

Senate Bill 2

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

**AS PASSED SENATE**

**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 specifically authorize electric membership corporations and their  
3 affiliates to provide broadband services; to provide for and revise definitions; to authorize  
4 certain financing and partnerships for the provision of broadband services; to prohibit  
5 cross-subsidization between the provision of broadband services and an electric membership  
6 corporation's natural gas activities or electricity services activities; to authorize the Public  
7 Service Commission to have jurisdiction over compliance with the cross-subsidization  
8 prohibitions and to provide for expedited adjudication of any complaints related thereto; to  
9 provide certain rights, powers, and benefits to broadband affiliates of electric membership  
10 corporations; to require certain rates, terms, and conditions for pole attachments between  
11 communications service providers and electric membership corporations and their broadband  
12 affiliates; to provide for related matters; to provide for an effective date; to repeal conflicting  
13 laws; and for other purposes.

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

15 **SECTION 1.**

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

19 "46-3-171.

20 As used in this article, the term:

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

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

27 (2.1) 'Broadband affiliate' means any person which directly or indirectly controls, is  
 28 controlled by, or is under common control of one or more electric membership  
 29 corporations and which is used to provide broadband services.

30 (2.2) 'Broadband facilities' means any facilities and equipment utilized to provide or  
 31 support broadband services.

32 (2.3) 'Broadband services' means a wired or wireless service that consists of the  
 33 capability to transmit data at a rate not less than 200 kilobits per second to and from end  
 34 users and in combination with such service provides:

35 (A) Access to the internet;

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

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

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

40 (2.4) 'Communications service provider' means a provider of cable service as defined in  
 41 47 U.S.C. Section 522(6), telecommunications service as defined in 47 U.S.C. Section  
 42 153(53), or information service as defined in 47 U.S.C. Section 153(24), as each such  
 43 term existed on January 1, 2019.

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

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

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

54 (5.1) 'Gas activities' shall have the same meaning as provided for in Code Section  
 55 46-4-152.

56 (5.2) 'Gas affiliate' shall have the same meaning as the term 'EMC gas affiliate' provided  
 57 in Code Section 46-4-152.

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

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

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

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

70 **SECTION 2.**

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

73 "46-3-200.

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

- 75 (1) To furnish electrical energy and service;  
 76 (2) To assist its members in the efficient and economical use of energy;  
 77 (3) To engage in research and to promote and develop energy conservation and sources  
 78 and methods of conserving, producing, converting, and delivering energy; ~~and~~  
 79 (4) To provide and operate broadband facilities for its own use, directly or indirectly, and  
 80 to lease such broadband facilities on a nondiscriminatory basis;  
 81 (5) To form, fund, support, and operate a broadband affiliate, directly or indirectly,  
 82 contingent upon compliance with Code Sections 46-5-163 and 46-3-200.2; and  
 83 ~~(4)(6)~~ (6) To engage in any lawful act or activity necessary or convenient to effect the  
 84 foregoing purposes."

85 **SECTION 3.**

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

87 "46-3-200.1.

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

- 91 (1) Apply for, accept, repay, and utilize loans, grants, and other financing from any  
 92 person; and  
 93 (2) Enter into contracts, agreements, partnerships, or other types of business relationships  
 94 with any person.

95 46-3-200.2.

96 (a) No electric membership corporation, broadband affiliate, or gas affiliate shall permit  
 97 cross-subsidization between its electricity services activities, its broadband services

98 activities, or its gas activities. To prevent cross-subsidization between broadband services  
99 activities and gas activities and between broadband services activities and electricity  
100 services activities, any electric membership corporation with a broadband affiliate that  
101 provides broadband services shall:

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

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

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

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

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

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

122 (5) Develop and maintain a cost allocation manual, approved by the commission,  
123 describing the electric membership corporation's methods of cost allocation and such  
124 other information and policies reasonably required to ensure compliance with this article.

125 Such manual shall:

126 (A) Establish rules for the pricing of transactions between an electric membership  
127 corporation and its gas affiliates and broadband affiliates, as applicable, including the  
128 transfer of assets between such electric membership corporation and its gas affiliates  
129 and broadband affiliates;

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

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

141 (b) An electric membership corporation that has broadband facilities shall:

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

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

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

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

168 (c) The commission shall have jurisdiction over the compliance of each electric  
169 membership corporation and broadband affiliate within the provisions of this Code section.  
170 The commission shall provide for an expedited adjudication of any complaint as to a failure

171 to comply with this Code section and may engage an administrative law judge for purposes  
172 of such adjudication.

173 46-3-200.3.

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

177 (1) Only serve the purposes of developing, providing, furnishing, or promoting  
178 broadband facilities and broadband services, or a combination of such purposes; and

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

180 46-3-200.4.

181 (a) As used in this Code section, the term 'agreement' means a pole attachment agreement  
182 or joint use agreement in effect as of January 1, 2019.

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

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

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

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

199 (d) The commission shall have jurisdiction over any complaint regarding the rates or terms  
200 and conditions of service for pole or infrastructure attachments between an electric  
201 membership corporation and a communications service provider. The commission shall  
202 provide for an expedited adjudication of any such complaint and may engage an  
203 administrative law judge to do so. If the commission finds that the rates or terms and  
204 conditions demanded by an electric membership corporation for such access are not just,  
205 reasonable, and nondiscriminatory, the commission shall determine the just, reasonable,

206 and nondiscriminatory rates or terms and conditions thereafter for such access. In so  
207 determining, the commission shall ensure that the rates or terms and conditions are not  
208 higher or more burdensome than the rates or terms and conditions imposed by other pole  
209 owners in this state. During the pendency of any such dispute, the electric membership  
210 corporation shall not disrupt the communications service provider's standard business  
211 operations."

212 **SECTION 4.**

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

215 **SECTION 5.**

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