

By: Senator(s) Carter

To: Energy

SENATE BILL NO. 3054

1 AN ACT TO AMEND CHAPTER 487, 2020 REGULAR SESSION (SENATE
2 BILL NO. 3046), TO CREATE THE "PUBLIC UTILITIES APPLICATION FUND,"
3 TO CHANGE THE APPLICATION FEE DEPOSITS FROM "PUBLIC UTILITIES
4 STAFF REGULATION FUND" TO THE "PUBLIC UTILITIES APPLICATION FUND,"
5 AND TO AUTHORIZE A THIRD ROUND OF APPLICATIONS FOR THE MISSISSIPPI
6 ELECTRIC COOPERATIVES BROADBAND COVID-19 GRANT PROGRAM; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** Chapter 487, 2020 Regular Session (Senate Bill
10 No. 3046), is amended as follows:

11 Section 1. (1) Upon the effective date of this act, the
12 State Fiscal Officer shall transfer to the Mississippi Electric
13 Cooperatives Broadband COVID-19 Grant Program Fund out of the
14 Budget Contingency Fund.....\$ 65,000,000.00.

15 (2) Upon the effective date of this act, the State Fiscal
16 Officer shall transfer to the COVID-19 Broadband Provider Grant
17 Program Fund out of the Budget Contingency Fund.....
18 \$ 10,000,000.00.

19 Section 2. This act shall be known and may be cited as the
20 "Mississippi Electric Cooperatives Broadband COVID-19 Act."



21 Section 3. (1) The Legislature finds and declares that the
22 State of Emergency and ongoing public health crisis related to
23 COVID-19 has caused significant challenges in the immediate
24 delivery of educational, health care and other services. The
25 Legislature further finds and declares that due to the COVID-19
26 pandemic there is an immediate increased need for reliable
27 internet service in rural Mississippi, including expanded rural
28 broadband capacity to facilitate and assist with distance
29 learning, telemedicine, and telework * * *, which is required for
30 citizens to continue their education, receive necessary services,
31 and work in a healthy and safe environment.

32 (2) Therefore, as part of this state's response to the
33 COVID-19 public health emergency, the Legislature determines that
34 it is necessary to create and there is hereby created in the State
35 Treasury a special fund to be designated as the "Mississippi
36 Electric Cooperatives Broadband COVID-19 Grant Program Fund,"
37 which shall consist of funds made available by the Legislature in
38 any manner and funds from any other source designated for deposit
39 into such fund. The Department of Finance and Administration, in
40 conjunction with the Mississippi Public Utilities Staff, shall
41 establish the "Mississippi Electric Cooperatives Broadband
42 COVID-19 Grant Program" ("Cooperative Program") to provide grants
43 to electric cooperatives for the purpose of expanding immediately
44 broadband access in unserved and underserved areas of the State of
45 Mississippi, as determined by the Mississippi Public Utilities



46 Staff which the Legislature hereby finds and determines are
47 necessary expenditures due to the public health emergency with
48 respect to COVID-19.

49 (3) The Legislature further determines, as part of this
50 state's response to the COVID-19 public health emergency, that it
51 is necessary to create and there is hereby created in the State
52 Treasury a special fund to be designated as the "COVID-19
53 Broadband Provider Grant Program Fund," which shall consist of
54 funds made available by the Legislature in any manner and funds
55 from any other source designated for deposit into such fund; and
56 the Department of Finance and Administration, in conjunction with
57 the Mississippi Public Utilities Staff, shall establish the
58 "COVID-19 Broadband Grant Program" ("General Program") to provide
59 grants to broadband providers, as defined in subsection (4) of
60 this section, for the purpose of expanding broadband access in
61 unserved and underserved areas of the State of Mississippi, as
62 determined by the Mississippi Public Utilities Staff, which the
63 Legislature hereby finds and determines are necessary expenditures
64 due to the public health emergency with respect to COVID-19.

65 (4) As used in this act, the following words and phrases
66 shall have the meanings ascribed in this section unless the
67 context clearly indicates otherwise:

68 (a) "Applicant" means an electric cooperative or
69 broadband provider that makes an application for a grant under
70 this act.



71 (b) "Broadband affiliate" means any entity that is (i)
72 wholly or partially owned by an electric cooperative, and (ii)
73 formed to own or operate a broadband system or provide broadband
74 services * * *.

75 (c) "Broadband provider" means an entity that (i) is
76 not an electric cooperative or an affiliate of an electric
77 cooperative and (ii) is authorized to provide broadband services
78 in Mississippi * * *.

79 (d) "Broadband services" means any service that
80 consists of or includes the provision of or connectivity to a
81 high-speed, high-capacity transmission medium that can carry
82 signals from or to multiple sources at a rate not less than one
83 hundred (100) megabits per second in the downstream direction and
84 not less than one hundred (100) megabits per second in the
85 upstream direction, and that either: (i) is used to provide
86 access to the internet, or (ii) provides computer processing,
87 information storage, information content or protocol conversion,
88 including any service applications or information service provided
89 over such high-speed access service.

90 (e) "Census block" means a geographic area defined as a
91 census block by the United States Department of Commerce, Bureau
92 of the Census, in conducting the 2010 decennial census.

93 (f) "COVID-19" means the Coronavirus Disease 2019;

94 (g) "Department" means the Department of Finance and
95 Administration; and



96 (h) "Electric cooperative" means a corporation formed
97 or operating under Section 77-5-201 et seq.

98 (i) "Grant Funds" means the "Mississippi Electric
99 Cooperatives Broadband COVID-19 Grant Program Fund" and the
100 "COVID-19 Broadband Provider Grant Program Fund."

101 (j) "Grant Programs" means the "Mississippi Electric
102 Cooperatives Broadband COVID-19 Grant Program" and the "COVID-19
103 Broadband Provider Grant Program."

104 (k) "Primary application" means the initial application
105 filed by an applicant under this act for the purpose of obtaining
106 a grant from one (1) of the grant funds.

107 (l) "Public Utilities Staff" or "staff" means the
108 Mississippi Public Utilities Staff.

109 (m) "Public Utilities Staff Regulation Fund" means the
110 fund established under Section 77-2-19.

111 (n) "Secondary application" means an application filed
112 by an applicant under this act after its primary application has
113 been filed and that is submitted for the purpose of obtaining an
114 additional grant from one (1) of the grant funds. Approved grants
115 for secondary applications will be distributed from each grant
116 fund on a pro rata basis, as determined by the department.

117 (o) "Tertiary application" means an application filed
118 by an electric cooperative after its secondary application has
119 been filed and that is submitted for the purposes of obtaining an



120 additional grant from the Mississippi Electric Cooperatives
121 Broadband COVID-19 Grant Program Fund.

122 (5) Unexpended amounts remaining in either of the grant
123 funds at the end of a fiscal year shall not lapse into the State
124 General Fund, and any investment earnings or interest earned on
125 amounts in the grant funds shall be deposited to the credit of the
126 grant funds, respectively. Monies in the grant funds shall be
127 used for the purpose of providing payments to eligible applicants
128 as provided in this act. Monies in the grant funds shall be
129 administered and disbursed by the department and Staff in
130 compliance with this act and in compliance with the guidelines,
131 guidance, rules, regulations and/or other criteria, as may be
132 amended from time to time, of the United States Department of the
133 Treasury regarding the use of monies from the Coronavirus Relief
134 Fund established in Section 5001 of the Coronavirus Aid, Relief,
135 and Economic Security (CARES) Act. If on October 1, 2020, there
136 are unobligated monies in one or both of the grant funds, or if at
137 any other time undistributed monies in either grant funds are
138 determined by the department to be ineligible to be spent by the
139 department, those monies shall be transferred into the
140 Unemployment Compensation Fund.

141 Section 4. (1) From the date of the beginning of the period
142 for applications for grants under this section, the Staff shall
143 consider and review applications from any eligible applicant. Any
144 project applied for by an electric cooperative must be for the



145 purpose of the electric cooperative immediately installing
146 broadband fiber on its electric delivery system and thereby
147 facilitating the provision of broadband services by its broadband
148 affiliate or an unaffiliated broadband provider. Any project
149 applied for by a broadband provider must be for the purpose of the
150 broadband provider's delivery of broadband services. All projects
151 under each of the Grant Programs must be designed to immediately
152 provide increased broadband services to an area or areas that have
153 been determined by the Public Utilities Staff to be unserved or
154 underserved according to the latest publicly available Federal
155 Communications Commission broadband data. Under this act,
156 electric cooperatives may only apply for and receive grants under
157 the Cooperative Program, and broadband providers may only apply
158 for and receive grants under the General Program.

159 (2) As to each of those specific Mississippi counties for
160 which such information is requested by an electric cooperative or
161 broadband provider, the Public Utilities Staff shall, by no later
162 than July 10, 2020, specifically identify census blocks that are
163 unserved or underserved according to the latest publicly available
164 Federal Communications Commission broadband data. In order to
165 create efficiencies in the administration of the Grant Programs
166 and avoid the imposition of undue and unnecessary burdens on the
167 Staff, a single electric cooperative or broadband provider may not
168 request such information for more than three (3) counties and any
169 requests for such information must be submitted to the Staff by no



170 later than the close of business on July 7, 2020. The Staff shall
171 provide its identification of such census blocks directly to the
172 department and to each electric cooperative and broadband provider
173 requesting the Staff for such information, and also provide such
174 information to the public through a posting on the Public
175 Utilities Staff's website. Each applicant shall rely on the
176 Public Utilities Staff's identification of unserved and
177 underserved census blocks in making its application(s) for grant
178 funds and spending awarded grant funds.

179 (3) In an attempt to facilitate broader participation in the
180 Cooperative Program, an electric cooperative's project or
181 projects, for which grant monies are provided under this act,
182 shall be considered pilot or special purpose projects and shall
183 not obligate the electric cooperative receiving the grant monies
184 or such electric cooperative's broadband affiliate to provide
185 broadband access to the entire service area of the electric
186 cooperative.

187 (4) For each dollar of grant monies requested for a project
188 or projects by an applicant, the applicant must commit and spend a
189 dollar of nongrant monies toward such project or projects.
190 Universal Service Fund, Connect America Fund, or other grants
191 awarded for broadband expansion through a separate state or
192 federal program shall not be used for the required matching
193 funds * * *, but this limitation shall not include or extend to
194 any loans of any kind. The primary application made by an



195 applicant shall be for a grant totaling not more than Six Million
196 Dollars (\$6,000,000.00).

197 (5) An applicant submitting a primary application may also
198 submit a secondary application at the same time or soon thereafter
199 with no maximum to the amount of grant monies that may be
200 requested. The department shall first obligate all primary
201 applications made that meet the eligibility criteria and are
202 approved by the Staff. Then, if grant monies are still available
203 the department shall consider and obligate any secondary
204 applications that meet the eligibility criteria and are approved
205 by the Staff. During the secondary application process, if one
206 (1) of the grant funds has unobligated monies remaining after all
207 qualifying secondary applications are considered, then the State
208 Fiscal Officer shall transfer those unobligated monies into the
209 other grant fund for distribution in the secondary application
210 process of such other grant fund.

211 (6) From and after the effective date of this act, an
212 electric cooperative may submit a tertiary application for the
213 Mississippi Electric Cooperatives Broadband COVID-19 Grant Program
214 with no maximum amount of grant monies that may be requested.
215 During the tertiary application process, if one (1) of the grant
216 funds has unobligated monies remaining after all qualifying
217 applications have been considered, then the State Fiscal Officer
218 shall transfer those unobligated monies into the other grant fund
219 for distribution in the tertiary application process.



220 (* * *7) Any grant monies provided under this act shall be
221 spent no later than December 30, 2020, or by such later date as
222 may be specified in the guidelines, guidance, rules, regulations
223 and/or other criteria of the United States Department of the
224 Treasury regarding the use of monies from the Coronavirus Relief
225 Fund established in Section 5001 of the Coronavirus Aid, Relief,
226 and Economic Security (CARES) Act.

227 Section 5. There is hereby created in the State Treasury a
228 special fund to be designated as the "Public Utilities Application
229 Fund," which shall consist of funds made available by the
230 Legislature in any manner and funds from any other source
231 designated for deposit into such fund. Unexpended amounts
232 remaining in the fund at the end of a fiscal year shall not lapse
233 into the State General Fund, and any investment earnings or
234 interest earned on amounts in the fund shall be deposited to the
235 credit of the fund. Monies in the fund shall be used for
236 administration expenses related to the processing of grants by the
237 Public Utilities Staff. Any application fee collected under the
238 grant programs and deposited to the Public Utilities Staff
239 Regulation Fund before the effective date of this act shall be
240 transferred to the Public Utilities Application Fund.

241 Section * * *6. (1) An applicant desiring to participate in
242 one (1) of the grant programs shall make written application to
243 the Staff for a grant.



244 (2) Any primary application must be submitted on or before
245 the close of business on July 17, 2020. A primary application
246 must include the following: (a) a description of the applicant,
247 (b) a description of the proposed project, (c) a project map
248 depicting the projects unserved or underserved census blocks, as
249 identified by the Public Utilities Staff, (d) an engineering map
250 of the project, (e) an estimate of the total number of households
251 along the route of the project, (f) the total estimated miles of
252 fiber to be installed, (g) the proposed maximum speeds to be
253 delivered both downstream and upstream, (h) the total estimated
254 cost of the project, (i) the grant amount requested by the
255 electric cooperative, subject, however, to the limit set forth in
256 Section 3 of this act, and (j) confirmation by the applicant of
257 its obligation under this act to refund any awarded funds in the
258 event it is found by the Public Utilities Staff to be fully or
259 materially noncompliant with this act.

260 (3) In order to assist with the payment of reasonable
261 expenses the Public Utilities Staff will incur in the
262 administration of the Grant Programs, any application for a grant
263 under this act, whether primary * * *, secondary or tertiary, must
264 include an application fee that is: (a) made payable to the
265 Public Utilities * * * Application Fund, and (b) equal to one-half
266 of one percent (1/2 of 1%) of the grant amount requested in the
267 application. An application fee paid by an applicant shall be
268 immediately returned if the proposed project is rejected by the



269 Staff. In the event a requested grant is partially awarded, the
270 application fee shall be reduced on a proportionate basis and the
271 difference refunded to the applicant.

272 (4) The Staff shall expeditiously review the primary
273 application submitted by an applicant and determine if the
274 application and proposed project meet the criteria set forth in
275 this act. On July 28, 2020, by close of business, the Staff shall
276 notify the applicant and the department which primary applications
277 have been approved. The department shall then distribute the
278 approved grants to the approved applicant(s) by close of business
279 July 31, 2020.

280 (5) In the event two (2) or more applicants submit projects
281 that include one (1) or more common census blocks, the Staff shall
282 determine which proposed project best serves that census block or
283 blocks using the following criteria:

284 (a) Maximum speeds, including both downstream and
285 upstream,

286 (b) Total miles of fiber to be deployed based on the
287 entire application, and

288 (c) Total value of the project, including both grant
289 and match, with preference given to projects of greater value.

290 The applicant whose project is rejected based on the Staff's
291 determination may, within three (3) days after the Staff's
292 determination, revise its proposed project and refile an amended
293 application with the Staff. The refiled project shall continue as



294 the same designation (primary * * *, secondary or tertiary) as the
295 rejected project.

296 (6) If after approval by the Staff of all primary
297 applications, the department determines that the requested grants
298 are greater than the monies in a given grant fund, the Staff shall
299 determine a ranking of the primary applications for whichever
300 grant fund is overdrawn. Such ranking shall be determined by the
301 following criteria:

302 (a) Maximum speeds, including both downstream and
303 upstream,

304 (b) Total miles of fiber to be deployed, and

305 (c) Total value of the project, including both grant
306 and match, with preference given to projects of greater value.

307 After the Staff has determined primary application rankings,
308 it shall transmit said rankings to the department for
309 disbursement. The department shall disburse grant funds in order
310 of the primary application rankings until all the grant funds are
311 disbursed.

312 (7) Any secondary application by an applicant shall be
313 submitted on or before July 29, 2020, and meet the same
314 application content criteria as a primary application. The
315 department shall notify the Staff if there are any grant funds
316 remaining after the department's distributions of grant funds for
317 primary applications. In the event there are monies remaining in
318 a given grant fund, the Staff shall review the secondary



319 applications for approval. Upon its approval of secondary
320 applications, the Staff shall notify the department of such
321 application approvals by no later than the close of business on
322 August 11, 2020, and the department shall distribute monies on a
323 pro rata basis, as determined by the department, to all qualifying
324 secondary applicants on or before August 14, 2020.

325 (8) Any tertiary application for the Mississippi Electric
326 Cooperatives Broadband COVID-19 Grant Program as authorized in
327 Section 4 of this act must be submitted on or before the close of
328 business on September 4, 2020, and meet the same application
329 content criteria as a primary application. Upon approval of any
330 tertiary application, the Staff shall notify the department of
331 such application approval by no later than the close of business
332 on September 11, 2020, and the department shall distribute monies
333 on a pro-rata basis to all qualifying applicants on or before
334 September 18, 2020.

335 Section * * *7. (1) Each applicant receiving any grant
336 funds under this act shall monthly file project status reports
337 with the Public Utilities Staff. The initial project status
338 report shall be due on or before September 15, 2020, and updates
339 shall be provided on or before the fifteenth day of each month
340 thereafter until such time as the project is completed. Such
341 reports shall include the following information concerning the
342 project: (a) a summary of the work performed, (b) an itemization
343 of the expenditures on the project, (c) the number of miles of



344 broadband fiber installed, (d) the number of residential
345 properties along the route of the installed fiber, (e) the number
346 of residential properties taking broadband service using the
347 installed fiber, and (f) the estimated project completion
348 percentage.

349 (2) Upon its completion of a project funded under this act,
350 the applicant shall promptly file a notice of project completion
351 with the Public Utilities Staff. The notice shall contain the
352 same information as is required to be provided in a monthly status
353 report.

354 (3) The Public Utilities Staff may, in its discretion,
355 conduct field audits, onsite audits, or engineering reviews
356 regarding the matters set forth in the report or notice. The
357 Staff may also require the applicant to provide such additional or
358 other information or documentation that the Staff determines is
359 reasonably necessary to ensure compliance with this act and the
360 United States Department of the Treasury regarding the use of
361 monies from the Coronavirus Relief Fund established in Section
362 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES)
363 Act.

364 (4) Except for the total amount of an applicant's
365 expenditures, any and all financial information contained within
366 an applicant's application, monthly status reports or notice of
367 project completion, including, but not limited to, the cost of
368 fiber or equipment and any other itemized expenditures, is and



369 shall be treated as confidential and proprietary information.
370 Such confidential and proprietary information may be submitted by
371 the applicant to the Staff and/or the department under seal; and
372 such information, if submitted under seal, shall be exempt from
373 the provisions of the Mississippi Public Records Act of 1983 and
374 withheld from public disclosure.

375 (5) If the Public Utilities Staff, after reviewing monthly
376 status reports or a notice of project completion, determines that
377 an applicant's project is not in compliance with this act, the
378 Staff shall so notify the applicant in writing and provide the
379 applicant with a reasonable opportunity to bring its project into
380 compliance. If the Staff thereafter determines that the applicant
381 has failed to bring its project into compliance, the Staff shall
382 provide written notice of same to the applicant and the
383 department.

384 (6) If the Staff, after reviewing a notice of project
385 completion, finds that a funded project is in compliance with this
386 act, then the Staff shall provide a written notice of compliance
387 to the applicant and to the department.

388 (7) An applicant found by the Public Utilities Staff to be
389 fully or materially noncompliant with this act shall return to the
390 state all or a portion of the grant monies received, as determined
391 by the department. Applicants shall confirm their understanding
392 of these terms in their primary and/or secondary applications.



393 (8) The Mississippi Public Utilities Staff shall ensure
394 grant monies are spent in compliance with this act and in
395 compliance with the guidelines, guidance, rules, regulations
396 and/or other criteria, as may be amended from time to time, of the
397 United States Department of the Treasury regarding the use of
398 monies from the Coronavirus Relief Fund established in Section
399 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES)
400 Act. Upon request of the Governor, Lieutenant Governor, the
401 Speaker of the House, the Chairman of the Senate Energy Committee
402 or the Chairman of the House Public Utilities Committee, the Staff
403 shall provide a report of the status of the Grant Programs,
404 provided that said report does not disclose any confidential or
405 proprietary information.

406 Section * * *8. If any section, paragraph, sentence, clause,
407 phrase or any part of this act is declared to be in conflict with
408 federal law, or if for any reason is declared to be invalid or of
409 no effect, the remaining sections, paragraphs, sentences, clauses,
410 phrases or parts thereof shall be in no manner affected thereby
411 but shall remain in full force and effect.

412 Section * * *9. This act shall take effect and be in force
413 from and after its passage.

414 **SECTION 2.** This act shall take effect and be in force from
415 and after its passage.

