SENATE BILL NO. 2604
(As Passed the Senate)

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:
SECTION 1. This act shall be known and may be cited as the "Mississippi Broadband Expansion Act."

SECTION 2. As used in this act:

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

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

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

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

(e) "Eligible broadband service provider" means any company, firm, corporation, limited liability company, partnership, or association that either has been providing broadband service to at least one hundred (100) residences and businesses in Mississippi for at least three (3) consecutive years, or is an electric power association's broadband affiliate
operating pursuant to Section 77-17-1 et seq.; or has demonstrated financial, technical, and operational capability in building and operating a broadband network.

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

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

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

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

(b) Two (2) members to be appointed by the Lieutenant Governor with the advise and consent of the Senate.
The commission shall review applications and shall provide recommendations on which projects should be funded to the Legislature on or before December 31 of each year.

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

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

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

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

(4) It shall be the duty and responsibility of the commission to:
(a) Coordinate all broadband expansion efforts on behalf of the state to ensure an effective and efficient use of broadband grant funds;

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

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

(d) Coordinate all information provided by broadband service providers. All information provided by a broadband internet access service provider pursuant to this chapter shall be presumed to be confidential, proprietary, and subject to exemption from disclosure under state and federal law and shall not be subject to disclosure except in the form of a map where information that could be used to determine provider-specific information about the network of the broadband services provider is not disclosed. Such provider-specific information shall not be released to any person without express written permission of the submitting broadband internet access services provider. In no instance shall a broadband provider be required to provide any data beyond that which it is required to provide to the Federal Communications Commission pursuant to 47 USC Section 641 et seq.
(5) As may be requested by the commission, the Public Utilities Staff shall provide the staff and other support necessary for the commission to perform its duties. The commission shall also have the ability to employ staff and/or consultants as they deem appropriate.

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

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

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

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

(8) There is hereby created within the State Treasury the "Mississippi Broadband Expansion Fund" for the purposes of the
expansion of broadband in unserved and underserved areas. The fund shall consist of all monies designated, accepted, or appropriated by the State of Mississippi for broadband deployment; all monies received from the federal government awarded to or allocated by the state for broadband deployment; and donations, gifts, and monies received from any other source, included transfers from other funds or accounts. Disbursements from the fund shall be in accordance with Section 5 of this act.

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

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

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

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

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

(b) The readiness to build, operate and maintain the project;
(c) Projects that will deploy broadband service to the most unserved or underserved areas for the lowest grant amount per location;

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

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

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

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

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

SECTION 6. Within ninety (90) days after the commission is appointed and after notice and opportunity to comment, the commission shall establish and publish on its website its criteria
for competently scoring applications. Specific criteria to be considered when weighing or scoring an application are as follows:

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

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

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

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

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

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

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

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

(e) The significant community institutions that will benefit from the proposed project;
(f) Evidence of community support for the project with a narrative on the impact that the investment will have on community and economic development efforts in the area;

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

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

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

(3) Within thirty (30) days from the date the preliminary recommendations are published on the commission's website, the commission shall accept comments or objections concerning each application. The commission shall consider all comments or objections received and investigate them as needed, in deciding whether an applicant is eligible for a final recommendation. If an objection submitted by a provider contains information that
requires an investigation and the objection is found to be inaccurate, the provider shall reimburse the commission for the cost of verifying the information.

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

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

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

SECTION 8. In the event federal rules or guidelines require funds to be expended before the Legislature meets on the Tuesday after the first Monday of January 2023, and such requirement is certified by the Executive Director of the Public Utilities Staff, the commission shall be authorized to expend funds from the Mississippi Broadband Expansion Fund and shall notify the Lieutenant Governor, the Speaker of the House of Representatives,
and the Legislative Budget Office of such expenditures prior to their distribution.

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

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

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

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

(a) Any contract or undertaking on a public or private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving erection, building, construction, reconstruction, repair, maintenance or related work where such
contract, subcontract or undertaking is less than Fifty Thousand Dollars ($50,000.00);

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

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

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

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

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

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

(h) Any contract or undertaking on a private project by a prime contractor, subcontractor or sub-subcontractor of any tier involving the construction, reconstruction, repair or maintenance
of fire protection systems where such contract, subcontract or undertaking is less than Ten Thousand Dollars ($10,000.00);

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

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

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

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

"Person": Any person, firm, corporation, joint venture or partnership, association or other type of business entity.
"Private project": Any project for erection, building, construction, reconstruction, repair, maintenance or related work which is not funded in whole or in part with public funds.

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

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

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

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

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

(2) If more than one-fifth (1/5) of the land area of a municipal school district is located in the territory served by a
municipally-owned electric utility described in subsection (1) of this section, then the electric utility owned by the municipality in which the central office of that school district is located shall have the same powers as are granted to an electric cooperative by the Mississippi Broadband Enabling Act, Section 77-17-1 et seq.

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

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

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

(b) "Governing authority" shall mean the board of supervisors of any county, board of trustees of any school district or community college whether elective or appointive, the governing board of any city, town or village, the board of
commissioners of a utility district, the Board of Trustees of State Institutions of Higher Learning, the commissioners of a municipal airport authority or regional airport authority, the commission of a local tourism commission or the board of directors of any public improvement district created under the Public Improvement District Act.

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

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

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

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

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

(d) "Broadband services" means any service that consists of or includes the provision of or connectivity to a high-speed, high-capacity transmission medium that can carry...
signals from or to multiple sources and that 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. As used herein, "broadband services" also includes video services, Voice over Internet Protocol services, any wireless services, and internet protocol-enabled services.

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

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

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

(h) "Internet protocol-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.
   (i) "Landowner" includes any person or entity holding
   an interest in real property.
   (j) "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 generally considered comparable to programming
provided by a television broadcast station or others.
   (k) "Voice over Internet Protocol 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.
   **SECTION 13.** This act shall take effect and be in force from
and after passage.