House Amendments to Senate Bill No. 3046

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Covid-19 Broadband Provider Grant Program Fund out of the Budget Contingency Fund

.................................$ 10,000,000.00.

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

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

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

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

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

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

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

(c) "Broadband provider" means an entity that (i) is
not an electric cooperative or an affiliate of an electric
cooperative and (ii) is authorized to provide broadband service in
Mississippi;
(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium that can carry signals from or to multiple sources at a rate not less than one hundred (100) megabits per second in the downstream direction and not less than one hundred (100) megabits per second in the upstream direction, and that either: (i) is used to provide access to the Internet, or (ii) provides computer processing, information storage, information content or protocol conversion, including any service applications or information service provided over such high-speed access service.

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

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

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

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

(i) "Grant Funds" means the "Mississippi Electric Cooperatives Broadband Covid-19 Grant Program Fund" and the "Covid-19 Broadband Provider Grant Program Fund."

(j) "Grant Programs" means the "Mississippi Electric Cooperatives Broadband Covid-19 Grant Program" and the "Covid-19 Broadband Provider Grant Program."
(k) "Primary application" means the initial application filed by an applicant under this act for the purpose of obtaining a grant from one of the Grant Funds.

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

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

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

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

SECTION 4. (1) From the date of the beginning of the period
for applications for grants under this section, the Staff shall
consider and review applications from any eligible applicant. Any
project applied for by an electric cooperative must be for the
purpose of the electric cooperative immediately installing
broadband fiber on its electric delivery system and thereby
facilitating the provision of broadband services by its broadband
affiliate or an unaffiliated broadband provider. Any project
applied for by a broadband provider must be for the purpose of the
broadband provider's delivery of broadband services. All projects
under each of the Grant Programs must be designed to immediately
provide increased broadband services to an area or areas that have
been determined by the Public Utilities Staff to be unserved or
underserved according to the latest publicly available Federal
Communications Commission broadband data. Under this act,
electric cooperatives may only apply for and receive grants under
the Cooperative Program, and broadband providers may only apply
for and receive grants under the General Program.

(2) As to each of those specific Mississippi counties for
which such information is requested by an electric cooperative or
broadband provider, the Public Utilities Staff shall, by no later
than July 10, 2020, specifically identify census blocks that are
unserved or underserved according to the latest publicly available
Federal Communications Commission broadband data. In order to
create efficiencies in the administration of the Grant Programs
and avoid the imposition of undue and unnecessary burdens on the
Staff, a single electric cooperative or broadband provider may not
request such information for more than three (3) counties and any
requests for such information must be submitted to the Staff by no
later than the close of business on July 7, 2020. The Staff shall
provide its identification of such census blocks directly to the
department and to each electric cooperative and broadband provider
requesting the Staff for such information, and also provide such
information to the public through a posting on the Public
Utilities Staff's website. Each applicant shall rely on the
Public Utilities Staff's identification of unserved and
underserved census blocks in making its application(s) for Grant
Funds and spending awarded Grant Funds.

(3) In an attempt to facilitate broader participation in the
Cooperative Program, an electric cooperative's project or
projects, for which grant monies are provided under this act,
shall be considered pilot or special purpose projects and shall
not obligate the electric cooperative receiving the grant monies
or such electric cooperative's broadband affiliate to provide
broadband access to the entire service area of the electric
cooperative.
(4) For each dollar of grant monies requested for a project or projects by an applicant, the applicant must commit and spend a dollar of nongrant monies toward such project or projects. Universal Service Fund, Connect America Fund, or other grants awarded for broadband expansion through a separate state or federal program shall not be used for the required matching funds; but this limitation shall not include or extend to any loans of any kind. The primary application made by an applicant shall be for a grant totaling not more than Six Million Dollars ($6,000,000.00).

(5) An applicant submitting a primary application may also submit a secondary application at the same time or soon thereafter with no maximum to the amount of grant monies that may be requested. The department shall first obligate all primary applications made that meet the eligibility criteria and are approved by the Staff. Then, if grant monies are still available the department shall consider and obligate any secondary applications that meet the eligibility criteria and are approved by the Staff. During the secondary application process, if one of the Grant Funds has unobligated monies remaining after all qualifying secondary applications are considered, then the State Fiscal Officer shall transfer those unobligated monies into the other Grant Fund for distribution in the secondary application process of such other Grant Fund.

(6) Any grant monies provided under this act shall be spent no later than December 30, 2020, or by such later date as may be
specified in the guidelines, guidance, rules, regulations and/or
other criteria of the United States Department of the Treasury
regarding the use of monies from the Coronavirus Relief Fund
established in Section 5001 of the Coronavirus Aid, Relief, and

SECTION 5.  (1) An applicant desiring to participate in one
of the Grant Programs shall make written application to the Staff
for a grant.

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

(3) In order to assist with the payment of reasonable
expenses the Public Utilities Staff will incur in the
administration of the Grant Programs, any application for a grant under this act, whether primary or secondary, must include an application fee that is: (a) made payable to the Public Utilities Staff Regulation Fund, and (b) equal to one-half of one percent (1/2 of 1%) of the grant amount requested in the application. An application fee paid by an applicant shall be immediately returned if the proposed project is rejected by the Staff. In the event a requested grant is partially awarded, the application fee shall be reduced on a proportionate basis and the difference refunded to the applicant.

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

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

(a) maximum speeds, including both downstream and upstream,

(b) total miles of fiber to be deployed based on the entire application, and
(c) total value of the project, including both grant and match, with preference given to projects of greater value.

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

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

(a) Maximum speeds, including both downstream and upstream,
(b) Total miles of fiber to be deployed, and
(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

After the Staff has determined primary application rankings, it shall transmit said rankings to the department for disbursement. The department shall disburse Grant Funds in order of the primary application rankings until all the Grant Funds are disbursed.

(7) Any secondary application by an applicant shall be submitted on or before July 29, 2020, and meet the same
application content criteria as a primary application. The department shall notify the Staff if there are any Grant Funds remaining after the department's distributions of Grant Funds for primary applications. In the event there are monies remaining in a given Grant Fund, the Staff shall review the secondary applications for approval. Upon its approval of secondary applications, the Staff shall notify the department of such application approvals by no later than the close of business on August 11, 2020, and the Department shall distribute monies on a pro rata basis, as determined by the department, to all qualifying secondary applicants on or before August 14, 2020.

SECTION 6. (1) Each applicant receiving any Grant Funds under this act shall monthly file project status reports with the Public Utilities Staff. The initial project status report shall be due on or before September 15, 2020, and updates shall be provided on or before the fifteenth day of each month thereafter until such time as the project is completed. Such reports shall include the following information concerning the project: (a) a summary of the work performed, (b) an itemization of the expenditures on the project, (c) the number of miles of broadband fiber installed, (d) the number of residential properties along the route of the installed fiber, (e) the number of residential properties taking broadband service using the installed fiber, and (f) the estimated project completion percentage.

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

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

(4) Except for the total amount of an applicant's expenditures, any and all financial information contained within an applicant's application, monthly status reports or notice of project completion, including, but not limited to, the cost of fiber or equipment and any other itemized expenditures, is and shall be treated as confidential and proprietary information. Such confidential and proprietary information may be submitted by the applicant to the Staff and/or the department under seal; and such information, if submitted under seal, shall be exempt from the provisions of the Mississippi Public Records Act of 1983 and withheld from public disclosure.

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

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

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

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

SECTION 7. If any section, paragraph, sentence, clause,
phrase or any part of this act is declared to be in conflict with
federal law, or if for any reason is declared to be invalid or of
no effect, the remaining sections, paragraphs, sentences, clauses,
phrases or parts thereof shall be in no manner affected thereby
but shall remain in full force and effect.

SECTION 8. This act shall take effect and be in force from
and after its passage.

Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:

AN ACT TO DIRECT THE STATE FISCAL OFFICER TO TRANSFER
$65,000,000.00 TO THE MISSISSIPPI ELECTRIC COOPERATIVES BROADBAND
COVID-19 GRANT PROGRAM FUND; TO DIRECT THE STATE FISCAL OFFICER TO
TRANSFER $10,000,000.00 TO THE COVID-19 BROADBAND PROVIDER GRANT
PROGRAM FUND; TO CREATE THE "MISSISSIPPI ELECTRIC COOPERATIVES
BROADBAND COVID-19 GRANT PROGRAM" AND THE "COVID-19 BROADBAND
PROVIDER GRANT PROGRAM"; TO PROVIDE A STATEMENT OF LEGISLATIVE
INTENT AND FINDINGS; TO CREATE THE "MISSISSIPPI ELECTRIC
COOPERATIVES BROADBAND COVID-19 GRANT PROGRAM FUND" AND THE
"COVID-19 BROADBAND PROVIDER GRANT PROGRAM FUND" AS SPECIAL FUNDS
IN THE STATE TREASURY FOR THE PURPOSE OF PROVIDING FUNDS FOR
GRANTS UNDER THIS ACT; TO PROVIDE THAT THE GRANT PROGRAMS CREATED
UNDER THIS ACT SHALL BE ADMINISTERED BY THE DEPARTMENT OF FINANCE
AND ADMINISTRATION, FOR THE PURPOSE OF MAKING GRANTS UNDER THIS
ACT FOR ELIGIBLE EXPENSES; TO PRESCRIBE THE REQUIREMENTS OF
APPLICATION FOR THE GRANTS; TO SPECIFY THAT THE USE OF GRANT FUNDS
SHALL BE SUBJECT TO AUDIT AND REGULATION OF THE PUBLIC UTILITIES
STAFF, AND NONCOMPLIANCE WITH THE TERMS OF THE GRANT SHALL REQUIRE
REPAYMENT OF GRANT MONIES TO THE STATE; TO SPECIFY THAT ALL MONIES
SHALL BE DISBURSED FROM THESE SPECIAL FUNDS IN COMPLIANCE WITH THE
REQUIREMENTS OF THE CARES ACT AND GUIDELINES FROM THE UNITED
STATES DEPARTMENT OF THE TREASURY REGARDING THE USE OF MONIES FROM
THE CORONAVIRUS RELIEF FUND; TO TRANSFER UNOBLIGATED MONIES IN THE
FUNDS AS OF OCTOBER 1, 2020, TO THE UNEMPLOYMENT INSURANCE FUND;
TO PROVIDE THAT A DECLARATION OF ANY PORTION OF THIS ACT AS
INVALID SHALL NOT AFFECT THE REMAINING PORTIONS OF THIS ACT; AND
FOR RELATED PURPOSES.

Andrew Ketchings
Clerk of the House of Representatives