

Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO

Senate Bill No. 2798

BY: Committee

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

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

23 77-3-2. (1) The Legislature finds and determines that the
24 rates, services and operations of public utilities as defined in
25 this title are affected with the public interest and that the
26 availability of an adequate and reliable service by such public
27 utilities to the people, economy and government of the State of
28 Mississippi is a matter of public policy. The Legislature hereby
29 declares to be the policy of the State of Mississippi:



30 (a) To provide fair regulation of public utilities in
31 the interest of the public;

32 (b) To promote the inherent advantage of regulated
33 public utilities;

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

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

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

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

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

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



(i) With respect to rate-regulated public utilities, to foster, encourage, enable and facilitate economic development in the State of Mississippi, * * * to support and augment economic development activities, * * * to expand deployment of existing and emerging technologies including fiber optic infrastructure and enhanced grid investments which will foster a more reliable and resilient utility delivery system and provide customer access to enhanced services, to encourage the deployment of adequate 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:

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

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

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

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



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

155 (ii) The transmission, sale, sale for resale, or
156 distribution of natural, artificial, or mixed natural and
157 artificial gas to the public for compensation by means of
158 transportation, transmission, or distribution facilities and
159 equipment located within this state; however, the term shall not
160 include the production and gathering of natural gas, the sale of
161 natural gas in or within the vicinity of the field where produced,
162 or the distribution or sale of liquefied petroleum gas or the sale
163 to the ultimate consumer of natural gas for use as a motor vehicle
164 fuel;

165 (iii) The transmission, conveyance or reception of
166 any message over wire, of writing, signs, signals, pictures and
167 sounds of all kinds by or for the public, where such service is
168 offered to the public for compensation, and the furnishing, or the
169 furnishing and maintenance, of equipment or facilities to the
170 public, for compensation, for use as a private communications
171 system or part thereof; however, no person or corporation not
172 otherwise a public utility within the meaning of this chapter
173 shall be deemed such solely because of engaging in this state in
174 the furnishing, for private use as last aforementioned, and
175 moreover, nothing in this chapter shall be construed to apply to
176 television stations, radio stations, community television antenna
177 services, video services, Voice over Internet Protocol services



178 ("VoIP"), any wireless services including commercial mobile
179 services, Internet protocol ("IP") - enabled services or broadband
180 services; and

181 (iv) The transmission, distribution, sale or
182 resale of water to the public for compensation, or the collection,
183 transmission, treatment or disposal of sewage, or otherwise
184 operating a sewage disposal service, to or for the public for
185 compensation.

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

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

196 (e) The term "rate" means and includes every
197 compensation, charge, fare, toll, customer deposit, rental and
198 classification, or the formula or method by which such may be
199 determined, or any of them, demanded, observed, charged or
200 collected by any public utility for any service, product or
201 commodity described in this section, offered by it to the public,
202 and any rules, regulations, practices or contracts relating to any



203 such compensation, charge, fare, toll, rental or classification;
204 however, the term "rate" shall not include charges for electrical
205 current furnished, delivered or sold by one (1) public utility to
206 another for resale.

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

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

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

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

218 (iii) Any corporation of which fifteen percent
219 (15%) or more of the voting securities is owned or controlled,
220 directly or indirectly, by a public utility;

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



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

232 (vi) Any person or corporation that the
233 commission, after notice and hearing, determines actually
234 exercises any substantial influence or control over the policies
235 and actions of a public utility, or over which a public utility
236 exercises such control, or that is under a common control with a
237 public utility, such control being the possession, directly or
238 indirectly, of the power to direct or cause the discretion of the
239 management and policies of another, whether such power is
240 established through ownership of voting securities or by any other
241 direct or indirect means.

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

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



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

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

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

270 (i) Is used to provide access to the Internet, or
271 (ii) Provides computer processing, information
272 storage, information content or protocol conversion, including any
273 service applications or information service provided over such
274 high-speed access service.

275 (l) The term "video services" means video programming
276 services without regard to delivery technology, including Internet



277 protocol technology ("Internet protocol television or IPTV") and
278 video programming provided as a part of a service that enables
279 users to access content, information, email or other services
280 offered over the public Internet. The term "video programming"
281 means any programming as defined in 47 USCS Section 522(20).

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

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

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

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



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

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

313 (s) The term "enhanced grid investments" means
314 investments in technologies and services that support and improve
315 the operational performance, service reliability, resiliency and
316 security of the electric delivery system.

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

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

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

323 77-3-44. (1) Any rate-regulated electric or natural gas
324 public utility with certificated service area in Mississippi may
325 undertake economic development activities, whether directly or
326 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



352 to use the electric delivery system, including the fiber optic
353 infrastructure and enhanced grid investments of the rate-regulated
354 public utility to provide broadband services or other similar
355 services as defined in Section 77-3-3(k) through (o), including to
356 extend adequate Internet services to unserved areas, subject to
357 the competitive safeguards in Section 4 of this act. The
358 rate-regulated public utility shall not allow the use of its
359 electric delivery system by a broadband operator to provide
360 broadband services to diminish the reliability of the electric
361 delivery system.

362 (b) To further expand fiber optic infrastructure and
363 economic development in the state, any public utility, including
364 electric cooperatives, of the type as defined in Section
365 77-3-3(d) (i), may grant permission to a retail customer with a
366 nonaggregated load greater than twenty (20) megawatts to
367 construct, install or maintain above or underground fiber optic
368 infrastructure on the public utility's existing right-of-way of
369 its electric delivery system.

370 (c) In instances where a landowner has previously been
371 compensated for the use of his land through a right-of-way
372 instrument with a rate-regulated public utility, the use of the
373 rate-regulated public utility's electric delivery system for the
374 provision of broadband services to a broadband operator or
375 broadband service provider or use of the rate-regulated public
376 utility's existing right-of-way on its electric delivery system by



a retail customer to construct, install, or maintain above or
underground fiber optic infrastructure shall not be considered an
additional burden on the real property upon which the
rate-regulated public utility's electric delivery system is
located and shall not require the broadband operator, broadband
service provider or retail customer to obtain the consent of
anyone having an interest in the real property upon which the
rate-regulated public utility's electric delivery system is
located. If a portion of a rate-regulated public utility's
electric delivery system is used by a broadband operator,
broadband service provider or retail customer for the provision of
broadband services to construct, install, or maintain above or
underground fiber optic infrastructure and the landowner of the
real property on which such portion is located believes his
property has been damaged by such use, the landowner may petition
the circuit court of the county in which the property is situated
for any damages to which the landowner may be entitled under this
subsection.

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



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

403 (iii) The damages recoverable shall be an amount
404 equal to the difference between 1. the fair market value of the
405 landowner's interest in the real property immediately before the
406 rate-regulated electric public utility's electric delivery system
407 on the owner's property was first used by the broadband operator,
408 broadband service provider or retail customer for the provision of
409 broadband services, and 2. the fair market value of the
410 landowner's interest in the real property immediately after the
411 rate-regulated electric public utility's electric delivery system
412 on the landowner's property was first used by the broadband
413 operator or retail customer for the provision of broadband
414 services. The before and after values must be established by the
415 testimony of a qualified real estate appraiser. The damages, if
416 any, shall be fixed and shall not be deemed to continue,
417 accumulate or accrue. The court shall, as part of its judgment,
418 vest the rights granted by the rate-regulated public utility to
419 the broadband operator or retail customer and his respective
420 successors and assigns for the placement or use of a broadband
421 system on or as part of the electric delivery system. The
422 judgment will have the same effect of a conveyance executed in due
423 form of law and shall run with the land; and a certified copy of
424 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



450 credited back to the electric service customers annually in a
451 method determined by the Public Service Commission.

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

460 (4) Except for subsection (2) (b) of this section, nothing in
461 this act shall be interpreted to affect the provisions of Sections
462 77-17-1 through 77-17-15, also known as the Mississippi Broadband
463 Enabling Act.

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

472 (2) A rate-regulated electric public utility shall not offer
473 or condition the provision of electric services, nor shall the
474 rate-regulated electric public utility offer more favorable rates,



475 terms or conditions for electric services, based on a customer
476 decision to purchase broadband services from any broadband
477 provider or broadband operator.

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

486 **SECTION 5.** This act shall take effect and be in force from
487 and after July 1, 2021, and shall stand repealed from and after
488 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; AND FOR RELATED PURPOSES.

