

By: Representative Anderson (122nd)

To: Public Utilities

HOUSE BILL NO. 86

1 AN ACT TO PROVIDE FOR CERTAIN PARTICIPATION OF INVESTOR OWNED  
2 ELECTRIC UTILITIES IN THE EXPANSION OF BROADBAND SERVICES IN THE  
3 STATE OF MISSISSIPPI; TO AMEND SECTION 77-3-2, MISSISSIPPI CODE OF  
4 1972, TO DECLARE THAT IT IS THE POLICY OF THE STATE OF MISSISSIPPI  
5 TO SUPPORT EXPANSION OF EXISTING AND EMERGING TECHNOLOGIES TO  
6 FOSTER RELIABLE AND RESILIENT SERVICE AND CUSTOMER ACCESS TO  
7 ENHANCED SERVICES; TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF  
8 1972, TO INCLUDE DEFINITIONS OF "BROADBAND SERVICE PROVIDER,"  
9 "BROADBAND OPERATOR," "ELECTRIC DELIVERY SYSTEM" AND "ENHANCED  
10 GRID INVESTMENTS"; TO AMEND SECTION 77-3-44, MISSISSIPPI CODE OF  
11 1972, TO INCLUDE FIBER-OPTIC INFRASTRUCTURE AND ENHANCED GRID  
12 INVESTMENTS AS AN ECONOMIC DEVELOPMENT ACTIVITY, TO ALLOW  
13 INVESTOR-OWNED ELECTRIC UTILITIES TO PERMIT BROADBAND PROVIDERS  
14 USE OF THE ELECTRIC DELIVERY SYSTEM TO PROVIDE BROADBAND SERVICES,  
15 TO REGULATE EASEMENTS, TO ALLOW CERTAIN ENTITIES TO CONSTRUCT  
16 FIBER-OPTIC INFRASTRUCTURE ON PUBLIC UTILITIES' EXISTING  
17 RIGHTS-OF-WAY; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 77-3-2, Mississippi Code of 1972, is  
20 amended as follows:

21 77-3-2. (1) The Legislature finds and determines that the  
22 rates, services and operations of public utilities as defined in  
23 this title are affected with the public interest and that the  
24 availability of an adequate and reliable service by such public  
25 utilities to the people, economy and government of the State of



26 Mississippi is a matter of public policy. The Legislature hereby  
27 declares to be the policy of the State of Mississippi:

28 (a) To provide fair regulation of public utilities in  
29 the interest of the public;

30 (b) To promote the inherent advantage of regulated  
31 public utilities;

32 (c) To promote adequate, reliable and economical  
33 service to all citizens and residents of the state;

34 (d) To provide just and reasonable rates and charges  
35 for public utility services without unjust discrimination, undue  
36 preferences or advantages, or unfair or destructive competitive  
37 practices and consistent with long-term management and  
38 conservation of energy resources by avoiding wasteful, uneconomic  
39 and inefficient uses of energy;

40 (e) To encourage and promote harmony between public  
41 utilities, their users and the environment;

42 (f) To foster the continued service of public utilities  
43 on a well-planned and coordinated basis that is consistent with  
44 the level of service needed for the protection of public health  
45 and safety and for the promotion of the general welfare;

46 (g) To cooperate with other states and the federal  
47 government in promoting and coordinating interstate and intrastate  
48 public utility service and reliability;

49 (h) To encourage the continued study and research for  
50 new and innovative rate-making procedures which will protect the



51 state, the public, the ratepayers and the utilities, and where  
52 possible reduce the costs of the rate-making process; and

53 (i) With respect to rate-regulated public utilities, to  
54 foster, encourage, enable and facilitate economic development in  
55 the State of Mississippi, \* \* \* to support and augment economic  
56 development activities, \* \* \* to expand deployment of existing and  
57 emerging technologies, including fiber-optic infrastructure and  
58 enhanced grid investments which will foster a more reliable and  
59 resilient utility delivery system and provide customer access to  
60 enhanced services, to authorize and empower the Public Service  
61 Commission \* \* \* in carrying out its statutory responsibilities,  
62 and to take every opportunity to advance the economic development  
63 of the state.

64 (2) To these ends, therefore, authority shall be vested in  
65 the Mississippi Public Service Commission to regulate public  
66 utilities in accordance with the provisions of this title.

67 (3) (a) The commission shall, in addition to its other  
68 powers and duties, be authorized and empowered, in its discretion,  
69 to consider and adopt a formula type rate of return evaluation  
70 rate which may include provision for the commission to:

71 (i) Periodically review and adjust, if required,  
72 the utility's level of revenues based upon the actual books and  
73 records of the utility which are periodically the subject of  
74 independent audits and regulatory audits;



75                   (ii) Review the utility's performance in certain  
76 areas or categories which may be used by the commission in the  
77 manner selected by it which may include rate incentives or  
78 penalties so long as such are found to be fair and reasonable and  
79 result in a level of revenue which is fair and reasonable; and

80                   (iii) Use such other provisions which may be  
81 permitted by this chapter.

82                   (b) When a formula type rate of return evaluation rate  
83 with periodic revenue adjustments is adopted by the commission,  
84 each periodic revenue adjustment will be separately considered for  
85 the purpose of determining whether a hearing is required pursuant  
86 to Section 77-3-39(1), and no such hearing shall be required if  
87 the amount of any separate periodic adjustment to the level of  
88 revenues of the utility is not a "major change" as defined in  
89 Section 77-3-37(8).

90                   (c) In administering any such formula type rate of  
91 return evaluation rate, the following procedures shall be observed  
92 by the commission:

93                   (i) Each periodic evaluation shall be supported  
94 with a sworn filing by the utility incorporating the data  
95 specified in the formula rate adopted by the commission, and such  
96 data shall be verified by the commission; and

97                   (ii) A hearing shall be required, as provided by  
98 law, to determine compliance with the formula rate plan and the  
99 accuracy of the data prior to any change in the level of revenues



100 if the cumulative change in any calendar year exceeds the greater  
101 of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%)  
102 of the annual revenues of the utility.

103 (d) The requirements of paragraphs (a), (b) and (c) of  
104 this subsection and other applicable provisions of Title 77,  
105 Chapter 3, Article 1, Mississippi Code of 1972, which are observed  
106 by the commission in administering such rate, are hereby declared  
107 to be procedural but are not required to be included in the rate  
108 itself.

109 (4) It is the intention of the Legislature to validate,  
110 retroactively to its initial adoption by the commission, any  
111 formula type rate, including any revenue adjustments effected  
112 pursuant thereto, which has heretofore been adopted by the  
113 commission. For the purposes of the retroactive validation and  
114 the administration of any formula type rate heretofore adopted by  
115 the commission, should the provisions of Title 77, Chapter 3,  
116 Article 1, Mississippi Code of 1972, conflict with any provisions  
117 of such formula type rate, Title 77, Chapter 3, Article 1,  
118 Mississippi Code of 1972, shall be interpreted to prevail and the  
119 formula type rate shall hereafter be administered or revised to  
120 conform to Title 77, Chapter 3, Article 1, Mississippi Code of  
121 1972; provided, however, such conflict, if any, shall not be held  
122 to invalidate the retroactive effect of this section upon such  
123 rate.



124           **SECTION 2.** Section 77-3-3, Mississippi Code of 1972, is  
125 amended as follows:

126           77-3-3. As used in this chapter:

127           (a) The term "corporation" includes a private or public  
128 corporation, a municipality, an association, a joint-stock  
129 association or a business trust.

130           (b) The term "person" includes a natural person, a  
131 partnership of two (2) or more persons having a joint or common  
132 interest, a cooperative, nonprofit, limited dividend or mutual  
133 association, a corporation, or any other legal entity.

134           (c) The term "municipality" includes any incorporated  
135 city, town or village.

136           (d) The term "public utility" includes persons and  
137 corporations, or their lessees, trustees and receivers now or  
138 hereafter owning or operating in this state equipment or  
139 facilities for:

140           (i) The generation, manufacture, transmission or  
141 distribution of electricity to or for the public for compensation;

142           (ii) The transmission, sale, sale for resale, or  
143 distribution of natural, artificial, or mixed natural and  
144 artificial gas to the public for compensation by means of  
145 transportation, transmission, or distribution facilities and  
146 equipment located within this state; however, the term shall not  
147 include the production and gathering of natural gas, the sale of  
148 natural gas in or within the vicinity of the field where produced,



149 or the distribution or sale of liquefied petroleum gas or the sale  
150 to the ultimate consumer of natural gas for use as a motor vehicle  
151 fuel;

152 (iii) The transmission, conveyance or reception of  
153 any message over wire, of writing, signs, signals, pictures and  
154 sounds of all kinds by or for the public, where such service is  
155 offered to the public for compensation, and the furnishing, or the  
156 furnishing and maintenance, of equipment or facilities to the  
157 public, for compensation, for use as a private communications  
158 system or part thereof; however, no person or corporation not  
159 otherwise a public utility within the meaning of this chapter  
160 shall be deemed such solely because of engaging in this state in  
161 the furnishing, for private use as last aforementioned, and  
162 moreover, nothing in this chapter shall be construed to apply to  
163 television stations, radio stations, community television antenna  
164 services, video services, Voice over Internet Protocol services  
165 ("VoIP"), any wireless services, including commercial mobile  
166 services, Internet Protocol ("IP") - enabled services or broadband  
167 services; and

168 (iv) The transmission, distribution, sale or  
169 resale of water to the public for compensation, or the collection,  
170 transmission, treatment or disposal of sewage, or otherwise  
171 operating a sewage disposal service, to or for the public for  
172 compensation.



173           The term "public utility" shall not include any person not  
174 otherwise a public utility, who furnishes the services or  
175 commodity described in this paragraph only to himself, his  
176 employees or tenants as an incident of such employee service or  
177 tenancy, if such services are not sold or resold to such tenants  
178 or employees on a metered or consumption basis other than the  
179 submetering authorized under Section 77-3-97.

180           A public utility's business other than of the character  
181 defined in subparagraphs (i) through (iv) of this paragraph is not  
182 subject to the provisions of this chapter.

183           (e) The term "rate" means and includes every  
184 compensation, charge, fare, toll, customer deposit, rental and  
185 classification, or the formula or method by which such may be  
186 determined, or any of them, demanded, observed, charged or  
187 collected by any public utility for any service, product or  
188 commodity described in this section, offered by it to the public,  
189 and any rules, regulations, practices or contracts relating to any  
190 such compensation, charge, fare, toll, rental or classification;  
191 however, the term "rate" shall not include charges for electrical  
192 current furnished, delivered or sold by one (1) public utility to  
193 another for resale.

194           (f) The word "commission" shall refer to the Public  
195 Service Commission of the State of Mississippi, as now existing,  
196 unless otherwise indicated.





197 (g) The term "affiliated interest" or "affiliate"  
198 includes:

199 (i) Any person or corporation owning or holding,  
200 directly or indirectly, twenty-five percent (25%) or more of the  
201 voting securities of a public utility;

202 (ii) Any person or corporation in any chain of  
203 successive ownership of twenty-five percent (25%) or more of the  
204 voting securities of a public utility;

205 (iii) Any corporation of which fifteen percent  
206 (15%) or more of the voting securities is owned or controlled,  
207 directly or indirectly, by a public utility;

208 (iv) Any corporation of which twenty-five percent  
209 (25%) or more of the voting securities \* \* \* is owned or  
210 controlled, directly or indirectly, by any person or corporation  
211 that owns or controls, directly or indirectly, twenty-five percent  
212 (25%) or more of the voting securities of any public utility or by  
213 any person or corporation in any chain of successive ownership of  
214 twenty-five percent (25%) of such securities;

215 (v) Any person who is an officer or director of a  
216 public utility or of any corporation in any chain of successive  
217 ownership of fifteen percent (15%) or more of voting securities of  
218 a public utility; or

219 (vi) Any person or corporation that the  
220 commission, after notice and hearing, determines actually  
221 exercises any substantial influence or control over the policies



222 and actions of a public utility, or over which a public utility  
223 exercises such control, or that is under a common control with a  
224 public utility, such control being the possession, directly or  
225 indirectly, of the power to direct or cause the discretion of the  
226 management and policies of another, whether such power is  
227 established through ownership of voting securities or by any other  
228 direct or indirect means.

229         However, the term "affiliated interest" or "affiliate" shall  
230 not include a joint agency organized pursuant to Section 77-5-701  
231 et seq., nor a member municipality thereof.

232         (h) The term "facilities" includes all the plant and  
233 equipment of a public utility, used or useful in furnishing public  
234 utility service, including all real and personal property without  
235 limitation, and any and all means and instrumentalities in any  
236 manner owned, operated, leased, licensed, used, controlled,  
237 furnished or supplied for, by or in connection with its public  
238 utility business.

239         (i) The term "cost of service" includes operating  
240 expenses, taxes, depreciation, net revenue and operating revenue  
241 requirement at a claimed rate of return from public utility  
242 operations.

243         (j) The term "lead-lag study" includes an analysis to  
244 determine the amount of capital which investors in a public  
245 utility, the rates of which are subject to regulation under the  
246 provisions of this chapter, must provide to meet the day-to-day



247 operating costs of the public utility prior to the time such costs  
248 are recovered from customers, and the measurement of (i) the lag  
249 in collecting from the customer the cost of providing service, and  
250 (ii) the lag in paying the cost of providing service by the public  
251 utility.

252 (k) The term "broadband services" means any service  
253 that consists of or includes a high-speed access capability to  
254 transmit at a rate that is not less than two hundred (200)  
255 kilobits per second either in the upstream or downstream direction  
256 and either:

257 (i) Is used to provide access to the internet, or  
258 (ii) Provides computer processing, information  
259 storage, information content or protocol conversion, including any  
260 service applications or information service provided over such  
261 high-speed access service.

262 (l) The term "video services" means video programming  
263 services without regard to delivery technology, including Internet  
264 Protocol technology ("Internet Protocol television or IPTV") and  
265 video programming provided as a part of a service that enables  
266 users to access content, information, email or other services  
267 offered over the public internet. The term "video programming"  
268 means any programming as defined in 47 USCS Section 522(20).

269 (m) The term "Voice over Internet Protocol services" or  
270 "VoIP services" means any service that: (i) enables real-time,  
271 two-way voice communications that originate from or terminate to



272 the user's location in Internet Protocol or any successor  
273 protocol; (ii) uses a broadband connection from the user's  
274 location; and (iii) permits users generally to receive calls that  
275 originate on the Public Switched Telephone Network and to  
276 terminate calls to the Public Switched Telephone Network.

277 (n) The term "commercial mobile services" means any  
278 services as defined in 47 USCS Section 332(d).

279 (o) The term "Internet Protocol-enabled services" or  
280 "IP-enabled services" means any service, capability,  
281 functionality, or application provided using Internet Protocol, or  
282 any successor protocol, that enables an end user to send or  
283 receive a communication in Internet Protocol format, or any  
284 successor format, regardless of whether the communications is  
285 voice, data or video.

286 (p) "Broadband service provider" means an entity that  
287 provides broadband services to others on a wholesale basis or to  
288 end-use customers on a retail basis.

289 (q) "Broadband operator" means a broadband service  
290 provider that uses the electric delivery system of any public  
291 utility of the type as defined in Section 77-3-3(d) (i) with the  
292 public utility's consent to provide broadband services.

293 (r) "Electric delivery system" means the poles, lines,  
294 fiber, cables, broadband system, materials, equipment, easements  
295 and other facilities or properties used by any public utility of



296 the type as defined in Section 77-3-3(d) (i) to deliver or  
297 facilitate the delivery, sale or use of electric energy.

298 (s) The term "enhanced grid investments" means  
299 investments in technologies and services that support and improve  
300 the operational performance, service reliability, resiliency and  
301 security of the electric delivery system.

302 Nothing contained in this paragraph shall apply to retail  
303 services that are tariffed by the commission.

304 **SECTION 3.** Section 77-3-44, Mississippi Code of 1972, is  
305 amended as follows:

306 77-3-44. (1) Any rate-regulated electric or natural gas  
307 public utility with certificated service area in Mississippi may  
308 undertake economic development activities, whether directly or  
309 indirectly, including activities such as providing capital, or  
310 investment in or acquisition and development of business or  
311 industrial sites and the necessary infrastructure or services  
312 needed to attract new or existing businesses or industry, to  
313 create or maintain employment opportunities, or expansion of  
314 fiber-optic infrastructure and enhanced grid investments,  
315 including those which provide customer access to modern-enhanced  
316 services, or otherwise to positively impact or in some manner  
317 promote the sale of electric energy or natural gas within its  
318 certificated service area. Any facilities developed, constructed  
319 or acquired in support of the activities described in this  
320 section, including fiber-optic infrastructure investments and



321 enhanced grid investments, including those which provide customer  
322 access to modern-enhanced services, for which a certificate of  
323 public convenience and necessity or other commission approval has  
324 been granted after July 1, 2015, as well as any capital investment  
325 in natural gas reserves made directly or indirectly by an electric  
326 or natural gas public utility to foster long-term stability in the  
327 cost of fuel, may be deemed used and useful in the provision of  
328 electric or natural gas service regardless of whether or not any  
329 end-use customers are taking service from said facilities or  
330 investment and otherwise recoverable through the utility's rates.

331 (2) (a) In addition, to further expand fiber-optic  
332 infrastructure in the state, any rate-regulated public utility of  
333 the type as defined in Section 77-3-3(d) (i) may grant permission  
334 to broadband service providers to use the electric delivery  
335 system, including without limitation the fiber-optic  
336 infrastructure and enhanced grid investments, of the public  
337 utility to provide broadband services or other similar services as  
338 defined in Section 77-3-3(k) through (o).

339 (b) The public utility shall not: (i) allow the use of  
340 its electric delivery system by a broadband operator to provide  
341 broadband services as defined above to diminish the reliability of  
342 the electric delivery system; (ii) require any person to purchase  
343 broadband services as a condition of receiving or continuing to  
344 receive electric service; or (iii) disconnect, or threaten to  
345 disconnect, electric service to any customer due to the customer's



346 failure to pay for broadband services. Any complaint related to a  
347 public utility's permissive offer of use pursuant to this  
348 paragraph (b) shall be brought before and resolved by the Public  
349 Service Commission.

350 (c) In addition, to further expand fiber-optic  
351 infrastructure and economic development in the state, any public  
352 utility, including electric cooperatives, of the type as defined  
353 in Section 77-3-3(d) (i) may grant permission to a retail customer  
354 with a nonaggregated load greater than twenty (20) megawatts to  
355 construct, install, or maintain above or underground fiber-optic  
356 infrastructure on the public utility's existing right-of-way of  
357 its electric delivery system.

358 (d) In instances where a landowner has previously been  
359 compensated for the use of their land through a right-of-way  
360 instrument with a public utility, the use of the public utility's  
361 electric delivery system for the provision of broadband services  
362 to a broadband operator or use of the public utility's existing  
363 right-of-way on its electric delivery system by a retail customer  
364 to construct, install, or maintain above or underground  
365 fiber-optic infrastructure shall not be considered an additional  
366 burden on the real property upon which the public utility's  
367 electric delivery system is located and shall not require the  
368 public utility, the broadband operator or retail customer to  
369 obtain the consent of anyone having an interest in the real



370 property upon which the public utility's electric delivery system  
371 is located.

372 (e) If a portion of a public utility's electric  
373 delivery system is used by a broadband operator for the provision  
374 of broadband services or a portion of a public utility's  
375 right-of-way is used by a retail customer to construct, install,  
376 or maintain above or underground fiber-optic infrastructure and  
377 the landowner of the real property on which such portion is  
378 located believes his property has been damaged by such use, the  
379 landowner may petition the circuit court of the county in which  
380 the property is situated for any damages to which the landowner  
381 may be entitled under this subsection:

382 (i) The petition allowed and damages recoverable  
383 under this subsection shall be the landowner's exclusive remedy,  
384 and the landowner shall not be entitled to assert any other  
385 theory, claims or causes of action nor recover any other damages,  
386 punitive damages, costs, attorneys' fees, or other relief.

387 (ii) The recoverable damages, if any, shall be  
388 recoverable only from the broadband operator or retail customer  
389 and not from the public utility.

390 (iii) The damages recoverable shall be an amount  
391 equal to the difference between 1. the fair market value of the  
392 landowner's interest in the real property immediately before the  
393 public utility's electric delivery system on the owner's property  
394 was first used by the broadband operator or retail customer for





395 the provision of broadband services, and 2. the fair market value  
396 of the landowner's interest in the real property immediately after  
397 the public utility's electric delivery system on the landowner's  
398 property was first used by the broadband operator or retail  
399 customer for the provision of broadband services. The  
400 before-and-after values must be established by the testimony of a  
401 qualified real estate appraiser. The damages, if any, shall be  
402 fixed and shall not be deemed to continue, accumulate, or accrue.  
403 The court shall, as part of its judgment, confirm the rights  
404 granted by the public utility to the broadband operator or retail  
405 customer and their respective successors and assigns for the  
406 placement or use of a broadband system on or as part of the  
407 electric delivery system. The judgment will have the same effect  
408 of a conveyance executed in due form of law and shall run with the  
409 land; and a certified copy of said judgment may be filed by the  
410 broadband operator retail customer in the land records of the  
411 county in which the subject property is located.

412 (iv) Evidence of past, current or future revenues  
413 or profits derived or to be derived by a broadband operator or  
414 retail customer from providing broadband services is not  
415 admissible for any purpose in any such proceeding.

416 (v) The landowner shall not be entitled to any  
417 damages or other relief relating to any broadband system or  
418 portion thereof that is located on the landowner's property or any  
419 fiber-optic infrastructure by the retail customer that is located



420 on the landowner's property and is used or could be used by the  
421 electric public utility for its own operations.

422 (vi) The landowner shall not be entitled to any  
423 relief or damages if an easement has been granted to the broadband  
424 operator or retail customer, if the landowner has authorized the  
425 public utility to use or allow others to use its electric delivery  
426 system for the provision of broadband services, or if the  
427 landowner has authorized the public utility to use its existing  
428 right-of-way to construct, install, or maintain above or  
429 underground fiber-optic infrastructure.

430 (f) Nothing in this section shall affect, abrogate, or  
431 eliminate in any way any obligation of an electric provider,  
432 public utility or any broadband affiliate or broadband operator to  
433 comply with any applicable safety and permitting requirements of  
434 any railroad company or any state governmental body or agency with  
435 respect to property that is held or controlled by such railroad  
436 company or state governmental body or agency, as the case may be,  
437 and in, on, over, or across which an easement is located.

438 (g) All costs paid by an investor-owned public utility  
439 to acquire right-of-way shall be considered cost of service and  
440 recovered through rates, and all revenue collected by an  
441 investor-owned public utility from third-party use of public  
442 utility right-of-way shall be credited back to customers in a  
443 comparable manner.



444           **SECTION 4.** This act shall take effect and be in force from  
445 and after July 1, 2021.

