

The Senate Committee on Regulated Industries and Utilities offered the following substitute to SB 402:

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 deployment of broadband services; to create a tax exemption for
15 certain equipment used in the deployment of broadband services in certain counties; to
16 provide for the annual designation of certain eligible counties and for a list of all eligible
17 counties to be published on the website of the Department of Community Affairs; to provide
18 the Georgia Technology Authority with the authority to establish and implement policies and
19 programs necessary to promote and facilitate broadband deployment and other
20 communications technologies in the state; to require the Georgia Technology Authority to
21 provide an annual report as to the status of attainment of state-wide broadband deployment;
22 to provide for the Department of Community Affairs to develop a grant program for the
23 provision of broadband services throughout the state; to change certain definitions relative
24 to the "OneGeorgia Authority Act" to include broadband services; to provide for legislative
25 findings and declarations; to provide for related matters; to provide for effective dates and
26 applicability; to provide for a short title; to repeal conflicting laws; and for other purposes.

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

28 PART I

29 SECTION 1-1.

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

32 PART II

33 SECTION 2-1.

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

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

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

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

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

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

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

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

73 (20) The department, in consultation with the Georgia Technology Authority, shall have
 74 the authority to plan for, establish, and implement a long-term policy with regard to the
 75 use of the rights of way of the interstate highways and state owned roads for the
 76 establishment, development, and maintenance of the deployment of broadband and other
 77 communications technologies throughout the state. The department shall be authorized
 78 to promote and encourage the use of such rights of way of the interstate highways and
 79 state owned roads for such purposes to the extent feasible and prudent. All net revenues
 80 from the use, lease, or other activities in such rights of way in excess of any project costs,
 81 that are not subject to the jurisdiction of the Federal Highway Administration or that are
 82 not otherwise restricted by any federal laws, rules, or regulations, shall be paid into the
 83 general fund of the treasury subject to any restrictions imposed by Federal Highway
 84 Administration. It is the intention of the General Assembly, subject to the appropriation
 85 process, that a portion of the amount so deposited into the general fund of the state
 86 treasury be appropriated each year to a program of state grants to be administered by the
 87 Department of Community Affairs as provided in Chapter 66F of Title 36 to be used to
 88 promote and provide broadband services throughout the state."

89 PART III

90 SECTION 3-1.

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

92

"CHAPTER 66D93 36-66D-1.94 As used in this chapter, the term:

95 (1) 'Broadband network project' means any wired or wireless Internet access deployment
96 that has the capability of transmitting data at a rate of not less than 25 megabits per
97 second in the downstream direction and not less than 3 megabits per second in the
98 upstream direction to end users.

99 (2) 'Broadband services provider' means any provider of wired or wireless
100 telecommunications services or cable services or a public utility that builds or owns a
101 broadband network project.

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

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

105 36-66D-2.

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

113 36-66D-3.

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

117 (b) The department shall approve an application and certify a political subdivision as a
118 broadband ready community if the department determines that such political subdivision
119 has a comprehensive plan that includes the promotion of the deployment of broadband
120 services pursuant to Code Sections 36-70-6 and 50-8-7.1 and has enacted an ordinance for
121 reviewing applications and issuing permits related to broadband network projects that
122 provides for the following:

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

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

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

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

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

137 (c) The department may, with input from the broadband services providers and local
 138 governments, develop a model ordinance for a political subdivision to use to review
 139 applications and issue permits related to broadband network projects.

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

145 36-66D-4.

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

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

156 36-66D-5.

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

PART IV

SECTION 4-1.

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

"CHAPTER 66E

36-66E-1.

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

36-66E-2.

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

36-66E-3.

The Department of Community Affairs shall be authorized to adopt and promulgate such rules and regulations as may be reasonable and necessary to carry out the purposes of this chapter."

PART V

SECTION 5-1.

The General Assembly recognizes that in today's society access to broadband services is essential to everyday life. Broadband access is a necessary utility as important as electricity, gas, or phone service. However, there is a growing need for the government to provide the much needed infrastructure to provide broadband access to homes and businesses that are without such access because of their location in rural and other areas. The General Assembly finds and declares that it is vital that the state provide equitable access to broadband services that will ensure that this necessary utility that provides support for education, work, engagement with government, healthcare, public safety, and leisure is available to all citizens of Georgia. The General Assembly finds and declares that ensuring deployment of broadband services throughout this state is a public necessity, a basic function of government, and would benefit the entire state. The General Assembly further finds and declares that it is in the best interest of the state to spend state funds through the establishment of a grant program to ensure that the much needed infrastructure exists for the public purpose of state-wide deployment of broadband services to unserved areas and underserved areas of the state.

SECTION 5-2.

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

"CHAPTER 66F36-66F-1.

As used in this article, the term:

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

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

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

(A) More than 5 percent but less than 25 percent of the population does not have access to broadband services capable of transmitting data at a rate of not less than 3 megabits per second in the downstream direction and not less than 1 megabit per second in the upstream direction to end users; or

223 (B) Forty percent or more of the population does not have access to broadband services
224 capable of transmitting data at a rate of not less than 25 megabits per second in the
225 downstream direction and not less than 3 megabits per second in the upstream direction
226 to end users.

227 (4) 'Unserved area' means a county in which 25 percent or more of the population does
228 not have access to broadband services capable of transmitting data at a rate of not less
229 than 3 megabits per second in the downstream direction and not less than 1 megabit per
230 second in the upstream direction to end users.

231 36-66F-2.

232 (a) On or before July 1, 2019, the department shall develop the 'Rural Georgia Broadband
233 Deployment Grant Program' with the assistance of the Georgia Technology Authority to
234 provide funding for deployment of broadband services in unserved areas or underserved
235 areas of the state. Such grants shall be subject to the availability of appropriations for such
236 program as may be expressly provided by the General Assembly together with such other
237 funds as may be available from public or private sources including, but not limited to,
238 funds through the OneGeorgia Authority Act and the Georgia Environmental Finance
239 Authority.

240 (b) The department may use a request for proposal process in soliciting proposals from
241 providers of broadband services and may also accept proposals from providers of
242 broadband services through an ongoing open proposal process pursuant to established
243 criteria. Such proposal processes for awarding grants shall be developed and administered
244 with assistance from the OneGeorgia Authority. Providers of broadband services shall
245 submit solicited or unsolicited proposals, as may be applicable, for unserved areas or
246 underserved areas in which such providers are seeking to deploy broadband services. Such
247 proposals shall be evaluated and scored on the basis of criteria consistent with this chapter
248 and other factors established by the department; provided, however, that the department
249 shall not discriminate between different types of technology used to provide broadband
250 services if such broadband services are each capable of transmitting data at the rates
251 specified for the unserved areas or underserved areas, as applicable. The department of
252 shall consider the applicant's prior performance under a grant, if applicable.

253 (c) The grants awarded shall reflect the state's share of the cost of deployment of
254 broadband services to unserved areas or underserved areas as authorized by this chapter.
255 The amount of any grant awarded shall be directly tied to the cost of the deployment of
256 broadband services by the provider of broadband services which shall be required make a
257 monetary investment in the unserved areas or underserved areas that is equal to or greater
258 than the amount of grant funding to be awarded. The grants awarded shall only provide

259 funds for capital expenses and shall not be used by the provider of broadband services for
 260 operation and maintenance expenses.

261 (d) A provider of broadband services applying for a grant shall receive priority if the
 262 submitted proposal to provide broadband services:

263 (1) Includes an area certified as a broadband ready community as provided in Chapter
 264 66D of this title; and

265 (2) Includes elements of cooperation with or broadband services enhancement for
 266 businesses, industrial parks, education centers, hospitals and other health care facilities
 267 such as telehealth facilities and emergency care facilities, government buildings, public
 268 safety departments, or other public purposes.

269 (e) Providers of broadband services submitting bids shall be required to disclose as part
 270 of the proposal process whether they are required under any federal law, rule, or regulation
 271 to provide broadband services to any portion of the unserved areas or underserved areas for
 272 which they are submitting a proposal and whether they have received any grants or other
 273 funding from the federal government, the state, or a local government to provide broadband
 274 services to any portion of such area.

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

278 36-66F-3.

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

281 **PART VI**

282 **SECTION 6-1.**

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

284 "36-70-6.

285 (a) As used in this Code section, the term 'broadband services' means Internet access
 286 capable of transmitting data at a rate of not less than 25 megabits per second in the
 287 downstream direction and not less than 3 megabits per second in the upstream direction to
 288 end users.

289 (b) The governing bodies of municipalities and counties shall provide in any
 290 comprehensive plan for the promotion of the deployment of broadband services by
 291 broadband services providers."

292 **SECTION 6-2.**

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

296 "(1) As part of such minimum standards and procedures, the department shall establish
 297 minimum elements which shall be addressed and included in comprehensive plans of
 298 local governments which are prepared as part of the coordinated and comprehensive
 299 planning process, provided that such minimum elements shall include the promotion of
 300 the deployment of reasonable and cost-effective access to broadband services by
 301 broadband services providers;"

302 **PART VII**

303 **SECTION 7-1.**

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

308 "(99)(A) Broadband equipment used in the deployment of broadband services in an
 309 eligible county by a provider of broadband services regardless of whether such
 310 equipment is purchased by the owner, a contractor, or a subcontractor.

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

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

316 (ii) 'Broadband services' means Internet access capable of transmitting data at a rate
 317 of not less than 25 megabits per second in the downstream direction and not less than
 318 3 megabits per second in the upstream direction to end users.

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

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

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

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

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

334 **PART VIII**

335 **SECTION 8-1.**

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

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

341 (31) To coordinate the establishment and administration of one or more programs to
 342 increase economic, educational, and social opportunities for citizens and businesses
 343 through the deployment of broadband and other communications technologies throughout
 344 the state; and

345 ~~(31)~~(32) To do all things necessary or convenient to carry out the powers conferred by
 346 this chapter."

347 **SECTION 8-2.**

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

350 "50-25-7.3.

351 (a) The authority is authorized and directed to establish and implement such policies and
 352 programs as are necessary to coordinate state-wide efforts to promote and facilitate
 353 deployment of broadband and other communications technologies throughout the state.

354 Such policies and programs shall include, but not be limited to, the following:

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

357 (2) Coordination with the Federal Communications Commission, representatives of the
 358 broadband industry and other communications technologies industries, and local
 359 governments to develop agreements for data sharing to facilitate accurate and up-to-date

360 mapping of areas with access to broadband and other communications technologies. All
361 local governments shall cooperate with the authority and its designated agents by
362 providing requested information as to addresses and locations of broadband and other
363 communications technologies within their jurisdictions. Notwithstanding any provision
364 of law to the contrary, any data or information shared by a provider of broadband or other
365 communications technologies pursuant to such agreements for data sharing and
366 designated by such provider as trade secret, as that term is defined in Code Section
367 10-1-761, shall not be subject to public inspection absent an order of the superior court
368 that the data or information are not trade secrets and are subject to disclosure;
369 (3) Oversight and coordination of state efforts to apply for, utilize, and implement public
370 and private grants, programs, designations, and other resources for deployment of
371 broadband and other communications technologies;
372 (4) Technical support and advisory assistance to state agencies, including, but not limited
373 to, the Department of Community Affairs and the OneGeorgia Authority, in developing
374 grant programs, designation programs, and other programs to promote the deployment
375 of broadband and other communications technologies;
376 (5) A periodic analysis performed in conjunction with the State Properties Commission
377 of all state assets, including, but not limited to, real property, that may be leased or
378 otherwise utilized for broadband deployment; and
379 (6) Coordination between state agencies, local governments, industry representatives,
380 community organizations, and other persons that control access to resources, such as
381 facilities and rights of way, that may be used for the deployment of broadband and other
382 communications technologies, that apply for or receive federal funds for the deployment
383 of broadband and other communications technologies, and that promote economic and
384 community development.
385 (b) The authority shall submit an annual report to the Governor and General Assembly
386 regarding the policies and programs established by the authority as provided in
387 subsection (a) of this Code section. Such report shall specifically include information as
388 to the status of attainment of state-wide deployment of broadband and other
389 communications technologies and industry and technology trends in broadband and other
390 communications technologies.
391 (c) All state agencies shall cooperate with the authority and its designated agents by
392 providing requested information to assist in the development and administration of policies
393 and programs and the annual report required under this Code section. Reserved."

394

PART IX

395

SECTION 9-1.

396

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

401

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

411

"(H) The acquisition, construction, improvement, or modification of any property, real or personal, used to provide or used in connection with the provision of broadband services which the authority has determined as necessary for the operation of the industries which such property, real or personal, is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term 'broadband services' means Internet access capable of transmitting data at a rate of not less than 25 megabits per second in the downstream direction and not less than 3 megabits per second in the upstream direction to end users."

419

PART X

420

SECTION 10-1.

421

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

422

423

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

424

425

426 **SECTION 10-2.**
427 All laws and parts of laws in conflict with this Act are repealed.