal and, if satisfied that the proposal is in
50 accordance with the purposes of this paragraph, may enter into a contract for
51 expenditure of funds.

52 (iii) The time of payment and any conditions concerning such funds shall be set forth
53 in the contract.

54 (C) In addition to subparagraph (A) of this paragraph and subject to general
55 appropriations for such purposes, the department with its own forces or by contract may
56 clear, dredge, or maintain free from obstruction and may widen, deepen, and improve
57 the ports, seaports, or harbors of this state; ~~and~~

58 (19) Code Sections 32-3-1 and 32-6-115 notwithstanding, the department may by
59 contract grant to any rapid transit authority created by the General Assembly, under such
60 terms and conditions as the department may deem appropriate, the right to occupy or
61 traverse a portion of the right of way of any road on the state highway system by or with

62 its mass transportation facilities. Furthermore, the department may by contract lease to
63 the rapid transit authority, under such terms and conditions as the department may deem
64 appropriate, the right to occupy, operate, maintain, or traverse by or with its mass
65 transportation facilities any parking facility constructed by the department.
66 Notwithstanding Code Section 48-2-17, all net revenue derived from the lease shall be
67 utilized by the department to offset the cost of constructing any parking facility.
68 Regardless of any financial expenditures by the rapid transit authority, no right of use or
69 lease granted under this paragraph shall merge into or become a property interest of the
70 rapid transit authority. Upon the transfer of the title of the mass transportation facilities
71 to private ownership or upon the operation of the rapid transportation facilities for the
72 financial gain of private persons, such rights granted by the department shall
73 automatically terminate and all rapid transportation facilities shall be removed from the
74 rights of way of the state highway system; and

75 (20) The department, in consultation with the Georgia Technology Authority, shall have
76 the authority to plan for, establish, and implement a long-term policy with regard to the
77 use of the rights of way of the interstate highways and state owned roads for the
78 establishment, development, and maintenance of the deployment of broadband and other
79 communications technologies throughout the state. The department shall be authorized
80 to promote and encourage the use of such rights of way of the interstate highways and
81 state owned roads for such purposes to the extent feasible and prudent. The department
82 shall be authorized to submit requests for proposals and to construct or to contract with
83 any public or private entities or individuals for the construction of facilities and
84 appurtenances incident thereto to enable the rights of way of the interstate highways and
85 state owned roads to be used for the deployment of broadband and other communications
86 technologies; provided, further, that the department may by contract lease to third parties
87 the right to occupy, operate, maintain, traverse, or sublease such facilities and
88 appurtenances. All revenues from such use, lease, or other activities in such right of ways
89 shall be paid into the general fund of the treasury. It is the intention of the General
90 Assembly, subject to the appropriation process, that a portion of the amount so deposited
91 into the general fund of the state treasury be appropriated each year to a program of state
92 grants to be administered by the Department of Community Affairs as provided in
93 Chapter 66F of Title 36 to be used to promote and provide broadband services throughout
94 the state."

95 PART III
96 SECTION 3-1.

97 Said Title 36 is further amended by adding a new chapter to read as follows:

98 "CHAPTER 66D

99 36-66D-1.

100 As used in this chapter, the term:

101 (1) 'Broadband network project' means any wired or wireless Internet access deployment
102 that has the capability of transmitting data at a rate of at least 25 megabits per second in
103 the downstream direction and at least 3 megabits per second in the upstream direction to
104 end users.

105 (2) 'Broadband services provider' means any provider of wired or wireless
106 telecommunications services or a public utility that builds or owns a broadband network
107 project.

108 (3) 'Department' means the Department of Community Affairs.

109 (4) 'Political subdivision' means a county, municipal corporation, or consolidated
110 government.

111 36-66D-2.

112 The department is authorized and directed to establish such rules and regulations as are
113 necessary to create a program with the assistance of the Georgia Technology Authority that
114 designates and recognizes political subdivisions that enact ordinances and policies that
115 have the effect of removing local barriers to broadband deployment as broadband ready
116 communities. Such program shall also provide for coordination with the Department of
117 Economic Development to jointly promote the availability of high-speed Internet services
118 in broadband ready communities throughout the state.

119 36-66D-3.

120 (a) A political subdivision may apply to the department for certification as a broadband
121 ready community. The department shall by rules and regulations prescribe the form and
122 manner for making an application.

123 (b) The department shall approve an application and certify a political subdivision as a
124 broadband ready community if the department determines that such political subdivision
125 has a comprehensive plan that includes the promotion of the availability and delivery of
126 broadband services pursuant to Code Sections 36-70-6 and 50-8-7.1 and has enacted an

127 ordinance for reviewing applications and issuing permits related to broadband network
128 projects that provides for the following:

129 (1) Appointing a single point of contact for all matters related to a broadband network
130 project;

131 (2) Requiring such political subdivision to review applications to determine whether an
132 application is complete and to approve or deny an application utilizing a streamlined and
133 expedited permit process;

134 (3) That any fee imposed by such political subdivision to review an application, issue a
135 permit, or perform any other activity related to a broadband network project shall be
136 reasonable, cost based, and nondiscriminatory to all applicants;

137 (4) Equal treatment among applicants with respect to actions related to a broadband
138 network project, including granting access to public rights of way, infrastructure and
139 poles, river and bridge crossings, or any other physical assets owned or controlled by the
140 political subdivision; and

141 (5) Any other provisions the department may require by rules or regulations related to
142 ensuring ready access to the public infrastructure and right of way.

143 (c) The department may develop a model ordinance for a political subdivision to use to
144 review applications and issue permits related to broadband network projects.

145 (d) After certification of a political subdivision as a broadband ready community, the
146 department shall continue to monitor such political subdivision's compliance with the
147 broadband ready community eligibility requirements provided in subsection (b) of this
148 Code section to ensure that the ordinance is still in effect and that such political
149 subdivision's actions are in conformance with such ordinance.

150 36-66D-4.

151 (a) Upon the request of a broadband services provider or based on the department's
152 investigation, the department may decertify a political subdivision as a broadband ready
153 community if such political subdivision fails to comply with or modifies the ordinance
154 required for certification under Code Section 36-66D-3.

155 (b) Upon a complaint that an application fee under an ordinance required for certification
156 under Code Section 36-66D-3 is unreasonable, the department shall determine whether or
157 not such fee is reasonable. In the proceeding for making such determination, the political
158 subdivision shall have the burden of proving the reasonableness of any function undertaken
159 by such political subdivision as part of the application process and the reasonableness of
160 the costs of such functions.

161 36-66D-5.

162 The department shall promulgate any reasonable and necessary rules and regulations to
163 effectuate the provisions of this chapter."

164 PART IV

165 SECTION 4-1.

166 Said Title 36 is further amended by adding a new chapter to read as follows:

167 "CHAPTER 66E

168 36-66E-1.

169 In order to encourage economic development and attract technology enabled growth in
170 Georgia, the Department of Community Affairs shall develop and administer the Georgia
171 Broadband Ready Community Site designation program with the assistance of the Georgia
172 Technology Authority. Such program shall designate facilities and developments that offer
173 at least 1 gigabit of broadband service that can be accessed for business, education, health
174 care, government, and other public purposes as a Georgia Broadband Ready Community
175 Site.

176 36-66E-2.

177 The Department of Community Affairs shall have the responsibility of creating and
178 developing the Georgia Broadband Ready Community Site designation program. Such
179 department shall evaluate the information submitted by applicants for such designation to
180 confirm, based on the best available local, state, and federal broadband information, that
181 at least 1 gigabit of broadband service is available within the facility or development.
182 Upon certification of such facility or development as a Georgia Broadband Community
183 Site by the Department of Community Affairs, such department shall provide standardized
184 graphics and materials to the owner or owners of such facility or development and the
185 county or municipal corporation in which such facility or development is located in order
186 to promote the status of the site as a Georgia Broadband Community Site. The Department
187 of Community Affairs shall make all departments and agencies involved in economic
188 development and the promotion of this state aware of the Georgia Broadband Community
189 Site designation and shall coordinate with the Department of Economic Development
190 promote this local community asset.

191 36-66E-3.
 192 The Department of Community Affairs shall be authorized to adopt and promulgate such
 193 rules and regulations as may be reasonable and necessary to carry out the purposes of this
 194 chapter."

195 **PART V**
 196 **SECTION 5-1.**

197 Said Title 36 is further amended by adding a new chapter to read as follows:

198 "CHAPTER 66F

199 36-66F-1.

200 As used in this article, the term:

201 (1) 'Broadband services' means the provision of access to the Internet or computer
 202 processing, information storage, or protocol conversion. For the purposes of this article,
 203 the term shall not include any information content or service applications provided over
 204 such access service nor any intrastate service that was subject to a tariff in effect as of
 205 September 1, 2005.

206 (2) 'Department' means the Department of Community Affairs.

207 (3) 'Underserved area' means a county in which:

208 (A) More than 5 percent but less than 25 percent of the population does not have
 209 Internet access capable of transmitting data at a rate of not less than 3 megabits per
 210 second in the downstream direction and not less than 1 megabit per second in the
 211 upstream direction; or

212 (B) Forty percent or more of the population does not have Internet access capable of
 213 transmitting data at a rate of not less than 25 megabits per second in the downstream
 214 direction and not less than 3 megabits per second in the upstream direction.

215 (4) 'Unserved area' means a county in which 25 percent or more of the population does
 216 not have Internet access capable of transmitting data at a rate of not less than 3 megabits
 217 per second in the downstream direction and not less than 1 megabit per second in the
 218 upstream direction.

219 36-66F-2.

220 (a) On or before July 1, 2019, the department shall develop the 'Rural Georgia Broadband
 221 Deployment Grant Program' with the assistance of the Georgia Technology Authority to
 222 provide funding to providers of broadband services to offer broadband services in unserved

223 areas or underserved areas of the state. Such grants shall be subject to the availability of
 224 appropriations for such program as may be expressly provided by the General Assembly
 225 together with such other funds as may be available from public or private sources
 226 including, but not limited to, funds through the OneGeorgia Authority Act and the Georgia
 227 Environmental Finance Authority.

228 (b) The department shall use a request for proposal process in awarding grants that shall
 229 be developed and administered with assistance from the OneGeorgia Authority. Proposals
 230 shall be evaluated and scored on the basis of criteria consistent with this chapter and other
 231 factors established by the department. The department of shall consider the applicant's
 232 prior performance under a grant, if applicable.

233 (c) A provider of broadband services applying for a grant shall receive priority if the
 234 submitted proposal to provide broadband services:

235 (1) Includes an area certified as a broadband ready community as provided in Chapter
 236 66D of this title;

237 (2) Includes elements of cooperation with or broadband services enhancement for
 238 businesses, industrial parks, education centers, hospitals and other health care facilities
 239 such as telehealth facilities and emergency care facilities, government buildings, public
 240 safety departments, or other public purposes; or

241 (3) Includes a monetary investment in the unserved areas or underserved areas by such
 242 provider of broadband services that is equal to or greater than the amount of grant
 243 funding to be awarded.

244 (d) Providers of broadband services submitting bids shall be required to disclose as part
 245 of the bidding process whether they are required under any federal law, rule, or regulation
 246 to provide broadband services to any portion of the unserved area or underserved area for
 247 which they are submitting a proposal and whether they have received any grants or other
 248 funding from the federal government, the state, or a local government to provide broadband
 249 services to any portion of such area.

250 (e) The department shall establish the criteria for determining grant eligibility and any
 251 grant terms and conditions that are reasonable and necessary to ensure that the grant funds
 252 are utilized to provide broadband services to the areas for which the grants are awarded.

253 36-66F-3.

254 The department shall promulgate and enforce such rules and regulations as may be deemed
 255 necessary to carry out the provisions of this chapter."

256

PART VI

257

SECTION 6-1.

258 Said Title 36 if further amended by adding a new Code section to read as follows:

259 "36-70-6.

260 (a) As used in this Code section, the term 'broadband services' means Internet access
 261 capable of transmitting data at a rate of not less than 25 megabits per second in the
 262 downstream direction and not less than 3 megabits per second in the upstream direction.

263 (b) The governing bodies of municipalities and counties shall provide in any
 264 comprehensive plan for the promotion of the availability and delivery of broadband
 265 services. The comprehensive plan shall identify steps which shall be taken to ensure that
 266 the population of the local government has reasonable and cost-effective access to
 267 broadband services."

268

SECTION 6-2.

269 Said Title 36 is further amended in Code Section 36-70-24, relating to criteria for service
 270 delivery strategy, by deleting "and" at the end of subparagraph (B) of paragraph (3), by
 271 replacing the period with "; and" at the end of subparagraph (B) of paragraph (4), and by
 272 adding a new paragraph to read as follows:

273 "(5) The strategy shall promote the availability and delivery of broadband services. The
 274 strategy shall identify steps which will be taken to ensure that the population of the local
 275 government has reasonable and cost-effective access to broadband services. As used in
 276 this paragraph, the term 'broadband services' means Internet access capable of
 277 transmitting data at a rate of not less than 25 megabits per second in the downstream
 278 direction and not less than 3 megabits per second in the upstream direction."

279

SECTION 6-3.

280 Title 50 of the Official Code of Georgia Annotated, relating to general powers and duties of
 281 the Department of Community Affairs is amended by revising paragraph (1) of subsection
 282 (b) of Code Section 50-8-7.1 as follows:

283 "(1) As part of such minimum standards and procedures, the department shall establish
 284 minimum elements which shall be addressed and included in comprehensive plans of
 285 local governments which are prepared as part of the coordinated and comprehensive
 286 planning process, provided that such minimum elements shall include the promotion of
 287 the availability and delivery of reasonable and cost-effective access to broadband services
 288 by the population of the local government;"

289
290

PART VII
SECTION 7-1.

291 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
292 amended in Code Section 48-8-3, relating to exemptions from state sales and use taxes, by
293 deleting "or" at the end of paragraph (97), by replacing the period with "; or" at the end of
294 paragraph (98), and by adding a new paragraph to read as follows:

295 "(99)(A) Broadband equipment used in the deployment of broadband technology in an
296 eligible county by a provider of broadband technology regardless of whether such
297 equipment is purchased by the owner, a contractor, or a subcontractor.

298 (B) As used in this paragraph, the term:

299 (i) 'Broadband equipment' means any device capable of being used for or in
300 connection with the transmission of broadband services, including, but not limited to,
301 asynchronous transfer mode switches, multiplexers, digital subscriber line access
302 multiplexers, routers, servers, fiber optics, and related equipment.

303 (ii) 'Broadband services' means Internet access capable of transmitting data at a rate
304 of at least 25 megabits per second in the downstream direction and at least 3 megabits
305 per second in the upstream direction.

306 (iii) 'Broadband technology' means high-speed Internet access transmissions,
307 including, but not limited to, digital subscriber lines, cable modems, fiber, wireless,
308 broadband over power lines, and satellites.

309 (iv) 'Eligible county' means any county certified as a broadband ready community
310 pursuant to Chapter 66D of Title 36 that has:

311 (I) A population of not more than 50,000 according to the United States decennial
312 census of 2010 or any future census; or

313 (II) Been designated by the commissioner of community affairs in the previous
314 calendar year as a county in which at least 40 percent of the population does not
315 have access to fixed broadband services.

316 (C) Prior to July 1 of each year, the commissioner of community affairs shall make the
317 annual designation described in division (iv) of subparagraph (B) of this paragraph and
318 publish on the website of the Department of Community Affairs a listing of eligible
319 counties.

320 (D) Any person making a sale of broadband equipment shall collect the tax imposed
321 on the sale by this article unless the purchaser furnishes a certificate issued by the
322 commissioner certifying that the purchaser is entitled to purchase the broadband
323 equipment without paying the tax."

324

PART VIII

325

SECTION 8-1.

326 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 327 by revising paragraphs (30) and (31) of Code Section 50-25-4, relating to general powers of
 328 the Georgia Technology Authority, and adding a new paragraph to read as follows:

329 "(30) To exercise any power granted by the laws of this state to public or private
 330 corporations which is not in conflict with the public purpose of the authority; and

331 (31) To coordinate the establishment and administration of one or more programs to
 332 increase economic, educational, and social opportunities for citizens and businesses
 333 through the deployment of universal broadband and other communications technologies;
 334 and

335 ~~(31)~~(32) To do all things necessary or convenient to carry out the powers conferred by
 336 this chapter."

337

SECTION 8-2.

338 Said Title 50 is further amended by revising Code Section 50-25-7.3, which was previously
 339 reserved, as follows:

340 "50-25-7.3.

341 (a) The authority is authorized and directed to establish and implement such policies and
 342 programs as are necessary to coordinate state-wide efforts to promote and facilitate
 343 universal deployment of broadband and other communications technologies in the state.
 344 Such policies and programs shall include, but not be limited to, the following:

345 (1) A written state-wide broadband deployment plan and the development of
 346 recommendations for promotion and implementation of such a plan;

347 (2) Coordination with representatives of the broadband industry and other
 348 communications technologies industries and local governments to develop agreements
 349 for data sharing to facilitate accurate and up-to-date mapping of areas with access to
 350 broadband and other communications technologies. All local governments shall
 351 cooperate with the authority and its designated agents by providing requested information
 352 as to addresses and locations of broadband and other communications technologies within
 353 their jurisdictions;

354 (3) Oversight and coordination of state efforts to apply for, utilize, and implement public
 355 and private grants, programs, designations, and other resources for deployment of
 356 broadband and other communications technologies;

357 (4) Technical support and advisory assistance to state agencies, including, but not limited
 358 to, the Department of Community Affairs and the OneGeorgia Authority, in developing

359 grant programs, designation programs, and other programs to promote the deployment
 360 of broadband and other communications technologies;

361 (5) A periodic analysis performed in conjunction with the State Properties Commission
 362 of all state assets, including, but not limited to, real property, that may be leased or
 363 otherwise utilized for broadband deployment; and

364 (6) Coordination between state agencies, local governments, industry representatives,
 365 community organizations, and other persons that control access to resources, such as
 366 facilities and rights of way, that may be used for the deployment of broadband and other
 367 communications technologies, that apply for or receive federal funds for the deployment
 368 of broadband and other communications technologies, and that promote economic and
 369 community development.

370 (b) The authority shall submit an annual report to the Governor and General Assembly
 371 regarding the policies and programs established by the authority as provided in
 372 subsection (a) of this Code section. Such report shall specifically include information as
 373 to the status of attainment of state-wide deployment of broadband and other
 374 communications technologies and industry and technology trends in broadband and other
 375 communications technologies.

376 (c) All state agencies shall cooperate with the authority and its designated agents by
 377 providing requested information to assist in the development and administration of policies
 378 and programs and the annual report required under this Code section. Reserved."

379 PART IX

380 SECTION 9-1.

381 Said Title 50 is further amended in Code Section 50-34-2, relating to definitions relative to
 382 the "OneGeorgia Authority Act," by revising subparagraph (B) of paragraph (4) and by
 383 revising paragraph (9) by deleting "and" at the end of subparagraph (F), by replacing the
 384 period with "; and" at the end of subparagraph (G), and by adding a new subparagraph to
 385 read as follows:

386 "(B) All costs of real property, fixtures, equipment, or personal property used in or in
 387 connection with or necessary or convenient for any project or any facility or facilities
 388 related thereto, including, but not limited to, cost of land, interests in land, options to
 389 purchase, estates for years, easements, rights, improvements, water rights, ~~and~~
 390 connections for utility services, and infrastructure and connections for broadband
 391 services as such term is defined in subparagraph (H) of paragraph (9) of this Code
 392 section; the cost of fees, franchises, permits, approvals, licenses, and certificates or the
 393 cost of securing any of the foregoing; the cost of preparation of any application

394 therefor; and the cost of all fixtures, machinery, equipment, furniture, and other
395 property used in connection with or necessary or convenient for any project or facility;"
396 "(H) The acquisition, construction, improvement, or modification of any property, real
397 or personal, used to provide or used in connection with the provision of broadband
398 services which the authority has determined as necessary for the operation of the
399 industries which such property, real or personal, is to serve and which is necessary for
400 the public welfare, provided that, for the purposes of this subparagraph, the term
401 'broadband services' means Internet access capable of transmitting data at a rate of not
402 less than 25 megabits per second in the downstream direction and not less than 3
403 megabits per second in the upstream direction."

404

PART X

405

SECTION 10-1.

406 (a) Except as provided in subsection (b) of this section, this Act shall become effective on
407 July 1, 2018.

408 (b) Part VII of this Act shall become effective upon its approval by the Governor or upon
409 its becoming law without such approval and shall apply to transactions which occur on or
410 after that date.

411

SECTION 10-2.

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