

By: Senator(s) Carter, Hickman, Caughman

To: Energy

SENATE BILL NO. 2604  
(As Passed the Senate)

1 AN ACT TO CREATE THE MISSISSIPPI BROADBAND EXPANSION ACT; TO  
2 DEFINE TERMS USED IN THE ACT; TO CREATE THE MISSISSIPPI BROADBAND  
3 EXPANSION COMMISSION FOR THE PURPOSE OF REVIEWING APPLICATIONS FOR  
4 FUNDING BROADBAND INFRASTRUCTURE PROJECTS AND MAKING  
5 RECOMMENDATIONS TO THE LEGISLATURE OF THE PROJECTS TO BE FUNDED  
6 USING FEDERAL AND STATE FUNDS; TO PROVIDE FOR THE MEMBERS OF THE  
7 COMMISSION AND TO PRESCRIBE POWERS AND DUTIES; TO PROVIDE THAT THE  
8 COMMISSION SHALL CONSIDER CERTAIN FACTORS IN MAKING ITS  
9 RECOMMENDATIONS; TO REQUIRE THE COMMISSION TO ESTABLISH AND  
10 PUBLISH ON ITS WEBSITE ITS CRITERIA FOR COMPETITIVELY SCORING  
11 APPLICATIONS; TO REQUIRE AN APPLICANT TO PROVIDE CERTAIN  
12 INFORMATION AT A MINIMUM ON THE APPLICATION; TO REQUIRE THE  
13 COMMISSION TO MAKE PRELIMINARY RECOMMENDATIONS; TO REQUIRE THE  
14 COMMISSION TO ACCEPT COMMENTS AND OBJECTIONS CONCERNING EACH  
15 PRELIMINARY RECOMMENDATION; TO REQUIRE THE COMMISSION TO MAKE ITS  
16 FINAL RECOMMENDATIONS TO THE LEGISLATURE AFTER CONSIDERING ALL  
17 COMMENTS AND OBJECTIONS AND INVESTIGATING THEM AS NEEDED; TO  
18 AUTHORIZE THE COMMISSION TO EXPEND FUNDS FROM THE MISSISSIPPI  
19 BROADBAND EXPANSION FUND IN THE EVENT FEDERAL RULES OR GUIDELINES  
20 REQUIRE FUNDS TO BE EXPENDED BEFORE THE LEGISLATURE CONVENES IN  
21 JANUARY 2023, AND TO REQUIRE NOTIFICATION OF SUCH EXPENDITURES  
22 PRIOR TO THEIR DISTRIBUTION; TO AMEND SECTION 31-3-1, MISSISSIPPI  
23 CODE OF 1972, TO EXEMPT FROM LICENSING REQUIREMENTS UNDER THE  
24 STATE BOARD OF CONTRACTORS CERTAIN UNDERTAKINGS BY A SUBCONTRACTOR  
25 OR SUB-SUBCONTRACTOR INVOLVING THE CONSTRUCTION IN THE BUILDOUT  
26 AND EXPANSION OF BROADBAND INFRASTRUCTURE; TO CREATE NEW SECTION  
27 21-27-79, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN  
28 MUNICIPALLY-OWNED ELECTRIC UTILITIES SHALL HAVE THE SAME POWERS AS  
29 ARE GRANTED TO AN ELECTRIC COOPERATIVE BY THE MISSISSIPPI  
30 BROADBAND ENABLING ACT; TO AMEND SECTIONS 17-13-5 AND 17-17-3,  
31 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PREVIOUS SECTION; AND  
32 FOR RELATED PURPOSES.

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



34           **SECTION 1.** This act shall be known and may be cited as the  
35 "Mississippi Broadband Expansion Act."

36           **SECTION 2.** As used in this act:

37                   (a) "Applicant" means a private provider that has  
38 authorization to do business in this state and has demonstrated  
39 that it has the technical, financial, and managerial resources and  
40 experience to provide broadband services in the state to retail  
41 end users.

42                   (b) "Broadband service" means a retail fixed  
43 terrestrial service capable of delivering high-speed internet  
44 access at speeds of at least one hundred (100) megabits per second  
45 downstream and twenty (20) megabit per second upstream.

46                   (c) "Commission" means the Mississippi Broadband  
47 Expansion Commission created in Section 3 of this act.

48                   (d) "Deployed" means, with respect to availability of  
49 broadband service at a location. Broadband service is considered  
50 to be deployed at a location when the person or entity has access  
51 regardless of whether a person or entity subscribes to the  
52 broadband service at the location.

53                   (e) "Eligible broadband service provider" means any  
54 company, firm, corporation, limited liability company,  
55 partnership, or association that either has been providing  
56 broadband service to at least one hundred (100) residences and  
57 businesses in Mississippi for at least three (3) consecutive  
58 years, or is an electric power association's broadband affiliate



59 operating pursuant to Section 77-17-1 et seq.; or has demonstrated  
60 financial, technical, and operational capability in building and  
61 operating a broadband network.

62 (f) "Eligible project" means a discrete and specific  
63 project located in an unserved or underserved area of the state  
64 seeking to provide broadband services to residences, businesses,  
65 and community institutions not currently available for service in  
66 accordance with the applicable federal guidelines.

67 (g) "Shapefile" means a digital storage format  
68 containing geospatial or location-based data and attribute  
69 information regarding the availability of broadband internet  
70 access service, and that can be viewed, edited, and mapped in  
71 geographic information system software.

72 **SECTION 3.** (1) There is hereby created a Mississippi  
73 Broadband Expansion Commission for the purpose of reviewing  
74 applications for projects to provide broadband access in unserved  
75 or underserved areas using the Mississippi Broadband Expansion  
76 Fund created pursuant to this act. The commission shall be  
77 composed of the following five (5) members:

78 (a) Three (3) members to be appointed by the Governor  
79 with the advise and consent of the Senate; and

80 (b) Two (2) members to be appointed by the Lieutenant  
81 Governor with the advise and consent of the Senate.



82           The commission shall review applications and shall provide  
83 recommendations on which projects should be funded to the  
84 Legislature on or before December 31 of each year.

85           Members of the commission shall be reimbursed for expenses in  
86 the manner and amount specified in Section 25-3-41 and shall be  
87 entitled to receive per diem compensation as authorized in Section  
88 25-3-69.

89           Members shall not be currently employed or affiliated with  
90 any company, firm, corporation, limited liability company,  
91 partnership, or association that will provide broadband service.

92           (2) Appointments to the commission shall be made within  
93 thirty (30) days of the effective date of this act. At the first  
94 meeting, the commission shall elect from among its membership a  
95 chairman, a vice chairman and any other officers determined to be  
96 necessary, and shall adopt rules for transacting business and  
97 keeping records.

98           (3) A majority of the members of the commission shall  
99 constitute a quorum. In the adoption of rules, resolutions and  
100 reports, and in the election of a chairman, vice chairman and any  
101 other officers determined to be necessary, an affirmative vote of  
102 a majority of the members present shall be required.

103           (4) It shall be the duty and responsibility of the  
104 commission to:



105           (a) Coordinate all broadband expansion efforts on  
106 behalf of the state to ensure an effective and efficient use of  
107 broadband grant funds;

108           (b) If necessary and in accordance with the  
109 Administrative Procedures Act develop rules and procedures for  
110 federal grant programs and for sub-grantees to receive funds from  
111 said federal grants;

112           (c) To develop rules and procedures, in accordance with  
113 the Administrative Procedures Act to implement a competitive  
114 statewide broadband grant program; and

115           (d) Coordinate all information provided by broadband  
116 service providers. All information provided by a broadband  
117 internet access service provider pursuant to this chapter shall be  
118 presumed to be confidential, proprietary, and subject to exemption  
119 from disclosure under state and federal law and shall not be  
120 subject to disclosure except in the form of a map where  
121 information that could be used to determine provider-specific  
122 information about the network of the broadband services provider  
123 is not disclosed. Such provider-specific information shall not be  
124 released to any person without express written permission of the  
125 submitting broadband internet access services provider. In no  
126 instance shall a broadband provider be required to provide any  
127 data beyond that which it is required to provide to the Federal  
128 Communications Commission pursuant to 47 USC Section 641 et seq.



129 (5) As may be requested by the commission, the Public  
130 Utilities Staff shall provide the staff and other support  
131 necessary for the commission to perform its duties. The  
132 commission shall also have the ability to employ staff and/or  
133 consultants as they deem appropriate.

134 (6) It shall be the duty and responsibility of the Public  
135 Utilities Staff and other support staff employed by the commission  
136 to:

137 (a) Work in conjunction with the Governor to apply for  
138 and to receive federal grants or funds, including, but not limited  
139 to, Coronavirus Capital Projects Fund established by Section 604  
140 of the Social Security Act, as added by Section 9901 of the  
141 American Rescue Plan Act of 2021, and the Broadband Equity, Access  
142 and Deployment Program established by the Infrastructure  
143 Investment and Jobs Act; and

144 (b) Work in conjunction with the Mississippi Broadband  
145 Expansion Commission as established by this act.

146 (7) To effectuate the purposes of this act, any department,  
147 division, board, bureau, committee, institution or agency of the  
148 state, or any political subdivision thereof, shall, at the request  
149 of the chairman of the commission, provide the facilities,  
150 assistance, information and data needed to enable the commission  
151 to carry out its duties.

152 (8) There is hereby created within the State Treasury the  
153 "Mississippi Broadband Expansion Fund" for the purposes of the



154 expansion of broadband in unserved and underserved areas. The  
155 fund shall consist of all monies designated, accepted, or  
156 appropriated by the State of Mississippi for broadband deployment;  
157 all monies received from the federal government awarded to or  
158 allocated by the state for broadband deployment; and donations,  
159 gifts, and monies received from any other source, included  
160 transfers from other funds or accounts. Disbursements from the  
161 fund shall be in accordance with Section 5 of this act.

162 **SECTION 4.** In making its recommendations, the commission  
163 shall consider the following:

164 (a) Funds for the grant program shall only be used by  
165 applicants for projects that exclusively extend broadband service  
166 into unserved or underserved areas in this state; and

167 (b) Federal funds shall be spent in accordance with  
168 federal rules and regulations, which shall govern in the case of  
169 any inconsistency.

170 **SECTION 5.** The criteria for recommending to the Legislature  
171 an appropriation of funds shall include the following:

172 (a) The applicant's experience and financial  
173 wherewithal to deploy, operate and manage the proposed project and  
174 broadband service offerings, including evidence of the applicant's  
175 successful operations of broadband services to retail end users;

176 (b) The readiness to build, operate and maintain the  
177 project;



178 (c) Projects that will deploy broadband service to the  
179 most unserved or underserved areas for the lowest grant amount per  
180 location;

181 (d) The scalability of the proposed project network to  
182 support the deployment of higher broadband speeds over time;

183 (e) The likelihood that the unserved or underserved  
184 area will not be served with broadband service without state grant  
185 funding;

186 (f) The applicant's ability to demonstrate the  
187 community's support for the project and a collaborated plan to  
188 leverage broadband services for community needs and economic  
189 development, such as rural development, education, tourism, new  
190 investment, or business attraction or retention;

191 (g) The commission shall grant a preference for those  
192 applications seeking to deploy and provide broadband services to  
193 areas in which there is currently no fixed terrestrial internet  
194 access service available; and

195 (h) The commission shall not discriminate or give any  
196 preferences to applications on the basis of the type of technology  
197 proposed by any applicant to be used to provide broadband services  
198 so long as the technology proposed meets the federal guidelines.

199 **SECTION 6.** Within ninety (90) days after the commission is  
200 appointed and after notice and opportunity to comment, the  
201 commission shall establish and publish on its website its criteria





202 for competitively scoring applications. Specific criteria to be  
203 considered when weighing or scoring an application are as follows:

204 (a) The size and scope of the unserved or underserved  
205 area to be deployed;

206 (b) The criteria outlined in Section 5 of this act; and

207 (c) The broadband service speed thresholds proposed in  
208 the application and the scalability of the broadband service  
209 network infrastructure proposed to be deployed to provide  
210 broadband service to households and businesses.

211 **SECTION 7.** (1) An applicant for funding under this act  
212 shall provide the following information at a minimum on the  
213 application:

214 (a) The location of the project by use of a shapefile

215 (b) The kind and amount of broadband infrastructure to  
216 be deployed for the project, including the amount the applicant  
217 intends to invest in the project from private funds;

218 (c) Evidence regarding the unserved or underserved  
219 nature of the community in which the project is to be located;

220 (d) The number of households that will have access to  
221 broadband service as a result of the project, or whose internet  
222 access service will be upgraded to broadband service as a result  
223 of the project;

224 (e) The significant community institutions that will  
225 benefit from the proposed project;



226 (f) Evidence of community support for the project with  
227 a narrative on the impact that the investment will have on  
228 community and economic development efforts in the area;

229 (g) The total cost of the project and a detailed budget  
230 and schedule for the project, including the submission of a  
231 business plan that provides for the use of funds provided under  
232 this act. Funds shall not be used to support the operational  
233 expenses of the network or to subsidize any other service provided  
234 by the applicant; and

235 (h) The broadband service provider's experience and  
236 financial capabilities.

237 (2) After scoring and considering all applications, the  
238 commission shall make its preliminary recommendations. Within  
239 thirty (30) days after the preliminary recommendations have been  
240 made, the commission shall publish on its website the  
241 applications, the proposed geographic broadband service area  
242 illustrated by a shapefile, and the proposed broadband service  
243 speeds for each application that receives a recommendation.

244 (3) Within thirty (30) days from the date the preliminary  
245 recommendations are published on the commission's website, the  
246 commission shall accept comments or objections concerning each  
247 application. The commission shall consider all comments or  
248 objections received and investigate them as needed, in deciding  
249 whether an applicant is eligible for a final recommendation. If  
250 an objection submitted by a provider contains information that



251 requires an investigation and the objection is found to be  
252 inaccurate, the provider shall reimburse the commission for the  
253 cost of verifying the information.

254 (4) The commission shall not recommend to the Legislature an  
255 applicant if verifiable information is made available that shows  
256 the proposed project includes an area where construction of a  
257 network to provide broadband service is underway, and the  
258 construction is scheduled to be completed within one (1) year  
259 after the date of the application.

260 (5) An applicant's or challenging party's trade secrets,  
261 financial information, and proprietary information submitted under  
262 this act as part of an application or challenge are exempt from  
263 disclosure under the Mississippi Public Records Act, Section  
264 25-61-1 et seq.

265 (6) After considering all comments or objections and  
266 investigating them as needed, the commission shall report on or  
267 before December 31 of each year, to the Legislature with its final  
268 recommendations of applicants that should be funded.

269 **SECTION 8.** In the event federal rules or guidelines require  
270 funds to be expended before the Legislature meets on the Tuesday  
271 after the first Monday of January 2023, and such requirement is  
272 certified by the Executive Director of the Public Utilities Staff,  
273 the commission shall be authorized to expend funds from the  
274 Mississippi Broadband Expansion Fund and shall notify the  
275 Lieutenant Governor, the Speaker of the House of Representatives,



276 and the Legislative Budget Office of such expenditures prior to  
277 their distribution.

278 **SECTION 9.** Section 31-3-1, Mississippi Code of 1972, is  
279 amended as follows:

280 31-3-1. The following words, as used in this chapter, shall  
281 have the meanings specified below:

282 "Board": The State Board of Contractors created under this  
283 chapter.

284 "Contractor": Any person contracting or undertaking as prime  
285 contractor, subcontractor or sub-subcontractor of any tier to do  
286 any erection, building, construction, reconstruction, demolition,  
287 repair, maintenance or related work on any public or private  
288 project; however, "contractor" shall not include any owner of a  
289 dwelling or other structure to be constructed, altered, repaired  
290 or improved and not for sale, lease, public use or assembly, or  
291 any person duly permitted by the Mississippi State Oil and Gas  
292 Board, pursuant to Section 53-3-11, Mississippi Code of 1972, to  
293 conduct operations within the state, and acting pursuant to said  
294 permit. It is further provided that nothing herein shall apply  
295 to:

296 (a) Any contract or undertaking on a public or private  
297 project by a prime contractor, subcontractor or sub-subcontractor  
298 of any tier involving erection, building, construction,  
299 reconstruction, repair, maintenance or related work where such



300 contract, subcontract or undertaking is less than Fifty Thousand  
301 Dollars (\$50,000.00);

302 (b) Highway construction, highway bridges, overpasses  
303 and any other project incidental to the construction of highways  
304 which are designated as federal aid projects and in which federal  
305 funds are involved;

306 (c) A residential project to be occupied by fifty (50)  
307 or fewer families and not more than three (3) stories in height;

308 (d) A residential subdivision where the contractor is  
309 developing either single-family or multifamily lots;

310 (e) A new commercial construction project not exceeding  
311 seventy-five hundred (7500) square feet and not more than two (2)  
312 stories in height undertaken by an individual or entity licensed  
313 under the provisions of Section 73-59-1 et seq.;

314 (f) Erection of a microwave tower built for the purpose  
315 of telecommunication transmissions;

316 (g) Any contract or undertaking on a public project by  
317 a prime contractor, subcontractor or sub-subcontractor of any tier  
318 involving the construction, reconstruction, repair or maintenance  
319 of fire protection systems where such contract, subcontract or  
320 undertaking is less than Five Thousand Dollars (\$5,000.00);

321 (h) Any contract or undertaking on a private project by  
322 a prime contractor, subcontractor or sub-subcontractor of any tier  
323 involving the construction, reconstruction, repair or maintenance



324 of fire protection systems where such contract, subcontract or  
325 undertaking is less than Ten Thousand Dollars (\$10,000.00);

326 (i) Any contract or undertaking on a private or public  
327 project by a prime contractor, subcontractor or sub-subcontractor  
328 of any tier involving the construction, reconstruction, repair or  
329 maintenance of technically specialized installations if performed  
330 by a Mississippi contractor who has been in the business of  
331 installing fire protection sprinkler systems on or before July 1,  
332 2000; \* \* \*

333 (j) Any contractor undertaking to build, construct,  
334 reconstruct, repair, demolish, perform maintenance on, or other  
335 related work, whether on the surface or subsurface, on oil or gas  
336 wells, pipelines, processing plants, or treatment facilities or  
337 other structures of facilities. Nothing herein shall be construed  
338 to limit the application or effect of Section 31-5-41 \* \* \*; or

339 (k) Any contract or undertaking by a subcontractor or  
340 sub-subcontractor of any tier involving the construction and other  
341 related work required by a licensed prime contractor in the  
342 buildout and expansion of broadband infrastructure.

343 "Certificate of responsibility": A certificate numbered and  
344 held by a contractor issued by the board under the provisions of  
345 this chapter after payment of the special privilege license tax  
346 therefor levied under this chapter.

347 "Person": Any person, firm, corporation, joint venture or  
348 partnership, association or other type of business entity.



349 "Private project": Any project for erection, building,  
350 construction, reconstruction, repair, maintenance or related work  
351 which is not funded in whole or in part with public funds.

352 "Public agency": Any board, commission, council or agency of  
353 the State of Mississippi or any district, county or municipality  
354 thereof, including school, hospital, airport and all other types  
355 of governing agencies created by or operating under the laws of  
356 this state.

357 "Public funds": Monies of public agencies, whether obtained  
358 from taxation, donation or otherwise; or monies being expended by  
359 public agencies for the purposes for which such public agencies  
360 exist.

361 "Public project": Any project for erection, building,  
362 construction, reconstruction, repair, maintenance or related work  
363 which is funded in whole or in part with public funds.

364 **SECTION 10.** The following shall be codified as Section  
365 21-27-79, Mississippi Code of 1972:

366 21-27-79. (1) Any municipally-owned electric utility  
367 created under this chapter which has more than one-third (1/3) of  
368 its service area located outside the corporate boundaries of the  
369 municipality shall have the same powers as are granted to an  
370 electric cooperative by the Mississippi Broadband Enabling Act,  
371 Section 77-17-1 et seq.

372 (2) If more than one-fifth (1/5) of the land area of a  
373 municipal school district is located in the territory served by a



374 municipally-owned electric utility described in subsection (1) of  
375 this section, then the electric utility owned by the municipality  
376 in which the central office of that school district is located  
377 shall have the same powers as are granted to an electric  
378 cooperative by the Mississippi Broadband Enabling Act, Section  
379 77-17-1 et seq.

380       **SECTION 11.** Section 17-13-5, Mississippi Code of 1972, is  
381 amended as follows:

382           17-13-5. For the purpose of this chapter, the following  
383 words shall be defined as herein provided unless the context  
384 requires otherwise:

385           (a) "Local governmental unit" shall mean any county,  
386 any incorporated city, town or village, any school district, any  
387 utility district, any community college, any institution of higher  
388 learning, any municipal airport authority or regional airport  
389 authority in the state, any local tourism commission in the state  
390 or any public improvement district created under the Public  
391 Improvement District Act. For the purposes of this chapter, the  
392 term "local governmental unit" includes a municipally-owned  
393 electric utility system described in Section 21-27-79 for the  
394 purpose authorized in that section.

395           (b) "Governing authority" shall mean the board of  
396 supervisors of any county, board of trustees of any school  
397 district or community college whether elective or appointive, the  
398 governing board of any city, town or village, the board of





399 commissioners of a utility district, the Board of Trustees of  
400 State Institutions of Higher Learning, the commissioners of a  
401 municipal airport authority or regional airport authority, the  
402 commission of a local tourism commission or the board of directors  
403 of any public improvement district created under the Public  
404 Improvement District Act.

405 **SECTION 12.** Section 77-17-3, Mississippi Code of 1972, is  
406 amended as follows:

407 77-17-3. As used in this chapter, the following terms shall  
408 have the following meanings unless the context clearly indicates  
409 otherwise:

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

414 (b) "Broadband service provider" means an entity that  
415 provides broadband services to others on a wholesale basis or  
416 to \* \* \* end-user customers on a retail basis.

417 (c) "Broadband operator" means a broadband service  
418 provider that owns or operates a broadband system on an electric  
419 cooperative's electric delivery system with the electric  
420 cooperative's consent.

421 (d) "Broadband services" means any service that  
422 consists of or includes the provision of or connectivity to a  
423 high-speed, high-capacity transmission medium that can carry



424 signals from or to multiple sources and that either: (i) is used  
425 to provide access to the internet, or (ii) provides computer  
426 processing, information storage, information content or protocol  
427 conversion, including any service applications or information  
428 service provided over such high-speed access service. As used  
429 herein, "broadband services" also includes video services, Voice  
430 over Internet Protocol services, any wireless services, and  
431 internet protocol-enabled services.

432 (e) "Broadband system" means the fiber, cables,  
433 materials, equipment and other facilities that are used or useful  
434 for the provision of broadband services.

435 (f) "Electric delivery system" means the poles, lines,  
436 fiber, cables, broadband system, materials, equipment, easements  
437 and other facilities or properties used by an electric cooperative  
438 to deliver or facilitate the delivery, sale or use of electric  
439 energy.

440 (g) "Electric cooperative" means an electric power  
441 association formed or operating under Sections 77-5-201, et seq.  
442 For the purposes of this chapter, the term "electric cooperative"  
443 includes a municipally-owned electric utility system described in  
444 Section 21-27-79.

445 (h) "Internet protocol-enabled services" means any  
446 service, capability, functionality or application provided using  
447 internet protocol, or any successor protocol, that enables an end  
448 user to send or receive a communication in internet protocol



449 format, or any successor format, regardless of whether the  
450 communications is voice, data or video.

451 (i) "Landowner" includes any person or entity holding  
452 an interest in real property.

453 (j) "Video services" means video programming services  
454 without regard to delivery technology, including internet protocol  
455 technology ("internet protocol television or IPTV") and video  
456 programming provided as a part of a service that enables users to  
457 access content, information, email or other services offered over  
458 the public internet. The term "video programming" means any  
459 programming generally considered comparable to programming  
460 provided by a television broadcast station or others.

461 (k) "Voice over Internet Protocol services" means any  
462 service that: (i) enables real-time, two-way voice communications  
463 that originate from or terminate to the user's location in  
464 internet protocol or any successor protocol; (ii) uses a broadband  
465 connection from the user's location; and (iii) permits users  
466 generally to receive calls that originate on the public switched  
467 telephone network and to terminate calls to the public switched  
468 telephone network.

469 **SECTION 13.** This act shall take effect and be in force from  
470 and after passage.

