

House Bill 887 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Powell of the 171<sup>st</sup>, England of the 116<sup>th</sup>, Watson of the 172<sup>nd</sup>, Parsons of the 44<sup>th</sup>, Jackson of the 128<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Titles 36, 38, 46, and 50 of the Official Code of Georgia Annotated, relating to  
2 local government, military, emergency management, and veteran affairs, public utilities and  
3 public transportation, revenue and taxation, and state government respectively, so as to  
4 facilitate and incentivize adequate and expanded broadband and other communications  
5 services throughout the state; to specifically authorize municipal corporations to provide  
6 broadband services; to change certain provisions of the "Local Government Cable Fair  
7 Competition Act of 1999; to change and provide certain definitions in order to broaden the  
8 scope and applicability of such Act; to establish certification of certain counties and  
9 municipal corporations as broadband ready communities; to provide for duties and  
10 responsibilities of the Georgia Emergency Management and Homeland Security Agency; to  
11 provide methodology for local governments to apply to such agency for certification as a  
12 broadband ready community; to provide for a model ordinance by such agency; to provide  
13 for the OneGeorgia Authority to give priority to projects of broadband ready communities;  
14 to provide for the director of emergency management and homeland security to develop a  
15 grant program for the provision of broadband services to unserved areas throughout the state;  
16 to provide for prioritization and requirements for the awarding of grants; to require the  
17 development and publication of a map showing the unserved areas in the state; to provide for  
18 the promulgation of rules and regulations; to specifically authorize electric membership  
19 corporations and their affiliates to provide emerging communications technologies; to  
20 simplify and provide uniformity in franchise fees for nonexclusive access and use of state  
21 and local public rights of way; to provide for definitions; to provide for uniform rates for  
22 activities of communications services providers within a public right of way; to provide for  
23 uniform rates for certain attachments and collocations; to provide for applicability; to provide  
24 for legislative findings and intent; to provide short titles; to provide for related matters; to  
25 provide for effective dates; to repeal conflicting laws; and for other purposes.

26 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

H. B. 887 (SUB)

27 **PART I**

28 **SECTION 1-1.**

29 Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended  
30 by revising Chapter 46, which was previously reserved, as follows:

31 "CHAPTER 46

32 36-46-1.

33 As used in this chapter, the term:

34 (1) 'Broadband services' shall have the same meaning as provided in Code  
35 Section 50-39-1.

36 (2) 'Director' shall have the same meaning as provided in Code Section 38-3-180.

37 (3) 'Unserved area' shall have the same meaning as provided in Code Section 38-3-190.

38 36-46-2.

39 (a) A municipal corporation shall be authorized to provide broadband services in any area  
40 determined by the director pursuant to Article 14 of Chapter 3 of Title 38 to be an unserved  
41 area and that is:

42 (1) Within the corporate limits of such municipal corporation;

43 (2) Within the county in which such municipal corporation is located but outside its  
44 corporate limits; and

45 (3) Outside of the county in which such municipal corporation is located, provided there  
46 is an intergovernmental agreement with the political subdivision within which such  
47 municipal corporation provides such broadband services.

48 (b) A municipal corporation that complies with the provisions of Chapter 90 of Title 36  
49 shall be authorized to provide broadband services in any area that has not been determined  
50 by the director pursuant to Article 14 of Chapter 3 of Title 38 to be an unserved area and  
51 that is:

52 (1) Within the corporate limits of such municipal corporation;

53 (2) Within the county in which such municipal corporation is located but outside its  
54 corporate limits; and

55 (3) Outside of the county in which such municipal corporation is located, provided there  
56 is an intergovernmental agreement with the political subdivision within which such  
57 municipal corporation provides such broadband services."

58 **PART II**

59 **SECTION 2-1.**

60 Said Title 36 is further amended by revising Code Section 36-90-1, relating to short title of  
61 the Act, as follows:

62 "36-90-1.

63 This chapter shall be known and may be cited as the 'Local Government ~~Cable~~  
64 Communications Services Fair Competition Act of ~~1999~~ 2018."

65 **SECTION 2-2.**

66 Said Title 36 is further amended by revising paragraphs (2), (3), (13), and (14) of Code  
67 Section 36-90-2, relating to definitions, and adding a new paragraph to read as follows:

68 "(2) ~~'Cable service'~~ means:

69 ~~(A) The one-way transmission to subscribers of (i) video programming or (ii) other~~  
70 ~~programming service; and~~

71 ~~(B) Subscriber interaction, if any, which is required for the selection or use of such~~  
72 ~~video programming or other programming service.~~

73 ~~(3) 'Capital costs'~~ means all costs of providing a service which are capitalized in  
74 accordance with generally accepted governmental accounting principles.

75 (3) 'Communications services' shall have the same meaning as provided in Code Section  
76 50-39-1."

77 "(13) 'Service' means ~~cable service~~ communications services provided by a private  
78 provider or a public provider.

79 (14) 'Subscriber' means any private person lawfully receiving any ~~cable service~~  
80 communications services provided by a private or public provider by means of or in  
81 connection with a ~~cable~~ communications services system."

82 **SECTION 2-3.**

83 Said Title 36 is further amended by revising Code Section 36-90-3, relating to notifications  
84 to private providers before authorizing public provider, feasibility analysis and specific  
85 findings required, components of business plan, public hearings, requirements of ordinance  
86 or resolution, as follows:

87 "36-90-3.

88 (a) Before a franchising authority may begin the authorization process of permitting a  
89 public provider to deliver service, the franchising authority ~~must notify each private~~  
90 ~~provider serving the targeted market that the franchising authority intends to begin the~~  
91 ~~process of authorizing a public provider to provide cable service. The notice must state that~~

92 ~~the private provider is not meeting the present and future needs of the community and shall~~  
 93 ~~set forth each such unmet need separately and fully in order that the private provider may~~  
 94 ~~reasonably ascertain the scope and nature of the issues identified by the franchising~~  
 95 ~~authority. The franchising authority must allow each private provider 30 days to present~~  
 96 ~~a plan to address the identified needs not being met, including a reasonable period of time~~  
 97 ~~to implement the plan. Neither the notification nor response to the notification provided for~~  
 98 ~~in this subsection shall affect the franchise agreement between a private provider and a~~  
 99 ~~franchising authority.~~

100 ~~(b) If the franchising authority does not accept the private provider's plan to address the~~  
 101 ~~identified issues submitted as provided in subsection (a) of this Code section, the~~  
 102 ~~franchising authority shall then shall conduct an independent feasibility analysis and~~  
 103 ~~require the public provider to prepare a business plan to provide service. Such business~~  
 104 ~~plan shall set forth assumptions and specific findings as to:~~

- 105 (1) ~~The cable service communications services market share to be obtained by the public~~  
 106 ~~provider over a four-year period;~~
- 107 (2) The programming service offerings;
- 108 (3) Reasonable projections, for a period of at least four years, of the revenue and the  
 109 direct, indirect, and imputed operating costs of providing service;
- 110 (4) The equipment needed to provide the service;
- 111 (5) The source and adequacy of the total direct and indirect capital to construct and  
 112 operate the proposed system;
- 113 (6) The repayment of the debt service, including the length of payback of the principal  
 114 debt;
- 115 (7) ~~A cost-benefit analysis that shows a range of assumptions relating to The projected~~  
 116 ~~market penetration rates, subscription rates, operating costs, and capital outlay;~~
- 117 (8) Assumptions as to programming costs;
- 118 (9) Assumptions as to actual or potential competition from all other providers; and
- 119 (10) The allocation of costs between the public provider and other municipal operations;  
 120 and,
- 121 ~~(11) The ability to address the issues cited in the notice to the private providers specified~~  
 122 ~~in subsection (a) of this Code section.~~

123 ~~(c)~~(b) In order for the business plan provided for in subsection ~~(b)~~(a) of this Code section  
 124 to be adopted and the process to move forward, the business plan shall include, at a  
 125 minimum, the following components:

- 126 (1) The total homes passed, provided that such shall be certified by the appropriate  
 127 official responsible for municipal tax or census;

- 128 ~~(2) Cable service~~ Communications services basic penetration, estimated subscribers, and  
 129 total homes passed, provided that such shall be reflective of the market analysis and not  
 130 presume a penetration achieved by the fourth year of operation in excess of 40 percent  
 131 without full independent verification; and
- 132 (3) The overall estimated revenue takeout per home, ~~provided that the same shall not~~  
 133 ~~exceed by more than 5 percent~~ and shall compare such revenue to the amount being  
 134 achieved by ~~the~~ any private provider as developed from such publicly available  
 135 information as franchise fee reports;
- 136 (4) ~~The estimated miles of cable plant, provided that such shall be determined based on~~  
 137 ~~an actual survey conducted by public works employees and certified as to method and~~  
 138 ~~findings by a responsible supervisor;~~
- 139 (5) ~~The average construction cost per cable service subscriber or cable plant mile or both,~~  
 140 ~~provided that such shall be based on an estimate provided by an independent supplier;~~  
 141 and
- 142 (6) ~~A definitive plan for the servicing of any capital utilized to fund the construction and~~  
 143 ~~operation of the cable system, including a reasonable payback period at an interest rate~~  
 144 ~~reflective of the public market and the inherent risks of the business.~~
- 145 ~~(d)~~(c) Prior to granting the authorization to the public provider, the franchising authority  
 146 shall conduct at least two public hearings held at least two weeks apart. The public provider  
 147 shall ~~publish~~ make its business plan available in its entirety ~~and provide a complete copy~~  
 148 ~~to each private provider~~ at least 30 days before the first final public hearing. ~~Such~~ The  
 149 notice of public hearing shall state that the business plan prepared by the public provider  
 150 is available for public inspection ~~each business day prior to the authorization~~ and shall state  
 151 the location where such inspection may be made. Notice of the time, place, and date of  
 152 each hearing shall be published in a newspaper of general circulation within the jurisdiction  
 153 of the county or ~~municipality~~ municipal corporation once a week for the two weeks  
 154 preceding the week in which the hearing is to be held. ~~In addition, the private provider~~  
 155 ~~shall be given two weeks' written notice of the proposed hearing.~~
- 156 ~~(e)~~(d) Any authorization by the franchising authority shall be by passage of an ordinance  
 157 or resolution and must:
- 158 (1) Find that the public provider possesses satisfactory financial and technical capability  
 159 to be a public provider of communications services;
- 160 (2) Set forth the terms and conditions with respect to franchise terms and conditions,  
 161 conditions of access to public property, and pole attachment; and
- 162 (3) Adopt the business plan."

163

**PART III**

164

**SECTION 3-1.**

165 Title 38 of the Official Code of Georgia Annotated, relating to military, emergency  
166 management, and veterans affairs, is amended by adding a new article to read as follows:

167

"ARTICLE 12168 38-3-180.169 As used in this article, the term:

170 (1) 'Agency' means the Georgia Emergency Management and Homeland Security  
171 Agency as established by Code Section 38-3-20.

172 (2) 'Broadband network project' means any deployment of broadband services.

173 (3) 'Broadband services' shall have the same meaning as provided in Code  
174 Section 50-39-1.

175 (4) 'Broadband services provider' means any provider of broadband services or a public  
176 utility or any other person or entity that builds or owns a broadband network project.

177 (5) 'Director' means the director of emergency management and homeland security of the  
178 Georgia Emergency Management and Homeland Security Agency appointed pursuant to  
179 Code Section 38-3-20.

180 (6) 'Political subdivision' means a county, municipal corporation, or consolidated  
181 government.

182 38-3-181.

183 (a) A political subdivision may apply to the agency for certification as a broadband ready  
184 community. The agency shall by rules and regulations prescribe the form and manner for  
185 making an application. The agency shall prescribe by rules and regulations a process for  
186 public notice and comment on an application for a period of at least 30 days after such  
187 application is received, except that such process shall not apply to an application by a  
188 political subdivision that enacts a model ordinance developed by the agency under Code  
189 Section 38-3-182.

190 (b) The agency shall approve an application and certify a political subdivision as a  
191 broadband ready community if the agency determines that the political subdivision has  
192 enacted an ordinance that complies with Code Section 38-3-182. If the process for public  
193 notice and comment applies to an application, the agency shall, before approving such  
194 application, consider any public comments made regarding such application.

195 38-3-182.

196 (a) A political subdivision shall not be certified as a broadband ready community unless  
197 such political subdivision enacts an ordinance for reviewing applications and issuing  
198 permits related to broadband network projects that provides for all of the following:

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

201 (2) Requiring such political subdivision to determine whether an application is complete  
202 and notifying the applicant about such determination in writing within a certain time  
203 period after receiving such application; provided, however, that any delay in the  
204 processing of an application that is outside the control of such political subdivision and  
205 that is directly caused by or attributable to a natural disaster, a state of emergency, a  
206 mandated federal review or approval, the receipt of multiple applications by the same or  
207 different applicants within a relatively short period of time, another political subdivision's  
208 review or approval, or through fault of the applicant shall not count toward the days  
209 allotted within such time period;

210 (3) If the political subdivision receives an application that is incomplete, requiring the  
211 written notification provided for under paragraph (2) of this subsection to specify in detail  
212 the required information that is incomplete;

213 (4) If such political subdivision does not make the written notification required under  
214 paragraph (2) of this subsection, requiring such political subdivision to consider an  
215 application to be complete;

216 (5) Within a certain time period after receiving an application that is complete, requiring  
217 such political subdivision to approve or deny such application and provide the applicant  
218 notification in writing of such approval or denial;

219 (6) That any fee imposed by such political subdivision to review an application, issue a  
220 permit, or perform any other activity related to a broadband network project shall be  
221 reasonable and cost based; and

222 (7) Any other information or specifications as may be required by the agency by rules  
223 and regulations.

224 (b) The agency shall develop a model ordinance for the review of applications and the  
225 issuance of permits related to broadband network projects that complies with subsection (a)  
226 of this Code section that may be enacted by a political subdivision.

227 (c) If a political subdivision enacts an ordinance that differs from the model ordinance  
228 developed by the agency, the political subdivision shall, when applying for certification  
229 under Code Section 38-3-181, provide the agency with a written statement that describes  
230 the ordinance enacted by such political subdivision and how such ordinance differs from  
231 the model ordinance.

232 38-3-183.

233 A political subdivision that the agency has certified as a broadband ready community under  
 234 Code Section 38-3-181 may be decertified by the agency if it:

235 (1) Imposes an unreasonable or noncost based fee to review an application or issue a  
 236 permit for a broadband network project. Any application fee that exceeds \$100.00 shall  
 237 be considered unreasonable unless such political subdivision can provide documentation  
 238 justifying such fee based on a specific cost;

239 (2) Imposes a moratorium of any kind on the approval of applications or issuance of  
 240 permits for broadband network projects or on construction related to broadband network  
 241 projects;

242 (3) Discriminates among broadband services providers with respect to any action  
 243 described in this article or otherwise related to a broadband network project, including  
 244 granting access to public rights of way, infrastructure and poles, river and bridge  
 245 crossings, or any other physical assets owned or controlled by such political subdivision;  
 246 or

247 (4) As a condition for approving an application or issuing a permit for a broadband  
 248 network project, requires the applicant to:

249 (A) Provide any service or make available any part of the broadband network project  
 250 to such political subdivision; or

251 (B) Except for reasonable and cost based fees allowed, make any payment to or on  
 252 behalf of such political subdivision.

253 38-3-184.

254 (a) Upon the request of a broadband services provider, the agency may decertify a political  
 255 subdivision as a broadband ready community if such political subdivision fails to act in  
 256 accordance with the ordinance required for certification under Code Section 38-3-182,  
 257 modifies such ordinance so that such ordinance no longer complies with subsection (a) of  
 258 Code Section 38-3-182, or violates any provision of Code Section 38-3-183.

259 (b) Upon a complaint that an application fee under an ordinance required for certification  
 260 under Code Section 38-3-182 is unreasonable, the agency shall determine whether or not  
 261 such fee is reasonable. In the proceeding for making such determination, the political  
 262 subdivision shall have the burden of proving the reasonableness of any action undertaken  
 263 by such political subdivision as part of the application process and the reasonableness of  
 264 the costs of such actions.

265 38-3-185.

266 A broadband network project targeting industry development or construction of a new  
 267 building for which a political subdivision that has been certified as a broadband ready  
 268 community under Code Section 38-3-181 is seeking financing from the OneGeorgia  
 269 Authority, pursuant to Chapter 34 of Title 50, shall be given priority by the OneGeorgia  
 270 Authority.

271 38-3-186.

272 The director shall promulgate any reasonable and necessary rules and regulations to  
 273 effectuate the provisions of this article."

274

#### **PART IV**

275

#### **SECTION 4-1.**

276 Said Title 38 is further amended in Code Section 38-3-20, relating to Georgia Emergency  
 277 Management and Homeland Security Agency created, director, staff, offices, director's  
 278 duties, and disaster coordinator, by adding a new subsection to read as follows:

279 "(g) The director of emergency management and homeland security shall also have such  
 280 additional authority, duties, and responsibilities as authorized and described in Articles 12  
 281 through 14 of this chapter."

282

#### **PART V**

283

#### **SECTION 5-1.**

284 The General Assembly recognizes that access to broadband services in today's society is  
 285 essential to everyday life. Broadband access is a necessary utility as important as electricity,  
 286 gas, or phone service. However, there is a growing need for the government to provide the  
 287 much needed infrastructure to provide access to broadband services to homes and businesses  
 288 that are without such access because of their location in rural and other areas. The General  
 289 Assembly finds and declares that it is vital that the state provide equitable access to  
 290 broadband services that will ensure that this necessary utility which provides support for  
 291 education, work, engagement with government, health care, public safety, and leisure is  
 292 available to all citizens of Georgia. The General Assembly also finds and declares that  
 293 ensuring deployment of broadband services throughout this state is a public necessity, a basic  
 294 function of government, and would benefit the entire state. The General Assembly further  
 295 finds and declares that it is in the best interest of the state to spend state funds through the

296 establishment of a grant program to ensure that the much needed infrastructure exists for the  
 297 public purpose of state-wide deployment of broadband services to unserved areas of the state.

298 **SECTION 5-2.**

299 Said Title 38 is further amended by adding a new article to read as follows:

300 "ARTICLE 13

301 38-3-190.

302 As used in this article the term:

303 (1) 'Agency' shall have the same meaning as provided in Code Section 38-3-180.

304 (2) 'Broadband services' shall have the same meaning as provided in Code  
 305 Section 50-39-1.

306 (3) 'Director' shall have the same meaning as provided in Code Section 38-3-180.

307 (4) 'Location' means any residence, dwelling, home, business, or building.

308 (5) 'Qualified broadband provider' means:

309 (A) An electric membership corporation organized under Article 4 of Chapter 3 of  
 310 Title 46, association, company, firm, corporation, partnership, or political subdivision  
 311 of the state that has been providing broadband services to at least 1,000 locations and  
 312 has been conducting business in the state for at least three years with a demonstrated  
 313 financial, technical, and operational capability to operate a broadband services  
 314 network; or

315 (B) An electric membership corporation organized under Article 4 of Chapter 3 of  
 316 Title 46 or a political subdivision of the state that is able to demonstrate financial,  
 317 technical, and operational capability to operate a broadband services network.

318 (6) 'Unserved area' means a county, municipal corporation, census tract, or some other  
 319 geographical area as determined by the director in which broadband services are not  
 320 available to 20 percent or more of the locations as determined by the director pursuant  
 321 to this article.

322 38-3-191.

323 (a) On or before July 1, 2019, the director shall develop the 'Georgia Broadband  
 324 Deployment Initiative,' to provide funding to qualified broadband providers who request  
 325 the least amount of money to offer broadband services in unserved areas of the state. The  
 326 goal of such program shall be to provide broadband services coverage throughout the entire  
 327 state. The grants awarded shall reflect the state's share of the cost of deployment of  
 328 broadband services to unserved areas as authorized by this chapter. The amount of any

329 grant awarded shall be directly tied to the cost of the deployment of broadband services by  
 330 the qualified broadband provider. The grants awarded shall only provide funds for capital  
 331 expenses and shall not be used by the qualified broadband provider for operation and  
 332 maintenance expenses.

333 (b) The program shall consist of a minimum of five rounds of grants, one each year for  
 334 five years. The director shall be authorized to extend the program for more than five years  
 335 if unserved areas still exist in the state.

336 (c) The first round of grants shall be awarded when moneys are appropriated or grants or  
 337 other funds are received to fund the awarding of the grant program.

338 (d) Qualified broadband providers submitting proposals shall receive priority if such  
 339 proposals to provide broadband services:

340 (1) Include a proposed system design that is scalable to higher broadband speeds in the  
 341 future;

342 (2) Include elements of cooperation with or broadband services enhancement for  
 343 businesses; industrial parks; education centers; hospitals and other health care facilities  
 344 such as telehealth facilities and emergency care facilities; government buildings; public  
 345 safety departments; or other providers of public services;

346 (3) Expand broadband services in unserved areas with a lower nonmilitary population  
 347 than other unserved areas in the state;

348 (4) Include an unserved area certified as a broadband ready community as provided in  
 349 Article 12 of this chapter; or

350 (5) Include a monetary investment in the unserved area that is equal to or greater than  
 351 the amount of money requested in the proposal, whether or not such investment is made  
 352 solely by such qualified broadband provider or by such qualified broadband provider in  
 353 conjunction with one or more local governments, one or more commercial or industrial  
 354 entities, or any combination thereof.

355 (e) As part of the proposal process any qualified broadband provider submitting a proposal  
 356 shall be required to disclose whether such qualified broadband provider is required under  
 357 any federal law, rule, or regulation to provide broadband services to any portion of the  
 358 unserved area for which such proposal is submitted and whether any grants or other  
 359 funding from the federal government, the state, or a local government to provide broadband  
 360 services to any portion of such unserved area have been received by such qualified  
 361 broadband provider.

362 (f) The director shall not discriminate between different types of technology used to  
 363 provide the broadband services nor shall the director condition the award of any grant to  
 364 specific requirements related to the qualified broadband provider's management of its  
 365 broadband services network.

366 (g) The director shall establish the criteria for determining proposal eligibility and any  
 367 grant terms and conditions that are reasonable and necessary to ensure that the grant funds  
 368 are utilized to provide broadband services to the areas for which the grants are awarded;  
 369 provided, however, that any qualified broadband provider receiving a grant under this  
 370 article shall be required to agree:

371 (1) Not to charge more for broadband services to customers in any unserved area for  
 372 which it receives a grant than it does for the same or similar broadband services to  
 373 customers in other areas of the state;

374 (2) To serve 96 percent of any locations requesting broadband services in any unserved  
 375 area for which it receives a grant;

376 (3) To meet or exceed in any unserved area for which it receives a grant a minimum level  
 377 of dependable service as established by the director; and

378 (4) That its plan to provide broadband services shall be substantially completed within  
 379 the time period specified in the grant proposal.

380 (h) In addition to the requirements of subsection (g) of this Code section, the director shall  
 381 evaluate proposals based on upstream and downstream speeds, data cap limits, signal  
 382 latency, reliability of the technology utilized, historic service issues in other areas served  
 383 by the qualified broadband provider, and the length of time it will take to deploy the  
 384 broadband services in the unserved area.

385 (i) The director shall condition the release of any grant funds upon the substantial  
 386 completion, as determined by the director, of the proposed broadband services deployment  
 387 and upon confirmation of the level of service proposed in the grant proposal as  
 388 demonstrated by operational testing. Once the grant funds have been released, the qualified  
 389 broadband provider shall have ownership and control of the broadband services network  
 390 built with such funds.

391 38-3-192.

392 Notwithstanding any provision of law to the contrary, any data or information shared by  
 393 a qualified broadband provider pursuant to this article that is designated by such qualified  
 394 broadband provider as a trade secret, as such term is defined in Code Section 10-1-761,  
 395 shall not be subject to public inspection absent an order of the superior court that the data  
 396 or information are not trade secrets and are subject to disclosure.

397 38-3-193.

398 The director shall ensure that the grant program complies with any laws, rules, or  
 399 regulations of the Federal Communications Commission.

400 38-3-194.

401 (a)(1) On June 30, 2019, and each June 30 thereafter, the director of shall report to the  
 402 Lieutenant Governor, the Speaker of the House of Representatives, and the Governor on  
 403 the program's progress in achieving the purposes of this article, including, at a minimum:

404 (A) The number, amounts, and recipients of grants awarded; and

405 (B) The status of any funded grant proposals.

406 (2) The report required under paragraph (1) of this subsection, shall be published on the  
 407 website of the agency.

408 (b) The state auditor, on a periodic basis, but no less often than once every three years,  
 409 shall conduct a performance audit of the grant program to examine and determine the  
 410 program's economy, efficiency, and effectiveness and to provide an accounting of the funds  
 411 of the grant program. The state auditor shall provide an audit report to the Lieutenant  
 412 Governor, the Speaker of the House of Representatives, and the Governor by December  
 413 31 of the year in which the audit was conducted.

414 38-3-195.

415 Subject to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' the director  
 416 is authorized to promulgate and enforce such rules and regulations as may be deemed  
 417 necessary to carry out the provisions of this article."

418 **PART VI**

419 **SECTION 6-1.**

420 Said Title 38 is further amended by adding a new article to read as follows:

421 "ARTICLE 14

422 38-3-200.

423 As used in this article the term:

424 (1) 'Agency' shall have the same meaning as provided in Code Section 38-3-180.

425 (2) 'Broadband services' shall have the same meaning as provided in Code  
 426 Section 50-39-1.

427 (3) 'Broadband services provider' shall have the same meaning as provided in Code  
 428 Section 38-3-180.

429 (4) 'Director' shall have the same meaning as provided in Code Section 38-3-180.

430 (5) 'Location' shall have the same meaning as provided in Code Section 38-3-190.

431 (6) 'Unserved area' shall have the same meaning as provided in Code Section 38-3-190.

432 38-3-201.

433 The director shall determine those areas in the state that are unserved areas and shall  
434 publish such findings pursuant to Code Section 38-3-202.

435 38-3-202.

436 (a) The director shall consult with the Federal Communications Commission in  
437 determining if a reliable map showing the unserved areas of the state exists in sufficient  
438 detail required for the director to determine the percentage of locations to which broadband  
439 services are not available. If on or before January 1, 2019, the director determines that  
440 such a map does not exist then he or she shall create such a map.

441 (b) On or before June 30, 2019, the director shall publish on the website of the agency a  
442 map showing the unserved areas in the state; provided, however, that if as provided in  
443 subsection (a) of this Code section, it is determined that a reliable map exists that was not  
444 created by the director or his or her designee, then the website may link to such existing  
445 map.

446 (c) All local governments shall cooperate with the director and the agency's designated  
447 agents by providing requested information as to addresses and locations of broadband  
448 services and other communications technologies within their jurisdictions.

449 (d) All broadband services providers in the state shall be required to provide such  
450 information as the director determines is necessary to develop a map or to make a  
451 determination as to the percentage of locations to which broadband services are not  
452 available. All information provided by a broadband services provider pursuant to this  
453 article shall be presumed to be confidential, proprietary, a trade secret, as such term is  
454 defined in Code Section 10-1-761, and subject to exemption from disclosure under state  
455 and federal law, and shall not be subject to disclosure under Article 4 of Chapter 18 of Title  
456 50, except in the form of a map where information that could be used to determine  
457 provider-specific information about the network of the broadband services provider is not  
458 disclosed. Except as provided in this Code section, such provider-specific information  
459 shall not be released to any person other than to the submitting broadband services  
460 provider, the agency, employees of the agency, and attorneys employed by or under  
461 contract with the agency without express permission of the submitting broadband services  
462 provider. Such information shall be used solely for the purposes stated under this article."

463

**PART VII**

464

**SECTION 7-1.**

465 Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public  
 466 transportation, is amended by revising Code Section 46-3-200, relating to purposes of electric  
 467 membership corporations, as follows:

468 "46-3-200.

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

470 (1) To furnish electrical energy and service;

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

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

474 (4) To provide and operate emerging communications technologies as provided in Code  
 475 Section 46-5-223; and

476 ~~(4)(5)~~ To engage in any lawful act or activity necessary or convenient to effect the  
 477 foregoing purposes."

478

**SECTION 7-2.**

479 Said Title 46 is further amended by revising Code Section 46-5-221, relating to definitions  
 480 for competitive emerging communications technologies, as follows:

481 "46-5-221.

482 As used in this article, the term:

483 (1) 'Affiliate' means another person which controls, is controlled by, or is under common  
 484 control with such person.

485 (1) 'Broadband ~~service~~ services' means a wired or wireless terrestrial service that consists  
 486 of the capability to transmit at a rate not less than 200 kilobits per second in either the  
 487 upstream or the downstream direction and in combination with such service ~~provide~~  
 488 provides either:

489 (A) Access to the Internet; or

490 (B) Computer processing, information storage, or protocol conversion.

491 For the purposes of this article, broadband ~~service~~ services shall not include any  
 492 information content or service applications provided over such access ~~service~~ services nor  
 493 any intrastate service that was subject to a tariff in effect as of September 1, 2005.

494 (1.1) 'Electric membership corporation' or 'EMC' means an electric membership  
 495 corporation organized under this title or any prior electric membership corporation law  
 496 of this state, or a corporation which elected, in accordance with the provisions thereof,  
 497 to be governed by Ga. L. 1937, p. 644, the 'Electric Membership Corporation Act.'

498 (1.2) 'Emerging communications technologies' means broadband services, VoIP, IP  
 499 enabled services, wireless services, and all facilities and equipment associated therewith.

500 (1.3) 'IP enabled services' means any service, capability, functionality, or application that  
 501 enables an end user to send or receive a communication in existing Internet Protocol  
 502 format, or any successor format, regardless of whether such communication is voice,  
 503 data, or video.

504 (2) 'VoIP' means Voice over Internet Protocol services offering real-time multidirectional  
 505 voice functionality utilizing any Internet protocol.

506 (3) 'Wireless ~~service~~ services' means:

507 (A) Commercial ~~commercial~~ mobile radio service carried on between mobile stations  
 508 or receivers and land stations and by mobile stations communicating among  
 509 themselves; or

510 (B) Commercial fixed radio service carried on between or among land stations or  
 511 receivers."

512 **SECTION 7-3.**

513 Said Title 46 is further amended by revising Code Section 46-5-222, relating to commission  
 514 has no authority over setting of rates or terms and conditions for the offering of broadband  
 515 service, voice over Internet protocol, or wireless service, and limitations, as follows:

516 "46-5-222.

517 (a) The Public Service Commission shall not have any jurisdiction, right, power, authority,  
 518 or duty to impose any requirement or regulation relating to the setting of rates or terms and  
 519 conditions for the offering of broadband ~~service~~ services, VoIP, or wireless services.

520 (b) This Code section shall not be construed to affect:

521 (1) State laws of general applicability to all businesses, including, without limitation,  
 522 consumer protection laws and laws relating to restraint of trade;

523 (2) Any authority of the Public Service Commission with regard to consumer  
 524 complaints; or

525 (3) Any authority of the Public Service Commission to act in accordance with federal  
 526 laws or regulations of the Federal Communications Commission, including, without  
 527 limitation, jurisdiction granted to set rates, terms, and conditions for access to unbundled  
 528 network elements and to arbitrate and enforce interconnection agreements.

529 (c) Except as otherwise expressly provided in this Code section, nothing in this ~~Code~~  
 530 ~~section~~ article shall be construed to restrict or expand any other authority or jurisdiction of  
 531 the Public Service Commission."

532 **SECTION 7-4.**

533 Said Title 46 is further amended by adding a new Code section to read as follows:

534 "46-5-223.535 An EMC shall be authorized to:536 (1) Provide and operate emerging communications technologies.537 (2) Create an affiliate that shall be authorized to provide and operate emerging  
538 communications technologies.539 (3) Enter into a partnership with a provider of emerging communications technologies  
540 to provide and operate emerging communications technologies.541 (4) Apply for, accept, repay, and utilize loans, grants, and other financing from the  
542 federal government, this state, or any department or agency thereof, or from any other  
543 public or private party, in order to provide funding to assist the EMC or an affiliate of  
544 such EMC in the planning, engineering, construction, extension, operation, repair, and  
545 maintenance of emerging communications technologies and facilities which such EMC  
546 or an affiliate of such EMC shall be authorized to provide under this article."547 **PART VIII**548 **SECTION 8-1.**549 This part shall be known and may be cited as the "Uniform Franchise Fee Structure for  
550 Communications Services Providers Act."551 **SECTION 8-2.**552 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
553 by adding a new chapter to read as follows:554 "CHAPTER 39555 50-39-1.556 As used in this chapter, the term:557 (1) 'Attachment' means the connection or fastening of a wire or cable by a  
558 communications services provider to a utility pole.559 (2) 'Authority' means the Department of Transportation, any local governing authority,  
560 any political subdivision providing retail electric service, and any electric membership  
561 corporation established under Article 4 of Chapter 3 of Title 46.562 (3) 'Broadband network project' shall have the same meaning as provided in Code  
563 Section 38-3-180.

564 (4) 'Broadband services' means a wired or wireless terrestrial service that consists of the  
 565 capability to transmit at a rate not less 10 megabits per second in the downstream  
 566 direction and at least 1 megabit per second in the upstream direction to end users and in  
 567 combination with such service provides:

568 (A) Access to the Internet; or

569 (B) Computer processing, information storage, or protocol conversion.

570 For the purposes of this chapter, broadband services shall not include any information  
 571 content or service applications provided over such access services nor any intrastate  
 572 service that was subject to a tariff in effect as of September 1, 2005.

573 (5) 'Broadband services provider' shall have the same meaning as provided in Code  
 574 Section 38-3-180.

575 (6) 'Collocate' or 'collocation' means to install, mount, maintain, operate, or replace one  
 576 or more communications facilities on or within an existing wireless support structure or  
 577 utility pole. The term shall not include the installation of a new utility pole or wireless  
 578 support structure or utility pole in a public right of way.

579 (7) 'Communications facility' means that set of equipment and network components and  
 580 associated facilities used by a communications services provider to facilitate  
 581 communications services.

582 (8) 'Communications services' means cable service as defined in 47 U.S.C.  
 583 Section 522(6), as it existed on January 1, 2018; telecommunications service as defined  
 584 in 47 U.S.C. Section 153(53), as it existed on January 1, 2018; information service as  
 585 defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018; video service; or  
 586 wireless services.

587 (9) 'Communications services provider' means a cable operator as defined in 47 U.S.C.  
 588 Section 522(5), as it existed on January 1, 2018; a telecommunications carrier as defined  
 589 in 47 U.S.C. Section 153(51), as it existed on January 1, 2018; a provider of information  
 590 services as defined in 47 U.S.C. Section 153(24), as it existed on January 1, 2018; and  
 591 a wireless services provider.

592 (10) 'Interstate highways' shall have the same meaning as provided in Code  
 593 Section 32-1-3.

594 (11) 'Law' means any federal, state, or local law, statute, common law, code, rule,  
 595 regulation, order, resolution, or ordinance.

596 (12) 'Local governing authority' means county or municipal corporation that has adopted  
 597 land use or zoning regulations for all or for the majority of land use within its jurisdiction  
 598 or has adopted separate regulations pertaining to the location, construction, collocation,  
 599 modification, or operation of wireless facilities.

600 (13) 'Person' means an individual, corporation, limited liability company, partnership,  
601 association, trust, or other entity or organization, including an authority.

602 (14) 'Right of way' shall have the same meaning as provided in Code Section 32-1-3.  
603 The term shall not include interstate highways.

604 (15) 'Rural county' means a county having a population of less than 50,000 according to  
605 the United States decennial census of 2010 or any future such census; provided, however,  
606 that for counties which contain a military base or installation, the military personnel and  
607 their dependents living in such county shall be excluded from the total population of such  
608 county for purposes of this definition.

609 (16) 'Unserved area' shall have the same meaning as provided in Code Section 38-3-200.

610 (17) 'Utility pole' means a pole or similar structure that is or may be used in whole or in  
611 part by or for wireline communications, electric distribution, lighting, traffic control,  
612 signage, or a similar function, or for the collocation of communications facilities. The  
613 term shall not include wireless support structures or electric transmission structures.

614 (18) 'Wireless services' shall have the same meaning as provided in Code  
615 Section 46-5-221.

616 (19) 'Wireless services provider' means a person that provides wireless services.

617 (20) 'Wireless support structure' means a freestanding structure, such as a monopole;  
618 tower, either guyed or self-supporting; billboard; or other existing or proposed structure  
619 designed to support or capable of supporting facilities that provide wireless services.  
620 Such term shall not include a utility pole or an electric transmission structure.

621 50-39-2.

622 (a) The provisions of this Code section shall only apply to activities of a communications  
623 services provider within a right of way.

624 (b) An authority shall not enter into an exclusive arrangement with any person for use of  
625 a right of way for the construction, installation, maintenance, modification, operation,  
626 marketing, or replacement of communications facilities or the collocation of said  
627 communications facilities.

628 (c) The authority, in the exercise of its administration and regulation related to the  
629 management of a right of way, shall be competitively neutral with regard to other similarly  
630 situated users of the right of way, and terms governing such authority's right of way shall  
631 not be unreasonable, discriminatory, and shall not violate any applicable law.

632 (d) The authority may require a communications services provider to repair all damage to  
633 a right of way directly caused by the activities of such communications services provider,  
634 while occupying, installing, repairing, modifying, replacing, or maintaining  
635 communications services facilities in the right of way, and to return such right of way to

636 its functional equivalence before the damage pursuant to the competitively neutral,  
637 reasonable requirements, and specifications of the authority. If the communications  
638 services provider fails to make such repairs required by the authority within 90 days after  
639 the receipt of written notice, the authority may effect those repairs and charge the  
640 applicable party the reasonable, documented cost of such repairs.

641 50-39-3.

642 (a) Any rates and fees charged by an authority for attachments and collocations to  
643 authority utility poles or authority wireless support structures by communications services  
644 providers shall be nondiscriminatory regardless of the services provided by the  
645 communications services provider and shall not exceed the annual recurring rate or differ  
646 from the terms and conditions permitted under rules and regulations adopted pursuant to  
647 47 U.S.C. 224(d) by the Federal Communications Commission, as such existed on  
648 January 1, 2018, with respect to attachments and collocations located in any rural county  
649 or any unserved area located in any other county which are owned by a broadband services  
650 provider to provide broadband services to such rural county or unserved area. The Federal  
651 Communications Commission rate shall be applicable in any rural county or any unserved  
652 area after the commencement of any construction of a broadband network project and such  
653 rates, terms, and conditions shall be effective for not less than ten years.

654 (b) All other terms and provisions of any authority agreement governing or affecting a  
655 communications services provider's attachments or collocations on authority poles shall be  
656 fair, reasonable, and nondiscriminatory.

657 (c) This Code section shall not constitute certification as provided in Section 224(c) of the  
658 Federal Communications Act of 1934, as amended, as it existed on January 1, 2018. If a  
659 court of competent jurisdiction determines that this Code section is tantamount to  
660 certification, this Code section shall become null and void.

661 (d) This Code section shall not apply to any attachment regulated by the Federal  
662 Communications Commission under Section 224 of the Federal Communications Act of  
663 1934, as amended, as it existed on January 1, 2018.

664 50-39-4.

665 The Department of Transportation shall amend its Utilities Accommodation Policy to  
666 reflect the provisions of this chapter that are applicable to the Department of  
667 Transportation; provided, however, that if such amended Utilities Accommodation Policy  
668 is not approved by the Federal Highway Administration such that the Department of  
669 Transportation would no longer be eligible for federal transportation funding, then this  
670 chapter shall be deemed to be null and void in terms of its applicability to the Department

671 of Transportation. In the event that such amended Utilities Accommodation Policy is not  
672 approved by the Federal Highway Administration, the Department of Transportation shall  
673 notify the chairperson of the House Committee on Ways and Means, the chairperson of  
674 Senate Regulated Industries and Utilities Committee, the Speaker of the House of  
675 Representatives, the Lieutenant Governor, and the Governor in writing within ten days of  
676 receipt of such disapproval. Such notification shall include a copy of Utilities  
677 Accommodation Policy that was not approved, a notation as to the specific language that  
678 was not approved, and an explanation why such language could not have been modified  
679 in keeping with the provisions of this chapter in a manner that the Federal Highway  
680 Administration would approve."

681

**PART IX**

682

**SECTION 9-1.**

683 (a) Except as provided in subsection (b) of this part, this Act shall become effective on  
684 July 1, 2018.

685 (b) For purposes of the Department of Transportation amending its Utilities  
686 Accommodation Policy to reflect the provisions of Chapter 39 of Title 50 that are  
687 applicable to the Department of Transportation and providing any notification required  
688 pursuant to Code Section 50-39-3 of Part VIII of this Act, this Act shall become effective  
689 upon its approval by the Governor or upon its becoming law without such approval.

690

**SECTION 9-2.**

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