

The House Committee on Energy, Utilities and Telecommunications offers the following substitute to SB 2:

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 allow electric membership corporations to engage in certain
3 activities in order to facilitate the provision of broadband services; to specifically authorize
4 electric membership corporations and their affiliates to provide broadband services; to
5 provide for and revise definitions; to authorize certain financing and partnerships for the
6 provision of broadband services; to prohibit cross-subsidization between the provision of
7 broadband services and an electric membership corporation's natural gas activities or
8 electricity services activities; to provide for declaratory judgment actions for violations of
9 cross-subsidization prohibitions and the procedures governing such actions; to provide
10 certain rights, powers, and benefits to broadband affiliates of electric membership
11 corporations; to require certain rates, terms, and conditions for pole attachments between
12 communications service providers and electric membership corporations and their broadband
13 affiliates; to provide for applicability; to permit the use of electric easements for broadband
14 services; to provide for legislative findings and declarations as to certain utility easements;
15 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
16 for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

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

22 "46-3-171.

23 As used in this article, the term:

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

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

30 (2.1) 'Assigned area' shall have the same meaning as provided for in Code
 31 Section 46-3-3.

32 (2.2) 'Broadband affiliate' means any person which directly or indirectly controls, is
 33 controlled by, or is under common control of one or more electric membership
 34 corporations and which is used to provide broadband services.

35 (2.3) 'Broadband facilities' means any facilities and equipment utilized to provide or
 36 support broadband services.

37 (2.4) 'Broadband services' means a wired or wireless service that consists of the
 38 capability to transmit data at a rate not less than 200 kilobits per second to and from end
 39 users and in combination with such service provides:

40 (A) Access to the internet;

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

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

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

45 (2.5) 'Communications service provider' means a provider of cable service as defined in
 46 47 U.S.C. Section 522(6), telecommunications service as defined in 47 U.S.C. Section
 47 153(53), or information service as defined in 47 U.S.C. Section 153(24), as each such
 48 term existed on January 1, 2019.

49 (2.6) 'Electric easement' means a right of way or an easement, whether acquired by
 50 eminent domain, prescription, or conveyance, that is used or may be used for
 51 transmitting, distributing, or providing electrical energy and services by utilizing
 52 aboveground or underground wires, cables, lines, or similar facilities.

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

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

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

63 (5.1) 'Gas activities' shall have the same meaning as provided for in Code
 64 Section 46-4-152.

65 (5.2) 'Gas affiliate' shall have the same meaning as the term 'EMC gas affiliate' provided
 66 in Code Section 46-4-152.

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

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

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

77 (8.1) 'Retail broadband services' means any broadband services other than those provided
 78 for:

79 (A) The internal use of an electric membership corporation;

80 (B) The use of another electric membership corporation;

81 (C) Resale by other communications service providers; or

82 (D) Use as a component part of communications services that other communications
 83 service providers offer to their customers.

84 (8.2) 'Served area' shall have the same meaning as provided for in Code Section 50-40-1.

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

87 (10) 'Unserved area' shall have the same meaning as provided for in Code
 88 Section 50-40-1."

89 **SECTION 2.**

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

92 "46-3-200.

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

94 (1) To furnish electrical energy and service;

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

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

98 (4) To provide and operate broadband facilities and to furnish on a nondiscriminatory
 99 basis broadband services that are not retail broadband services; provided, however, that
 100 such broadband services shall only be provided in unserved areas, but may continue to
 101 be provided in such areas once the area becomes a served area; and provided, further, that
 102 such broadband services shall only be provided in the electric membership corporation's
 103 assigned area unless such broadband services are provided in another electric
 104 membership corporation's assigned area with written permission or an agreement between
 105 the two electric membership corporations;

106 (5) To form, fund, support, and operate a broadband affiliate, directly or indirectly,
 107 contingent upon compliance with Code Sections 46-5-163 and 46-3-200.2; provided,
 108 however, that such broadband services shall only be provided in unserved areas, but may
 109 continue to be provided in such areas once the area becomes a served area; and provided,
 110 further, that such broadband services shall only be provided in the electric membership
 111 corporation's assigned area unless such broadband services are provided in another
 112 electric membership corporation's assigned area with written permission or an agreement
 113 between the two electric membership corporations; and

114 ~~(4)~~(6) To engage in any lawful act or activity necessary or convenient to effect the
 115 foregoing purposes."

116 SECTION 3.

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

118 "46-3-200.1.

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

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

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

126 46-3-200.2.

127 (a) No electric membership corporation, broadband affiliate, or gas affiliate shall permit
 128 cross-subsidization between its electricity services activities, its broadband services
 129 activities, or its gas activities. To prevent cross-subsidization between broadband services
 130 activities and gas activities and between broadband services activities and electricity
 131 services activities, any electric membership corporation with a broadband affiliate that
 132 provides retail broadband services shall:

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

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

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

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

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

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

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

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

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

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

166 (4) When such electric membership corporation is assisting a customer or potential
 167 customer seeking to initiate electricity services and there is any inquiry or discussion
 168 regarding the availability of retail broadband services, in the course of the same
 169 discussion or transaction in which such assistance is being provided, inform such

170 customer or potential customer of other providers offering broadband services in such
171 customer's area based on any service map of a provider of broadband services or similar
172 resource maintained by any department of the state or federal government and inform
173 such customer or potential customer that broadband services may be obtained from such
174 electric membership corporation's broadband affiliate or such other providers of
175 broadband services. Such information shall be provided only with regard to other
176 providers of broadband services that have notified the electric membership corporation's
177 broadband affiliate, in writing and in a commercially reasonable manner, that such
178 provider of broadband services is able and willing to provide broadband services to
179 customers located within all or a portion of the electric membership corporation's
180 designated electricity service territory.

181 46-3-200.3.

182 (a) A communications service provider or a member of an electric membership corporation
183 in good standing shall be authorized to bring an action for a declaratory judgment in the
184 superior court of the county in which the principal office of the electric membership
185 corporation is located in order for such court to determine whether the electric membership
186 corporation has failed to comply with Code Section 46-3-200.2. Such action shall be
187 brought within the calendar year immediately following the calendar year in which the
188 alleged failure to comply with Code Section 46-3-200.2 occurred and reasonably could
189 have been discovered. If the court determines that the electric membership corporation
190 failed to comply with Code Section 46-3-200.2, such court shall be authorized to enter an
191 order requiring the electric membership corporation to remedy such failure within such
192 period as determined by the court. No such action shall be filed as a class action.

193 (b) A superior court judge or senior judge shall preside over the superior court having
194 jurisdiction of a proceeding filed under subsection (a) of this Code section and shall be
195 selected as set out in subsection (c) or subsection (d) of this Code section.

196 (c) Upon the filing of an action under subsection (a) of this Code section, the clerk of the
197 superior court having jurisdiction shall immediately notify the administrative judge for the
198 judicial administrative district in which that county lies or the district court administrator,
199 who shall immediately notify the administrative judge of the institution of proceedings
200 under subsection (a) of this Code section. If the county in which the proceedings were
201 instituted is not in the circuit of the administrative judge, the administrative judge shall
202 select a superior court judge from within the district, but not from the circuit in which the
203 proceeding was instituted, or a senior judge not a resident of the circuit in which the
204 proceeding was instituted to preside over the proceeding.

205 (d) If the administrative judge is a member of the circuit in which the proceeding was
 206 filed, or if the other judges of the district are unable or unwilling to preside over the
 207 proceeding, or if the other judges of the district are judges of the circuit in which the
 208 proceeding was filed, then the administrative judge shall select an administrative judge of
 209 an adjoining district to select a superior court judge from that district or a superior court
 210 judge from the district in which the proceeding was filed, but not from the circuit in which
 211 the proceeding was filed, or a senior judge who is not a resident of the circuit in which the
 212 proceeding was filed.

213 (e) After a judge has agreed to preside over the proceeding, the administrative judge who
 214 selected the judge to hear the matter shall enter an order in the superior court of the county
 215 in which the proceeding was filed appointing such judge, and such judge shall promptly
 216 begin presiding over such proceedings in such court and shall determine same as soon as
 217 practicable. Such judge shall be reimbursed for his or her actual expenses for food and
 218 lodging and shall receive the same mileage as any other state officials and employees.
 219 Senior judges shall be entitled to compensation and reimbursement as the law provides for
 220 senior judge service.

221 46-3-200.4.

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

- 225 (1) Only serve the purposes of developing, providing, furnishing, or promoting
 226 broadband facilities and broadband services, or a combination of such purposes; and
 227 (2) Be subject to the provisions of Code Section 46-3-200.2.

228 46-3-200.5.

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

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

- 235 (1) Upon terms and conditions that are no less favorable than those in such agreement;
 236 and
 237 (2) At rates that shall not exceed those in the existing agreements, subject to annual rate
 238 adjustments based on the Handy-Whitman Index of Public Utility Construction Costs,

239 and based upon the Consumer Price Index in the event the Handy-Whitman Index of
 240 Public Utility Construction Costs is no longer available.

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

247 46-3-200.6.

248 An electric membership corporation or a broadband affiliate that was providing and
 249 operating broadband facilities or offering broadband services prior to January 1, 2019, shall
 250 be authorized to continue to provide and operate such broadband facilities in any assigned
 251 area in which it is currently providing and operating such broadband facilities and to
 252 continue to offer such broadband services in any assigned area in which it is currently
 253 offering such broadband services."

254 **SECTION 4.**

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

256 "46-3-205.

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

270 (b) Subject to compliance with any express prohibitions in an electric easement, a provider
 271 of broadband services or the owner of an electric easement may use an electric easement
 272 to install, maintain, lease, and operate broadband services without incurring liability to the
 273 owner or occupant of the real property subject to the electric easement or paying additional

274 compensation to the owner or occupant of the real property subject to the electric easement,
275 so long as no additional poles or other ground based structures are installed; provided,
276 however, that any electric utility owning an electric easement may assess fees and charges
277 and impose reasonable conditions on the use of its facilities within an electric easement for
278 the purpose of providing or supporting broadband services."

279 **SECTION 5.**

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

282 **SECTION 6.**

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