

By: Senator(s) Carter

To: Energy

SENATE BILL NO. 2798
(As Sent to Governor)

1 AN ACT TO PROVIDE FOR CERTAIN PARTICIPATION OF RATE-REGULATED
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" AND "ELECTRIC DELIVERY SYSTEM"; TO AMEND
10 SECTION 77-3-44, MISSISSIPPI CODE OF 1972, TO INCLUDE FIBER-OPTIC
11 INFRASTRUCTURE AS AN ECONOMIC DEVELOPMENT ACTIVITY, TO ALLOW
12 RATE-REGULATED ELECTRIC UTILITIES TO PERMIT BROADBAND PROVIDERS
13 USE OF THE ELECTRIC DELIVERY SYSTEM TO PROVIDE BROADBAND SERVICES,
14 TO REGULATE EASEMENTS, TO ALLOW CERTAIN ENTITIES TO CONSTRUCT
15 FIBER-OPTIC INFRASTRUCTURE ON PUBLIC UTILITIES' EXISTING
16 RIGHTS-OF-WAY; AND FOR RELATED PURPOSES.

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

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

20 77-3-2. (1) The Legislature finds and determines that the
21 rates, services and operations of public utilities as defined in
22 this title are affected with the public interest and that the
23 availability of an adequate and reliable service by such public
24 utilities to the people, economy and government of the State of



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

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

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

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

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

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

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

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

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



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

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

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

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

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

73 (ii) Review the utility's performance in certain
74 areas or categories which may be used by the commission in the



75 manner selected by it which may include rate incentives or
76 penalties so long as such are found to be fair and reasonable and
77 result in a level of revenue which is fair and reasonable; and

78 (iii) Use such other provisions which may be
79 permitted by this chapter.

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

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

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

95 (ii) A hearing shall be required, as provided by
96 law, to determine compliance with the formula rate plan and the
97 accuracy of the data prior to any change in the level of revenues
98 if the cumulative change in any calendar year exceeds the greater



99 of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%)
100 of the annual revenues of the utility.

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

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

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



124 77-3-3. As used in this chapter:

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

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

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

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

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

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



148 to the ultimate consumer of natural gas for use as a motor vehicle
149 fuel;

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

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

171 The term "public utility" shall not include any person not
172 otherwise a public utility, who furnishes the services or



173 commodity described in this paragraph only to himself, his
174 employees or tenants as an incident of such employee service or
175 tenancy, if such services are not sold or resold to such tenants
176 or employees on a metered or consumption basis other than the
177 submetering authorized under Section 77-3-97.

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

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

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

195 (g) The term "affiliated interest" or "affiliate"
196 includes:



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

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

203 (iii) Any corporation of which fifteen percent
204 (15%) or more of the voting securities is owned or controlled,
205 directly or indirectly, by a public utility;

206 (iv) Any corporation of which twenty-five percent
207 (25%) or more of the voting securities * * * is owned or
208 controlled, directly or indirectly, by any person or corporation
209 that owns or controls, directly or indirectly, twenty-five percent
210 (25%) or more of the voting securities of any public utility or by
211 any person or corporation in any chain of successive ownership of
212 twenty-five percent (25%) of such securities;

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

217 (vi) Any person or corporation that the
218 commission, after notice and hearing, determines actually
219 exercises any substantial influence or control over the policies
220 and actions of a public utility, or over which a public utility
221 exercises such control, or that is under a common control with a



222 public utility, such control being the possession, directly or
223 indirectly, of the power to direct or cause the discretion of the
224 management and policies of another, whether such power is
225 established through ownership of voting securities or by any other
226 direct or indirect means.

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

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

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

241 (j) The term "lead-lag study" includes an analysis to
242 determine the amount of capital which investors in a public
243 utility, the rates of which are subject to regulation under the
244 provisions of this chapter, must provide to meet the day-to-day
245 operating costs of the public utility prior to the time such costs
246 are recovered from customers, and the measurement of (i) the lag



247 in collecting from the customer the cost of providing service, and
248 (ii) the lag in paying the cost of providing service by the public
249 utility.

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

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

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

267 (m) The term "Voice over Internet Protocol services" or
268 "VoIP services" means any service that: (i) enables real-time,
269 two-way voice communications that originate from or terminate to
270 the user's location in Internet Protocol or any successor
271 protocol; (ii) uses a broadband connection from the user's



272 location; and (iii) permits users generally to receive calls that
273 originate on the Public Switched Telephone Network and to
274 terminate calls to the Public Switched Telephone Network.

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

277 (o) The term "Internet Protocol-enabled services" or
278 "IP-enabled services" means any service, capability,
279 functionality, or application provided using Internet Protocol, or
280 any successor protocol, that enables an end user to send or
281 receive a communication in Internet Protocol format, or any
282 successor format, regardless of whether the communications is
283 voice, data or video. Nothing contained in this paragraph shall
284 apply to retail services that are tariffed by the commission.

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

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

292 (r) "Electric delivery system" means the poles, lines,
293 fiber, cables, broadband system, materials, equipment, easements
294 and other facilities or properties used by any public utility of
295 the type as defined in paragraph (d)(i) of this section to deliver
296 or facilitate the delivery, sale or use of electric energy.



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

299 77-3-44. (1) Any rate-regulated electric or natural gas
300 public utility with certificated service area in Mississippi may
301 undertake economic development activities, whether directly or
302 indirectly, including activities such as providing capital, or
303 investment in or acquisition and development of business or
304 industrial sites and the necessary infrastructure or services
305 needed to attract new or existing businesses or industry, to
306 create or maintain employment opportunities, or expansion of
307 fiber-optic infrastructure or otherwise to positively impact or in
308 some manner promote the sale of electric energy or natural gas
309 within its certificated service area. Any facilities developed,
310 constructed or acquired in support of the activities described in
311 this section, including fiber-optic infrastructure for which a
312 certificate of public convenience and necessity or other
313 commission approval has been granted after July 1, 2015, as well
314 as any capital investment in natural gas reserves made directly or
315 indirectly by an electric or natural gas public utility to foster
316 long-term stability in the cost of fuel, may be deemed used and
317 useful in the provision of electric or natural gas service
318 regardless of whether or not any end-use customers are taking
319 service from said facilities or investment and otherwise
320 recoverable through the utility's rates.



321 (2) (a) In addition, to further expand fiber-optic
322 infrastructure in the state, any rate-regulated public utility of
323 the type as defined in Section 77-3-3(d) (i) may grant permission
324 to broadband service providers to use the electric delivery
325 system, including without limitation the fiber-optic
326 infrastructure, of the public utility to provide broadband
327 services or other similar services as defined in Section 77-3-3(k)
328 through (o). To the extent a rate-regulated electric public
329 utility grants permission to any broadband service provider to use
330 any part of the utility's electric delivery system, including
331 without limitation its fiber-optic infrastructure, it must grant
332 such permission on a nonexclusive basis.

333 (b) The public utility shall not: (i) allow the use of
334 its electric delivery system by a broadband operator to provide
335 broadband services as defined above to diminish the reliability of
336 the electric delivery system; (ii) require any person to purchase
337 broadband services as a condition of receiving or continuing to
338 receive electric service; or (iii) disconnect, or threaten to
339 disconnect, electric service to any customer due to the customer's
340 failure to pay for broadband services. Any complaint related to a
341 public utility's permissive offer of use pursuant to this
342 paragraph (b) shall be brought before and resolved by the Public
343 Service Commission.

344 (c) In addition, to further expand fiber-optic
345 infrastructure and economic development in the state, any public



346 utility, including electric cooperatives, of the type as defined
347 in Section 77-3-3(d) (i) may grant permission to a retail customer
348 with a nonaggregated load greater than twenty (20) megawatts to
349 construct, install, or maintain above or underground fiber-optic
350 infrastructure on the public utility's existing right-of-way of
351 its electric delivery system.

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

366 (e) If a portion of a public utility's electric
367 delivery system is used by a broadband operator for the provision
368 of broadband services or a portion of a public utility's
369 right-of-way is used by a retail customer to construct, install,
370 or maintain above or underground fiber-optic infrastructure and



371 the landowner of the real property on which such portion is
372 located believes his property has been damaged by such use, the
373 landowner may petition the circuit court of the county in which
374 the property is situated for any damages to which the landowner
375 may be entitled under this subsection:

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

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

384 (iii) The damages recoverable shall be an amount
385 equal to the difference between 1. the fair market value of the
386 landowner's interest in the real property immediately before the
387 public utility's electric delivery system on the owner's property
388 was first used by the broadband operator or retail customer for
389 the provision of broadband services, and 2. the fair market value
390 of the landowner's interest in the real property immediately after
391 the public utility's electric delivery system on the landowner's
392 property was first used by the broadband operator or retail
393 customer for the provision of broadband services. The
394 before-and-after values must be established by the testimony of a
395 qualified real estate appraiser. The damages, if any, shall be



396 fixed and shall not be deemed to continue, accumulate, or accrue.
397 The court shall, as part of its judgment, confirm the rights
398 granted by the public utility to the broadband operator or retail
399 customer and their respective successors and assigns for the
400 placement or use of a broadband system on or as part of the
401 electric delivery system. The judgment will have the same effect
402 of a conveyance executed in due form of law and shall run with the
403 land; and a certified copy of said judgment may be filed by the
404 broadband operator retail customer in the land records of the
405 county in which the subject property is located.

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

410 (v) The landowner shall not be entitled to any
411 damages or other relief relating to any broadband system or
412 portion thereof that is located on the landowner's property or any
413 fiber-optic infrastructure by the retail customer that is located
414 on the landowner's property and is used or could be used by the
415 electric public utility for its own operations.

416 (vi) The landowner shall not be entitled to any
417 relief or damages if an easement has been granted to the broadband
418 operator or retail customer, if the landowner has authorized the
419 public utility to use or allow others to use its electric delivery
420 system for the provision of broadband services, or if the



421 landowner has authorized the public utility to use its existing
422 right-of-way to construct, install, or maintain above or
423 underground fiber-optic infrastructure.

424 (f) Nothing in this section shall affect, abrogate, or
425 eliminate in any way any obligation of a rate-regulated, public
426 utility or broadband operator to comply with any applicable safety
427 and permitting requirements of any railroad company or any state
428 governmental body or agency with respect to property that is held
429 or controlled by such railroad company or state governmental body
430 or agency, as the case may be, and in, on, over, or across which
431 an easement is located.

432 (g) All costs paid by a rate-regulated public utility
433 to acquire right-of-way shall be considered cost of service and
434 recovered through rates, and all revenue collected by a
435 rate-regulated public utility from third-party use of public
436 utility right-of-way shall be credited back to customers in a
437 comparable manner.

438 The Public Service Commission shall establish a mechanism for
439 electric utility revenues deriving from the provision of
440 competitive broadband services such that electric service
441 customers receive an annual credit, adjusted annually, for any
442 wholesale revenues derived from fiber-optic infrastructure.

443 **SECTION 4.** This act shall take effect and be in force from
444 and after its passage.

