

## **House Amendments to Senate Bill No. 2798**

**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:**

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

35       77-3-2. (1) The Legislature finds and determines that the  
36 rates, services and operations of public utilities as defined in  
37 this title are affected with the public interest and that the  
38 availability of an adequate and reliable service by such public  
39 utilities to the people, economy and government of the State of  
40 Mississippi is a matter of public policy. The Legislature hereby  
41 declares to be the policy of the State of Mississippi:

42               (a) To provide fair regulation of public utilities in  
43 the interest of the public;

44               (b) To promote the inherent advantage of regulated  
45 public utilities;

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

48               (d) To provide just and reasonable rates and charges  
49 for public utility services without unjust discrimination, undue

50 preferences or advantages, or unfair or destructive competitive  
51 practices and consistent with long-term management and  
52 conservation of energy resources by avoiding wasteful, uneconomic  
53 and inefficient uses of energy;

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

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

60 (g) To cooperate with other states and the federal  
61 government in promoting and coordinating interstate and intrastate  
62 public utility service and reliability;

63 (h) To encourage the continued study and research for  
64 new and innovative rate-making procedures which will protect the  
65 state, the public, the ratepayers and the utilities, and where  
66 possible reduce the costs of the rate-making process; and

67 (i) With respect to rate-regulated public utilities, to  
68 foster, encourage, enable and facilitate economic development in  
69 the State of Mississippi, \* \* \* to support and augment economic  
70 development activities, \* \* \* to expand deployment of existing and  
71 emerging technologies including fiber optic infrastructure and  
72 enhanced grid investments which will foster a more reliable and  
73 resilient utility delivery system and provide customer access to  
74 enhanced services, to encourage the deployment of adequate  
75 Internet services to unserved areas, to authorize and empower the

Public Service Commission \* \* \* in carrying out its statutory responsibilities, and to take every opportunity to advance the economic development of the state.

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

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

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

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

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

(b) When a formula type rate of return evaluation rate with periodic revenue adjustments is adopted by the commission, each periodic revenue adjustment will be separately considered for the purpose of determining whether a hearing is required pursuant to Section 77-3-39(1), and no such hearing shall be required if

the amount of any separate periodic adjustment to the level of revenues of the utility is not a "major change" as defined in Section 77-3-37(8).

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

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

(ii) A hearing shall be required, as provided by law, to determine compliance with the formula rate plan and the accuracy of the data prior to any change in the level of revenues if the cumulative change in any calendar year exceeds the greater of Two Hundred Thousand Dollars (\$200,000.00) or four percent (4%) of the annual revenues of the utility.

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

(4) It is the intention of the Legislature to validate, retroactively to its initial adoption by the commission, any formula type rate, including any revenue adjustments effected pursuant thereto, which has heretofore been adopted by the

commission. For the purposes of the retroactive validation and the administration of any formula type rate heretofore adopted by the commission, should the provisions of Title 77, Chapter 3, Article 1, Mississippi Code of 1972, conflict with any provisions of such formula type rate, Title 77, Chapter 3, Article 1, Mississippi Code of 1972, shall be interpreted to prevail and the formula type rate shall hereafter be administered or revised to conform to Title 77, Chapter 3, Article 1, Mississippi Code of 1972; provided, however, such conflict, if any, shall not be held to invalidate the retroactive effect of this section upon such rate.

(5) The Public Service Commission is authorized and empowered to enter into contracts with federal agencies, including, but not limited to, the United States Department of Commerce, the Federal Communications Commission and the National Telecommunications Information Agency, or state agencies, for the purposes only of providing services for the collection of data for mapping of broadband availability and related purposes. For purposes of this subsection, "state agencies" include any state agency including, but not limited to, state institutions of higher learning.

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

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

152           (a) The term "corporation" includes a private or public  
153 corporation, a municipality, an association, a joint-stock  
154 association or a business trust.

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

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

161           (d) The term "public utility" includes persons and  
162 corporations, or their lessees, trustees and receivers now or  
163 hereafter owning or operating in this state equipment or  
164 facilities for:

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

167               (ii) The transmission, sale, sale for resale, or  
168 distribution of natural, artificial, or mixed natural and  
169 artificial gas to the public for compensation by means of  
170 transportation, transmission, or distribution facilities and  
171 equipment located within this state; however, the term shall not  
172 include the production and gathering of natural gas, the sale of  
173 natural gas in or within the vicinity of the field where produced,  
174 or the distribution or sale of liquefied petroleum gas or the sale  
175 to the ultimate consumer of natural gas for use as a motor vehicle  
176 fuel;

177                   (iii) The transmission, conveyance or reception of  
178 any message over wire, of writing, signs, signals, pictures and  
179 sounds of all kinds by or for the public, where such service is  
180 offered to the public for compensation, and the furnishing, or the  
181 furnishing and maintenance, of equipment or facilities to the  
182 public, for compensation, for use as a private communications  
183 system or part thereof; however, no person or corporation not  
184 otherwise a public utility within the meaning of this chapter  
185 shall be deemed such solely because of engaging in this state in  
186 the furnishing, for private use as last aforementioned, and  
187 moreover, nothing in this chapter shall be construed to apply to  
188 television stations, radio stations, community television antenna  
189 services, video services, Voice over Internet Protocol services  
190 ("VoIP"), any wireless services including commercial mobile  
191 services, Internet protocol ("IP") - enabled services or broadband  
192 services; and

193                   (iv) The transmission, distribution, sale or  
194 resale of water to the public for compensation, or the collection,  
195 transmission, treatment or disposal of sewage, or otherwise  
196 operating a sewage disposal service, to or for the public for  
197 compensation.

198           The term "public utility" shall not include any person not  
199 otherwise a public utility, who furnishes the services or  
200 commodity described in this paragraph only to himself, his  
201 employees or tenants as an incident of such employee service or  
202 tenancy, if such services are not sold or resold to such tenants

or employees on a metered or consumption basis other than the submetering authorized under Section 77-3-97.

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

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

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

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

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



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

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

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

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

(vi) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under a common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the discretion of the management and policies of another, whether such power is

established through ownership of voting securities or by any other direct or indirect means.

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

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

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

(j) The term "lead-lag study" includes an analysis to determine the amount of capital which investors in a public utility, the rates of which are subject to regulation under the provisions of this chapter, must provide to meet the day-to-day operating costs of the public utility prior to the time such costs are recovered from customers, and the measurement of (i) the lag in collecting from the customer the cost of providing service, and (ii) the lag in paying the cost of providing service by the public utility.

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

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

(m) The term "Voice over Internet Protocol services" or "VoIP services" means any service that: (i) enables real-time, two-way voice communications that originate from or terminate to the user's location in Internet protocol or any successor protocol; (ii) uses a broadband connection from the user's location; and (iii) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

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

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

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

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

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

(s) The term "enhanced grid investments" means investments in technologies and services that support and improve

the operational performance, service reliability, resiliency and security of the electric delivery system.

(t) The term "unserved area" means an area lacking access to adequate Internet service.

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

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

77-3-44. (1) Any rate-regulated electric or natural gas public utility with certificated service area in Mississippi may undertake economic development activities, whether directly or indirectly, including activities such as providing capital, or investment in or acquisition and development of business or industrial sites and the necessary infrastructure or services needed to attract new or existing businesses or industry, to create or maintain employment opportunities, or expansion of fiber optic infrastructure and enhanced grid investments, including those which provide customer access to modern enhanced services, or otherwise to positively impact or in some manner promote the sale of electric energy or natural gas within its certificated service area. Any facilities developed, constructed or acquired in support of the activities described in this section, including fiber optic infrastructure and enhanced grid investments, including those which provide customer access to modern enhanced services, for which a certificate of public convenience and necessity or other commission approval has been granted after July

1, 2015, as well as any capital investment in natural gas reserves made directly or indirectly by an electric or natural gas public utility to foster long-term stability in the cost of fuel, may be deemed used and useful in the provision of electric or natural gas service regardless of whether or not any end-use customers are taking service from said facilities or investment and otherwise recoverable through the utility's rates.

(2) (a) Notwithstanding the foregoing, to further expand fiber optic infrastructure in the state, any rate-regulated public utility of the type as defined in Section 77-3-3(d) (i) may grant permission to broadband operators or broadband service providers to use the electric delivery system, including the fiber optic infrastructure and enhanced grid investments of the rate-regulated public utility to provide broadband services or other similar services as defined in Section 77-3-3(k) through (o), including to extend adequate Internet services to unserved areas, subject to the competitive safeguards in Section 4 of this act. The rate-regulated public utility shall not allow the use of its electric delivery system by a broadband operator to provide broadband services to diminish the reliability of the electric delivery system.

(b) To further expand fiber optic infrastructure and economic development in the state, any public utility, including electric cooperatives, of the type as defined in Section 77-3-3(d) (i), may grant permission to a retail customer with a nonaggregated load greater than twenty (20) megawatts to

379 construct, install or maintain above or underground fiber optic  
380 infrastructure on the public utility's existing right-of-way of  
381 its electric delivery system.

382 (c) In instances where a landowner has previously been  
383 compensated for the use of his land through a right-of-way  
384 instrument with a rate-regulated public utility, the use of the  
385 rate-regulated public utility's electric delivery system for the  
386 provision of broadband services to a broadband operator or  
387 broadband service provider or use of the rate-regulated public  
388 utility's existing right-of-way on its electric delivery system by  
389 a retail customer to construct, install, or maintain above or  
390 underground fiber optic infrastructure shall not be considered an  
391 additional burden on the real property upon which the  
392 rate-regulated public utility's electric delivery system is  
393 located and shall not require the broadband operator, broadband  
394 service provider or retail customer to obtain the consent of  
395 anyone having an interest in the real property upon which the  
396 rate-regulated public utility's electric delivery system is  
397 located. If a portion of a rate-regulated public utility's  
398 electric delivery system is used by a broadband operator,  
399 broadband service provider or retail customer for the provision of  
400 broadband services to construct, install, or maintain above or  
401 underground fiber optic infrastructure and the landowner of the  
402 real property on which such portion is located believes his  
403 property has been damaged by such use, the landowner may petition  
404 the circuit court of the county in which the property is situated

405 for any damages to which the landowner may be entitled under this  
406 subsection.

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

412 (ii) The recoverable damages, if any, shall be  
413 recoverable only from the broadband operator or retail customer  
414 and not from the rate-regulated electric public utility.

415 (iii) The damages recoverable shall be an amount  
416 equal to the difference between 1. the fair market value of the  
417 landowner's interest in the real property immediately before the  
418 rate-regulated electric public utility's electric delivery system  
419 on the owner's property was first used by the broadband operator,  
420 broadband service provider or retail customer for the provision of  
421 broadband services, and 2. the fair market value of the  
422 landowner's interest in the real property immediately after the  
423 rate-regulated electric public utility's electric delivery system  
424 on the landowner's property was first used by the broadband  
425 operator or retail customer for the provision of broadband  
426 services. The before and after values must be established by the  
427 testimony of a qualified real estate appraiser. The damages, if  
428 any, shall be fixed and shall not be deemed to continue,  
429 accumulate or accrue. The court shall, as part of its judgment,  
430 vest the rights granted by the rate-regulated public utility to



the broadband operator or retail customer and his respective successors and assigns for the placement or use of a broadband system on or as part of the electric delivery system. The judgment will have the same effect of a conveyance executed in due form of law and shall run with the land; and a certified copy of said judgment may be filed by the broadband operator or retail customer in the land records of the county in which the subject property is located.

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

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

(vi) The landowner shall not be entitled to any relief or damages if an easement has been granted to the broadband operator or retail customer if the landowner has authorized the rate-regulated electric public utility to use or allow others to use its electric delivery system for the provision of broadband services, or if the landowner has authorized the rate-regulated electric public utility to use its existing right-of-way to

construct, install, or maintain above or underground fiber optic infrastructure.

(d) The total revenue collected by a rate-regulated public utility, derived from leasing their fiber optic infrastructure and enhanced grid investments and associated use of the rate-regulated public utility's right-of-way, shall all be credited back to the electric service customers annually in a method determined by the Public Service Commission.

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

(4) Except for subsection (2) (b) of this section, nothing in this act shall be interpreted to affect the provisions of Sections 77-17-1 through 77-17-15, also known as the Mississippi Broadband Enabling Act.

**SECTION 4.** (1) To the extent a rate-regulated electric public utility grants permission to any broadband operator or broadband service provider to use any part of the utility's electric delivery system, including, without limitation, its fiber optic infrastructure and enhanced grid investments, it must grant such permission, on a first-come first-served basis, to all other

broadband operators and broadband service providers on a nondiscriminatory basis.

(2) A rate-regulated electric public utility shall not offer or condition the provision of electric services, nor shall the rate-regulated electric public utility offer more favorable rates, terms or conditions for electric services, based on a customer decision to purchase broadband services from any broadband provider or broadband operator.

(3) The Public Service Commission shall enforce subsection (2) of this section. Before a rate-regulated electric public utility can grant permission to any broadband operator or broadband service provider to use any part of the utility's electric delivery system, including without limitation its fiber optic infrastructure and enhanced grid investments, the Public Service Commission must have approved such infrastructure and investments.

**SECTION 5.** Section 5 through 8 of this act shall be known and may be cited as the Mississippi Broadband Accessibility Act.

**SECTION 6.** The Legislature finds that the availability of high-speed broadband services, with the preference of speeds of twenty-five (25) megabits per second of download speed and three (3) megabits per second of upload speed or greater, in unserved rural Mississippi is important for economic development, education, health care, and emergency services in Mississippi, and that grants and other incentives set forth in Sections 5 through 8

of this act will further those objectives by encouraging new investment in broadband infrastructure.

**SECTION 7.** For the purposes of Sections 5 through 8 of this act, the following words shall have the following meanings unless the context clearly indicates otherwise:

(a) "End user" means a residential, business, institutional, or government entity that uses broadband services for its own purposes and does not resell such broadband services to other entities. An Internet service provider (ISP) and mobile wireless service provider are not an end-user for the purposes of Sections 5 through 8 of this act.

(b) "Middle mile project" means a broadband infrastructure project that does not provide broadband service to end-users or to end-user devices.

(c) "Minimum service threshold" means a connection to the Internet that provides capacity for transmission at an average speed per customer of at least twenty-five (25) megabits (Mbps) per second downstream and at least three (3) megabits (Mbps) per second upstream.

(d) "Rural area" means any area within this state not included within the boundaries of any incorporated city or town having a population in excess of twenty-five thousand (25,000) inhabitants, according to the latest federal decennial census.

(e) "Unserved area" means any rural area in which there is not at least one provider of terrestrial broadband service that is either: (i) offering a connection to the Internet meeting the

minimum service threshold; or (ii) is required, under the terms of the Federal Universal Service Fund or other federal or state grant, to provide a connection to the Internet at speeds meeting the minimum service threshold by March 28, 2023.

**SECTION 8.** (1) The Director of Mississippi Public Utilities Staff shall establish and administer the broadband accessibility grant program for the purpose of promoting the deployment and adoption of broadband Internet access services to unserved areas. By August 1, 2021, the director shall adopt rules and policies to administer the program and begin to accept applications for grants, and shall adopt such rules as may be necessary to meet the future needs of the grant program.

(2) The program shall be administered pursuant to policies developed by the Public Utilities Staff in compliance with Sections 5 through 8 of this act. The policies shall provide for the awarding of grants to nongovernmental entities that are cooperatives, corporations, limited liability companies, partnerships, or other private business entities that provide broadband services. Nothing in Sections 5 through 8 of this act shall expand the authority under state law of any entity to provide broadband service.

(3) There is hereby created the Mississippi Broadband Accessibility Fund as a special fund in the State Treasury. The fund is subject to appropriations by the Legislature and gifts, grants, and other donations received by the Public Utilities Staff for the broadband accessibility grant program or fund. The Public

Utilities Staff may not spend appropriations for the program for purposes other than those listed in this section. Any monies appropriated to the Public Utilities Staff for broadband grants that are unspent at the end of a fiscal year shall be carried over for use by the program in the next fiscal year. The Public Utilities Staff shall develop rules ensuring that expenses incurred to administer the program must not exceed the lesser of seven percent (7%) of the total amount appropriated for the program in any fiscal year or Seven Hundred Fifty Thousand Dollars (\$750,000.00). Monies in the fund shall be invested by the State Treasurer for the sole benefit of the fund.

(4) (a) Individual grants awarded by the Public Utilities Staff under this section may only be awarded for projects in unserved areas, and may not exceed the lesser of:

(i) Thirty-five percent (35%) of the project costs; or

(ii) One Million Five Hundred Thousand Dollars (\$1,500,000.00) for projects that will be capable of transmitting broadband signals at or above the minimum service threshold.

(b) The Public Utilities Staff shall ensure that not less than forty percent (40%) of funds appropriated for grants be utilized in unincorporated areas of the state.

(c) Subject to the limitations in this subsection (4), grants shall be awarded pursuant to the service criteria developed by the Public Utilities Staff, with priority given to projects that meet any of the following:

(i) Seek to leverage grant funds through private investment and extension of existing infrastructure;

(ii) Serve locations with demonstrated community support, including, but not limited to, documented support from local government;

(iii) Demonstrate the operator's technical and managerial capabilities to complete the project within two (2) years of the grant;

(iv) Demonstrate the applicants' necessary financial resources;

(v) Are most cost effective and technically efficient in that they propose to serve the highest number of unserved homes, businesses and community anchor points for the least cost and best level of service, emphasizing projects including the highest broadband speeds;

(vi) Provide material broadband enhancement to hospitals located in rural areas; and

(vii) Support local libraries in this state for the purpose of assisting the libraries in offering digital literacy training pursuant to state library and archive guidelines.

(d) For the purposes of awarding grants, the Public Utilities Staff shall take into consideration the average pole attachment rates that a grant applicant charges to an unaffiliated entity, provided that this paragraph (d) shall not apply to a public utility.

611           (e) In order to promote the deployment of grant funds  
612 in an inclusive manner that is consistent with the racial, gender,  
613 geographic, urban, rural, and economic diversity of the state, the  
614 Public Utilities Staff may give additional consideration to an  
615 applicant that provides documentation that it has been certified  
616 as a Disadvantaged Business Enterprise. For projects funded under  
617 Sections 5 through 8 of this act, the Public Utilities Staff shall  
618 encourage grant applicants to use vendors and subcontractors that  
619 have been certified as Disadvantaged Business Enterprises.

620           (5) For each fiscal year in which grant funds are available,  
621 the Public Utilities Staff shall accept applications within a  
622 90-day grant window that it shall establish. Applications for  
623 eligible projects will be evaluated according to a scoring system  
624 developed by the Public Utilities Staff that incorporates the  
625 priorities listed in this section, with grant awards published  
626 within ninety (90) days after expiration of the filing window.  
627 Grant applications shall be published by the Public Utilities  
628 Staff on the Internet at the end of the filing window, and  
629 existing service providers shall have thirty (30) business days  
630 from the date of publication to file objections to the eligibility  
631 of a proposed project. The Public Utilities Staff shall address  
632 any objections within thirty (30) days of submission and shall  
633 make any appropriate changes to grant awards based on a finding of  
634 ineligibility resulting from such protest. Subject to such  
635 protest procedure, grants issued by the Public Utilities Staff  
636 shall be conditioned upon compliance with the terms of the grant



but shall not otherwise be revocable. Providers' grants shall be paid within thirty (30) days upon the Public Utilities Staff receiving written certification of the completion of the project and evidence of compliance with the terms of the grant as prescribed by the Public Utilities Staff.

(6) Grants shall be conditioned on project completion within two (2) years of awarding of the grant. If a recipient fails to complete a project within the two-year deadline due to reasons other than delay caused by a government entity, the Public Utilities Staff may revoke the grant in its entirety and rededicate the funds to a new recipient.

(7) The Public Utilities Staff shall condition the release of any grant funds awarded under Sections 5 through 8 of this act on both of the following:

(a) The progressive completion, as measured on not more than a quarterly basis, of the approved project.

(b) Operational testing, when possible, to confirm the level of service proposed in the grant application. Such regulations shall not exceed in degree or differ in kind from testing and reporting requirements imposed on the grant recipient by the Federal Communications Commission, as adjusted for the service specifications in the Public Utilities Staff grant agreement.

(8) Notwithstanding any other provision of this section, eligible projects shall include any of the following:

662 (a) Projects to serve unserved areas in which the grant  
663 applicant is either or both: (i) an existing or future service  
664 provider which has or will receive support through federal  
665 universal service funding programs designed specifically to  
666 encourage broadband deployment in an area without broadband  
667 access; or (ii) an existing or future service provider which has  
668 or will receive other forms of federal or state financial support  
669 or assistance, such as a grant or loan from the United States  
670 Department of Agriculture; provided, however, that any award of  
671 state funds under this section, when combined with other forms of  
672 state or federal support or assistance dedicated to the project,  
673 other than interest-bearing loans, may not exceed sixty percent  
674 (60%) of the total project costs. Nothing in this section shall  
675 prohibit a grant applicant who has not previously received any  
676 federal or state funds, grants or loans for broadband deployment  
677 from applying for and receiving grant funds under this section.

678 (b) Middle mile projects, where the applicant  
679 demonstrates that the project will connect other service providers  
680 eligible for grants under this section with broadband  
681 infrastructure further upstream in order to enable the providers  
682 to offer broadband service to end-users; provided that eligible  
683 projects under this paragraph (b) may include projects in an  
684 unserved area or a rural area that does not meet the definition of  
685 an unserved area but otherwise meets the requirements of this  
686 section, for which the grant applicant demonstrates, by specific  
687 evidence, the need for greater broadband speeds, capacity, or

688 service which is not being offered by an existing service  
689 provider.

690 (c) Projects to provide broadband service to a specific  
691 hospital, public school, public safety, or economic development  
692 site in a rural area that does not meet the definition of an  
693 unserved area but otherwise meets the requirements of this  
694 section, for which the grant applicant demonstrates, by specific  
695 evidence, the need for greater broadband speeds, capacity, or  
696 service which is not being offered by an existing service  
697 provider.

698 (d) Grants issued under paragraphs (b) and (c) of this  
699 subsection (8) shall not exceed forty percent (40%) of the total  
700 funds appropriated for grants on an annual basis.

701 **SECTION 9.** This act shall take effect and be in force from  
702 and after July 1, 2021, and shall stand repealed from and after  
703 June 30, 2021.

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

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 THE POLICY OF THIS STATE TO SUPPORT EXPANSION OF  
5 EXISTING AND EMERGING TECHNOLOGIES TO FOSTER RELIABLE AND  
6 RESILIENT SERVICE AND CUSTOMER ACCESS TO ENHANCED SERVICES; TO  
7 AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972, TO INCLUDE  
8 DEFINITIONS OF "BROADBAND SERVICE PROVIDER," "BROADBAND OPERATOR,"  
9 "ELECTRIC DELIVERY SYSTEM" AND "ENHANCED GRID INVESTMENTS"; TO  
10 AMEND SECTION 77-3-44, MISSISSIPPI CODE OF 1972, TO INCLUDE FIBER  
11 OPTIC INFRASTRUCTURE AND ENHANCED GRID INVESTMENTS AS AN ECONOMIC  
12 DEVELOPMENT ACTIVITY IN WHICH CERTAIN UTILITIES ARE AUTHORIZED TO  
13 UNDERTAKE, AND TO AUTHORIZE RATE-REGULATED ELECTRIC UTILITIES TO  
14 GRANT PERMISSION TO BROADBAND OPERATORS OR BROADBAND SERVICE

15 PROVIDERS TO USE THE ELECTRIC DELIVERY SYSTEM; TO CREATE A NEW  
16 SECTION TO PROVIDE COMPETITIVE SAFEGUARDS WHEN A RATE-REGULATED  
17 ELECTRIC UTILITY GRANTS PERMISSION TO A BROADBAND OPERATOR OR  
18 BROADBAND SERVICE PROVIDER TO USE ANY PART OF THE UTILITY'S  
19 ELECTRIC DELIVERY SYSTEM; TO CREATE THE MISSISSIPPI BROADBAND  
20 ACCESSIBILITY ACT; TO PROVIDE LEGISLATIVE FINDINGS; TO PROVIDE  
21 DEFINITIONS FOR THE ACT; TO REQUIRE THE DIRECTOR OF MISSISSIPPI  
22 PUBLIC UTILITIES STAFF TO ESTABLISH AND ADMINISTER THE BROADBAND  
23 ACCESSIBILITY GRANT PROGRAM FOR THE PURPOSE OF PROMOTING THE  
24 DEPLOYMENT AND ADOPTION OF BROADBAND INTERNET ACCESS SERVICES TO  
25 UNSERVED AREAS; TO PROVIDE THAT THE PROGRAM SHALL BE ADMINISTERED  
26 PURSUANT TO POLICIES DEVELOPED BY THE PUBLIC UTILITIES STAFF,  
27 SUBJECT TO THE REQUIREMENTS OF THE ACT, WHICH SHALL PROVIDE FOR  
28 THE AWARDING OF GRANTS TO NONGOVERNMENTAL ENTITIES THAT ARE  
29 COOPERATIVES, CORPORATIONS, LIMITED LIABILITY COMPANIES,  
30 PARTNERSHIPS, OR OTHER PRIVATE BUSINESS ENTITIES THAT PROVIDE  
31 BROADBAND SERVICES; AND FOR RELATED PURPOSES.

HR26\SB2798PH.J

Andrew Ketchings  
Clerk of the House of Representatives