

By: Senator(s) Doty

To: Energy

SENATE BILL NO. 2893

1 AN ACT TO CREATE THE MISSISSIPPI BROADBAND ENABLING ACT; TO
2 PROVIDE DEFINITIONS FOR THE ACT; TO PROVIDE FOR OWNERSHIP AND/OR
3 OPERATION OF BROADBAND SYSTEMS BY ELECTRIC COOPERATIVES THROUGH
4 AFFILIATES OR OPERATORS; TO REQUIRE ELECTRIC COOPERATIVES TO
5 CHARGE OR PAY ANY ENTITY THE SAME AMOUNT OF FEES THAT IT CHARGES
6 OR PAYS AN AFFILIATE FOR POLE ATTACHMENT FEES OR OTHER ITEMS; TO
7 PROVIDE NONDISCRIMINATION IN POLE ACCESS; TO REQUIRE AN ELECTRIC
8 COOPERATIVE TO CONDUCT AN ECONOMIC FEASIBILITY STUDY BEFORE
9 BROADBAND SERVICES MAY BE PROVIDED; TO REQUIRE THAT ELECTRIC
10 COOPERATIVES MAINTAIN THE RELIABILITY OF THEIR ELECTRIC SYSTEMS;
11 TO REGULATE EASEMENTS UNDER THIS ACT; TO REQUIRE AN ANNUAL
12 COMPLIANCE AUDIT; TO AMEND SECTIONS 77-5-205 AND 77-5-231,
13 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS
14 ACT; AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** This act shall be known and may be cited as the
17 "Mississippi Broadband Enabling Act."

18 **SECTION 2.** As used in this act, the following terms shall
19 have the following meanings unless the context clearly indicates
20 otherwise:

21 (a) "Broadband affiliate" or "affiliate" means any
22 entity that is (i) wholly or partially owned by an electric
23 cooperative, and (ii) formed to own or operate a broadband system
24 or provide broadband services.



25 (b) "Broadband service provider" means an entity that
26 provides broadband services to others on a wholesale basis or to
27 end-use customers on a retail basis.

28 (c) "Broadband operator" means a broadband service
29 provider that owns or operates a broadband system on an electric
30 cooperative's electric delivery system with the electric
31 cooperative's consent.

32 (d) "Broadband services" means any service that
33 consists of or includes the provision of or connectivity to a
34 high-speed, high-capacity transmission medium that can carry
35 signals from or to multiple sources and that either: (i) is used
36 to provide access to the Internet, or (ii) provides computer
37 processing, information storage, information content or protocol
38 conversion, including any service applications or information
39 service provided over such high-speed access service. As used
40 herein, "broadband services" also includes video services, voice
41 over Internet protocol services, any wireless services, and
42 Internet protocol-enabled services.

43 (e) "Broadband system" means the fiber, cables,
44 materials, equipment and other facilities that are used or useful
45 for the provision of broadband services.

46 (f) "Electric delivery system" means the poles, lines,
47 fiber, cables, broadband system, materials, equipment, easements
48 and other facilities or properties used by an electric cooperative



to deliver or facilitate the delivery, sale or use of electric energy.

(g) "Electric cooperative" means an electric power association formed or operating under Section 77-5-201 et seq.

(h) "Internet protocol-enabled services" means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communications is voice, data or video.

(i) "Landowner" includes any person or entity holding an interest in real property.

SECTION 3. (1) Every electric cooperative is authorized to establish, acquire, and wholly or partially own one or more broadband affiliates.

(2) An electric cooperative may allow its broadband affiliate(s) or an unaffiliated broadband operator to own, lease, construct, maintain and operate a broadband system on the electric cooperative's electric delivery system and to provide broadband services to the public utilizing the electric cooperative's broadband system or other parts of its electric delivery system.

(3) An electric cooperative is not required to implement a broadband system or allow others to use broadband capacity on the electric cooperative's electric delivery system to provide broadband services.



74 (4) An electric cooperative may determine, in its sole
75 discretion, which broadband operators, if any, may have access to
76 broadband capacity on the electric cooperative's broadband system;
77 and it shall be lawful for an electric cooperative to provide an
78 affiliate or other broadband operator exclusive access to
79 broadband capacity on the electric cooperative's broadband system.

80 (5) (a) An electric cooperative may charge an affiliate or
81 an unaffiliated broadband operator for the construction,
82 installation, operation, use, and maintenance of those parts of
83 its electric delivery system that are used or may be reserved for
84 use by the affiliate or unaffiliated broadband operator for the
85 provision of broadband services. Any lease of facilities by an
86 electric cooperative to a broadband affiliate that includes the
87 use of the electric cooperative's poles shall specifically include
88 pole attachment fees to be paid by the broadband affiliate to the
89 electric cooperative equal to pole attachment fees charged by the
90 electric cooperative to like unaffiliated, private entities.

91 (b) An electric cooperative shall not:

92 (i) Charge an affiliate under this act an amount
93 less than the electric cooperative charges an unaffiliated entity
94 for the same item or class of items; or

95 (ii) Pay an affiliate under this act an amount more
96 than the affiliate charges an unaffiliated entity for the same
97 item or class of items.



98 (6) An electric cooperative shall not use its electric
99 energy sales revenues to subsidize the provision by an affiliate
100 or unaffiliated broadband operator of broadband services to the
101 public. An electric cooperative may, however, make capital
102 investments in an affiliate, make loans to an affiliate at fair
103 market rate, and enter loan guarantees for the benefit of an
104 affiliate, all of which may be in such amounts and on such terms
105 as the electric cooperative's board of directors determines to be
106 prudent and authorizes.

107 (7) An electric cooperative that elects to provide broadband
108 service or to deploy or operate a broadband system, including an
109 affiliate or commercial partner, shall provide cable operators,
110 telecommunications carriers, and authorized attachers with
111 nondiscriminatory access to locate and maintain their equipment
112 for the provision of communications services on infrastructure
113 and/or poles owned or controlled by the Electric Cooperative or
114 any affiliate (as defined by Section 77-3-3(g)) on just,
115 reasonable and nondiscriminatory terms and conditions that are
116 consistent with the regulatory obligations provided by the FCC for
117 FCC Regulated Utilities and at rates that are no higher than one
118 hundred fifty percent (150%) of the average of the annual pole
119 attachment rent charged by all investor owner electric utilities
120 operating in the State of Mississippi.

121 (8) Electric cooperatives exercising their authority granted
122 by this act shall comply with all financial performance and loan



covenant obligations required by the United States Department of Agriculture/Rural Utilities Service and/or National Rural Utility Cooperative Finance Corporation or other like entities.

(9) Before broadband services may be offered under this act, an electric cooperative must, by resolution of the board of directors and spread upon its minutes, have an economic feasibility study conducted and adopt a plan that will provide service to its entire certificated area. Such feasibility study shall be made available to electric cooperative members upon request.

SECTION 4. The passage of Senate Bill No. ____, 2019 Regular Session, does not expand the regulatory authority of any state agency, instrumentality or political subdivision of the State of Mississippi beyond the existing state or federal law and regulations in place at the time of its passage.

SECTION 5. (1) An electric cooperative shall not allow the installation or operation of a broadband system on its electric delivery system by an affiliate or other broadband operator to diminish the reliability of the electric delivery system.

(2) An electric cooperative shall not require any person to purchase broadband services from an affiliate or other broadband operator as a condition of receiving or continuing to receive electric energy from the electric cooperative.

(3) An electric cooperative shall not disconnect, nor threaten to disconnect, its electric service to any customer due



to the customer's failure to pay for broadband services provided to the customer by an affiliate or other broadband operator.

SECTION 6. (1) An electric cooperative may grant permission to an affiliate or other broadband operator to use the electric delivery system of the electric cooperative to provide broadband services. The use of the electric cooperative's electric delivery system for the provision of broadband services by the affiliate or other broadband operator shall not be considered an additional burden on the real property upon which the electric cooperative's electric delivery system is located and shall not require the affiliate or other broadband operator to obtain the consent of anyone having an interest in the real property upon which the electric cooperative's electric delivery system is located.

(2) If a portion of an electric cooperative's electric delivery system is used by an affiliate or other broadband operator for the provision of broadband services and the landowner of the real property on which such portion is located believes his property has been damaged by such use, the landowner may petition the circuit court of the county in which the property is situated for any damages to which the landowner may be entitled under this subsection.

(a) The petition allowed and damages recoverable under this subsection (2) shall be the landowner's exclusive remedy, and the landowner shall not be entitled to assert any other theory,



claims or causes of action nor recover any other damages, punitive damages, costs, attorneys' fees, or other relief.

(b) The recoverable damages, if any, shall be recoverable only from the affiliate or other broadband operator and not from the electric cooperative.

(c) The damages recoverable shall be an amount equal to the difference between (i) the fair market value of the landowner's interest in the real property immediately before the electric cooperative's electric delivery system on the owner's property was first used by an affiliate or other broadband operator for the provision of broadband services, and (ii) the fair market value of the landowner's interest in the real property immediately after the electric cooperative's electric delivery system on the landowner's property was first used by an affiliate or other broadband operator for the provision of broadband services. The before and after values must be established by the testimony of a qualified real estate appraiser. The damages, if any, shall be fixed and shall not be deemed to continue, accumulate, or accrue. The court shall as part of its judgment vest a permanent easement in favor of the affiliate or other broadband operator and their respective successors and assigns for the placement or use of a broadband system on or as part of the electric delivery system. The judgment will have the same effect of a conveyance executed in due form of law and shall run with the land; and a certified copy of said judgment may be filed by the



197 affiliate or other broadband operator in the land records of the
198 county in which the subject property is located.

199 (d) Evidence of past, current or future revenues or
200 profits derived or to be derived by an affiliate or other
201 broadband operator from providing broadband services is not
202 admissible for any purpose in any such proceeding.

203 (e) The landowner shall not be entitled to any damages
204 or other relief relating to any broadband system or portion
205 thereof that is located on the landowner's property and is used or
206 could be used by the electric cooperative for its own operations.

207 (f) The landowner shall not be entitled to any relief
208 or damages if an easement has been granted to the affiliate or
209 other broadband operator or if the landowner has, either directly
210 or through his membership in the electric cooperative, authorized
211 the electric cooperative to use or allow others to use its
212 electric delivery system for the provision of broadband services.

213 **SECTION 7.** This act is to be liberally construed, and the
214 enumeration of any object, power, manner, method or thing shall
215 not be deemed to exclude like or similar objects, purposes,
216 powers, manners, methods or things.

217 **SECTION 8.** Every electric cooperative shall conduct an
218 annual audit of compliance with this act, which shall be made
219 publicly available.

220 **SECTION 9.** Section 77-5-205, Mississippi Code of 1972, is
221 amended as follows:



77-5-205. Three (3) or more natural persons may, by executing, filing and recording a certificate as hereafter provided in this article, form a corporation not organized for pecuniary profit for the purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such corporations. In addition, such corporations may serve the purposes provided under the Mississippi Broadband Enabling Act.

SECTION 10. Section 77-5-231, Mississippi Code of 1972, is amended as follows:

77-5-231. (1) A corporation shall have power to do any and all acts or things necessary or convenient for carrying out the purposes for which it was formed, including, but not limited to:

(a) To sue and be sued.

(b) To have a seal and alter the same at pleasure.

(c) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

(d) To render service and to acquire, own, operate, maintain and improve a system or systems within the state and in counties adjacent thereto.



246 (e) To pledge all or any part of its revenues and to
247 mortgage or otherwise incumber all or any part of its property for
248 the purpose of securing the payment of the principal of and
249 interest on any of its bonds or other obligations.

250 (f) To use any right-of-way, easement or other similar
251 property right necessary or convenient in connection with the
252 acquisition, improvement, operation or maintenance of a system,
253 granted by the state or any political subdivision thereof,
254 provided that the governing body of such political subdivision
255 shall consent to such use, and to have and exercise the power of
256 eminent domain in the manner provided by the condemnation laws of
257 this state for acquiring private property for public use, such
258 right to be paramount except as to the property of the state or of
259 any political subdivision thereof.

260 (g) To accept gifts or grants of money, property, real
261 or personal, from any person, municipality or federal agency and
262 to accept voluntary and uncompensated services.

263 (h) To make any and all contracts necessary or
264 convenient for the full exercise of the powers in this article
265 granted, including, but not limited to, contracts with any person,
266 federal agency, state agency or municipality for the purchase,
267 transfer or sale of energy and/or the acquisition of all or any
268 part of any system, and in connection with any such contract to
269 stipulate and agree to such covenants, terms and conditions as the
270 board may deem appropriate, including covenants, terms and



conditions with respect to the resale rates, financial and accounting methods, services, operation and maintenance practices and the manner of disposing of the revenues of the system operated and maintained by the corporation.

(i) To sell, lease, or otherwise dispose of all or any part of its property, subject however to the provisions of Section 77-5-237.

(j) To contract debts, borrow money and to issue, assume or indorse the payment of bonds or other evidences of indebtedness.

(k) To fix, maintain and collect fees, rents, tolls and other charges for services rendered.

(l) To acquire and to sell, lease, distribute and generally to deal in electrical and plumbing appliances, apparatus, machinery and equipment for the purpose of and in connection with the promotion of the sale of electric energy to its customers; to assist its customers to purchase or otherwise obtain such appliances, apparatus, machinery and equipment; to assist its customers to wire their premises and to install therein such appliances, apparatus, machinery and equipment; to acquire and to indorse, sell, pledge, hypothecate and dispose of notes, bonds and other obligations of its customers in carrying out the purposes expressed in this paragraph.

(m) To maintain, in any reasonable manner and in its discretion, its easements and rights-of-way and adjacent property



296 within a reasonable or necessary distance of its energy facilities
297 free of vegetation, trees, limbs or other impediments in order to
298 foster the integrity and reliability of the corporation's electric
299 energy system or the safety of the public or its members, agents
300 or employees.

301 (n) To condemn any land, easements, or rights-of-way,
302 either on, under, or above the ground, as the association may deem
303 necessary for any purposes mentioned in this article other than
304 the purposes described in subsection (2) of this section, and such
305 property or interest in such property may be so acquired whether
306 or not the same is owned or held for public use by corporations,
307 associations or persons having the power of eminent domain, or
308 otherwise held or used for public purposes. Such power of
309 condemnation may be exercised in the mode or method of procedure
310 prescribed by Chapter 27, Title 11, Mississippi Code of 1972, or
311 in the mode or method of procedure prescribed by any other
312 applicable statutory provisions now in force or hereafter enacted
313 for the exercise of the power of eminent domain. Where
314 condemnation proceedings become necessary, the judge of the
315 circuit court or the judge of the county court in counties where
316 the county court exists, in which such proceedings are filed,
317 shall, upon application of the authority, and upon the deposit in
318 court, to the use of the person or persons lawfully entitled
319 thereto, of such amount as the judge may deem necessary to assure
320 just compensation, order that the right of possession shall issue



321 immediately or as soon and upon such terms as the judge, in his
322 discretion, may deem just and proper. Upon application of the
323 parties in interest other than the corporation, the judge may
324 order that the money deposited in the court, or any part thereof,
325 be paid forthwith for or on account of the just compensation to be
326 awarded in said proceedings.

327 (o) To operate across state lines.

328 (p) To perform any and all of the foregoing acts and to
329 do any and all of the foregoing things under, through or by means
330 of its own officers, agents and employees, or by contracts with
331 any person, federal agency or municipality.

332 (q) To perform as provided under the Mississippi
333 Broadband Enabling Act.

334 (2) Any generation and transmission electric corporation
335 created under this article may undertake economic development
336 activities, whether directly, indirectly, or in conjunction with
337 other entities, including activities such as providing capital, or
338 investment in or acquisition and development of business or
339 industrial sites and the necessary infrastructure or services
340 needed to attract new or existing businesses or industry, to
341 create or maintain employment opportunities, or otherwise to
342 positively impact its service territory or in some manner promote
343 the sale of electric energy.

344 **SECTION 11.** This act shall take effect and be in force from
345 and after its passage.

