

Senate Amendments to House Bill No. 1029

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE 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:

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

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

26 (a) "Applicant" means an eligible broadband service
27 provider that has authorization to do business in this state and
28 has demonstrated that it has the technical, financial and
29 managerial resources and experience to provide broadband services
30 in the state to retail end users.

31 (b) "Broadband service" means a mass-market retail
32 service by wire, cable, fiber, or radio provided to customers in
33 the State of Mississippi that provides the capability to transmit
34 data to, and receive data from, all or substantially all internet
35 endpoints, at speeds of at least one hundred (100) megabits per
36 second downstream and twenty (20) megabits per second upstream,
37 and including but not limited to, any capabilities that are
38 incidental to and enable the operation of communications service,
39 but excluding dial-up internet access service.

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

42 (d) "Deployed" means, with respect to availability of
43 broadband service at a location, when the person or entity has
44 access regardless of whether a person or entity subscribes to the
45 broadband service at the location.

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

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

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

65 **SECTION 3.** (1) There is created a Mississippi Broadband
66 Expansion Commission for the purpose of making final
67 determinations and awards from applications for projects to
68 provide broadband service in unserved or underserved areas using
69 the Mississippi Broadband Expansion Fund created pursuant to this
70 act. The commission shall be composed of the following seven (7)
71 members:

72 (a) Three (3) members to be appointed by the Governor,
73 with the advice and consent of the Senate; and

74 (b) Four (4) members to be appointed by the Lieutenant
75 Governor, with the advice and consent of the Senate.

76 The Governor shall appoint one (1) member who is a resident
77 from each of the three (3) Supreme Court districts. The
78 Lieutenant Governor shall appoint one (1) member who is a resident
79 from each of the four (4) congressional districts. Two (2) of the
80 members to be appointed by the Lieutenant Governor shall be
81 appointed only after consideration of recommendations for those
82 appointments made by the Speaker of the House of Representatives
83 to the Lieutenant Governor.

84 Of the initial appointees, the members' terms shall be
85 staggered as follows: one (1) term appointed by the Governor to
86 expire on December 31, 2023; one (1) term appointed by the
87 Governor to expire on December 31, 2024; one (1) term to be
88 appointed by the Governor to expire on December 31, 2025; two (2)
89 terms to be appointed by the Lieutenant Governor to expire on
90 December 31, 2024; and two (2) terms to be appointed by the

91 Lieutenant Governor to expire on December 31, 2025. After the
92 expiration of the initial terms, members of the board shall serve
93 terms of five (5) years. No member shall serve more than two (2)
94 consecutive terms. Members may be removed by the appointing
95 public official. Upon the initial appointment of a majority of
96 the commissioners, the Lieutenant Governor shall call the first
97 meeting of the commission within thirty (30) calendar days, at
98 which time the commission shall elect a chairman, a vice chairman
99 and any other officers determined to be necessary, and shall adopt
100 rules for transacting business and keeping records. The
101 commission shall meet at such times as the chairman shall
102 determine, and shall also meet upon call of three (3) or more of
103 the commissioners. The commission shall annually elect a chairman
104 from among its members. The commission shall keep accurate and
105 complete records of all its meetings.

106 Members of the commission shall be reimbursed for expenses in
107 the manner and amount specified in Section 25-3-41, and shall be
108 entitled to receive additional per diem compensation of Seven
109 Hundred Fifty Dollars (\$750.00) per meeting.

110 Members of the commission shall not have any direct or
111 indirect interest in an undertaking that puts their personal
112 interest in conflict with that of the commission and shall be
113 governed by the provisions of Section 109 of the Mississippi
114 Constitution and Section 25-4-105. In addition, members of the
115 commission shall not receive anything of value from, or on behalf

116 of, any person holding or applying for broadband expansion funds
117 under this act.

118 (2) Appointments to the commission shall be made within
119 fifteen (15) days of the effective date of this act.

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

125 **SECTION 4.** (1) The Public Utilities Staff shall serve as
126 the state broadband office to review applications and make
127 recommendations to the commission for projects to provide
128 broadband access in unserved or underserved areas using the
129 Mississippi Broadband Expansion Fund created pursuant to this act.
130 The commission shall approve final determinations and awards after
131 consideration by the commission.

132 (2) It shall be the duty and responsibility of the Public
133 Utilities Staff, in conjunction with the commission, to:

134 (a) Coordinate all broadband expansion efforts on
135 behalf of the state to ensure an effective and efficient use of
136 broadband grant funds;

137 (b) Develop the plan and application for federal grant
138 programs and for sub-grantees to receive funds from said federal
139 grants;

140 (c) Develop rules and procedures, if necessary and in
141 accordance with the Administrative Procedures Act, to implement a
142 competitive statewide broadband grant program;

143 (d) Coordinate all information provided by broadband
144 service providers, including all broadband mapping efforts for the
145 state. All information provided by a broadband service provider
146 pursuant to this act shall be presumed to be confidential,
147 proprietary, and subject to exemption from disclosure under state
148 and federal law and shall not be subject to disclosure except in
149 the form of a map where information that could be used to
150 determine provider-specific information about the network of the
151 broadband service providers is not disclosed. Such
152 provider-specific information shall not be released to any person
153 without written permission of the submitting broadband service
154 provider. In no instance shall a broadband service provider be
155 required to provide any data beyond that which it is required to
156 provide to the Federal Communications Commission pursuant to 47
157 USC Section 641 et seq.; and

158 (e) Apply for and receive federal grants or funds,
159 working in conjunction with the Governor when necessary,
160 including, but not limited to, Coronavirus Capital Projects Fund
161 established by Section 604 of the Social Security Act, as added by
162 Section 9901 of the American Rescue Plan Act of 2021, and the
163 Broadband Equity, Access and Deployment Program established by the
164 Infrastructure Investment and Jobs Act.

165 (3) To effectuate the purposes of this act, any department,
166 division, board, bureau, committee, institution or agency of the
167 state, or any political subdivision thereof, shall, at the request
168 of the Executive Director of the Public Utilities Staff, provide
169 the assistance, information and data needed to enable the
170 commission to carry out its duties.

171 (4) There is created within the State Treasury the
172 "Mississippi Broadband Expansion Fund" for the purposes of the
173 expansion of broadband in unserved and underserved areas. The
174 fund shall consist of all monies designated, accepted or
175 appropriated by the State of Mississippi for broadband deployment;
176 all monies received from the federal government awarded to or
177 allocated by the state for broadband deployment; and donations,
178 gifts and monies received from any other source, including
179 transfers from other funds or accounts. Disbursements from the
180 fund shall be made by the Public Utilities Staff in accordance
181 with the provisions of this act with approval of the commission.
182 All unexpended and unencumbered monies in the fund at the end of
183 the fiscal year shall remain in the fund. Monies in the fund
184 shall be invested by the State Treasurer in the same manner as
185 monies in the State General Fund and interest earned on the
186 investment of these monies shall be credited to the fund.

187 **SECTION 5.** In making recommendations, determinations and
188 awards, the Public Utilities Staff and commission shall consider
189 the following:

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

193 (b) Funds from federal broadband grant programs shall
194 be spent in accordance with federal laws, rules, regulations and
195 guidance, and federal laws, rules, regulations and guidance shall
196 supersede in any instance where this act conflicts.

197 **SECTION 6.** The criteria for determining the awarding of
198 funds shall include the following:

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

203 (b) The readiness to build, operate and maintain the
204 project;

205 (c) Projects that will deploy broadband service to the
206 most unserved or underserved areas;

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

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

212 (f) The applicant's ability to demonstrate the
213 community's support for the project and a collaborated plan to
214 leverage broadband services for community needs and economic

215 development, such as rural development, education, tourism, new
216 investment, or business attraction or retention;

217 (g) A preference for those applications seeking to
218 deploy and provide broadband services to areas in which there is
219 currently no fixed terrestrial internet access service available;

220 (h) No discrimination or preference to applications on
221 the basis of the type of technology proposed by any applicant to
222 be used to provide broadband services so long as the technology
223 proposed meets the federal guidelines;

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

226 (j) The broadband service speed thresholds proposed in
227 the application and the scalability of the broadband service
228 network infrastructure proposed to be deployed to provide
229 broadband service to households and businesses.

230 **SECTION 7.** In accordance with federal laws, rules,
231 regulations and guidance, the Public Utilities Staff shall
232 establish and publish on its website its criteria for
233 competitively scoring applications.

234 **SECTION 8.** (1) An applicant for funding under this act
235 shall provide the following information at a minimum on the
236 application:

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

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

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

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

247 (e) The significant community institutions that will
248 benefit from the proposed project;

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

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

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

260 (2) After scoring and considering all applications, the
261 commission shall make its preliminary determinations. Within
262 thirty (30) days after the preliminary determinations have been
263 made, the Public Utilities Staff shall publish on its website the
264 applications, the proposed geographic broadband service area
265 illustrated by a shapefile, and the proposed broadband service

266 speeds for each application that receives a preliminary
267 determination.

268 (3) Within thirty (30) days from the date the preliminary
269 determinations are published on the Public Utility Staff's
270 website, the staff shall accept comments or objections concerning
271 each application and investigate each of them as appropriate. The
272 commission shall consider all comments and objections received and
273 the investigative findings in determining whether an applicant is
274 eligible for a final determination and award.

275 (4) The commission shall not make a final determination and
276 award to an applicant if verifiable information is made available
277 that shows the proposed project includes an area where broadband
278 services currently are deployed, or where construction of a
279 network to deploy broadband service is underway by a provider
280 other than the applicant, and the construction is scheduled to be
281 completed within one (1) year after the date of the application.

282 (5) An applicant's or challenging party's trade secrets,
283 financial information and proprietary information submitted under
284 this act as part of an application or challenge are exempt from
285 disclosure under the Mississippi Public Records Act, Section
286 25-61-1 et seq.

287 **SECTION 9.** (1) The Public Utilities Staff may expend funds
288 from the Mississippi Broadband Expansion Fund in accordance with
289 this act and shall notify the Lieutenant Governor, the Speaker of
290 the House of Representatives, and the Legislative Budget Office of
291 such expenditures prior to their distribution.

292 (2) The Public Utilities Staff may employ the services of
293 such persons as the executive director considers necessary for the
294 purposes of consultation or investigation and fix the salaries of
295 or contract for the services of such legal, professional,
296 technical and operational personnel and consultants, subject to
297 applicable provisions of the State Personnel Board. Additional
298 legal assistance may be retained in accordance with this
299 subsection (2) only with the approval of the Attorney General.

300 (3) The staff shall provide to the Legislature an annual
301 detailed report on the status and details of all projects
302 considered and approved under this act no later than December 15
303 of each year.

304 **SECTION 10.** Section 31-3-1, Mississippi Code of 1972, is
305 amended as follows:

306 31-3-1. The following words, as used in this chapter, shall
307 have the meanings specified below:

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

310 "Contractor": Any person contracting or undertaking as prime
311 contractor, subcontractor or sub-subcontractor of any tier to do
312 any erection, building, construction, reconstruction, demolition,
313 repair, maintenance or related work on any public or private
314 project; however, "contractor" shall not include any owner of a
315 dwelling or other structure to be constructed, altered, repaired
316 or improved and not for sale, lease, public use or assembly, or
317 any person duly permitted by the Mississippi State Oil and Gas

318 Board, pursuant to Section 53-3-11, Mississippi Code of 1972, to
319 conduct operations within the state, and acting pursuant to said
320 permit. It is further provided that nothing herein shall apply
321 to:

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

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

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

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

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

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

342 (g) Any contract or undertaking on a public project by
343 a prime contractor, subcontractor or sub-subcontractor of any tier

344 involving the construction, reconstruction, repair or maintenance
345 of fire protection systems where such contract, subcontract or
346 undertaking is less than Five Thousand Dollars (\$5,000.00);

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

352 (i) Any contract or undertaking on a private or public
353 project by a prime contractor, subcontractor or sub-subcontractor
354 of any tier involving the construction, reconstruction, repair or
355 maintenance of technically specialized installations if performed
356 by a Mississippi contractor who has been in the business of
357 installing fire protection sprinkler systems on or before July 1,
358 2000; * * *

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

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

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

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

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

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

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

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

390 **SECTION 11.** This act shall take effect and be in force from
391 and after its passage.

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

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; TO DESIGNATE THE PUBLIC UTILITIES STAFF AS
4 THE STATE BROADBAND OFFICE TO REVIEW APPLICATIONS FOR FUNDING
5 BROADBAND INFRASTRUCTURE PROJECTS USING FEDERAL AND STATE FUNDS;
6 TO PROVIDE THAT THE PUBLIC UTILITIES STAFF SHALL CONSIDER CERTAIN
7 FACTORS IN MAKING ITS PRELIMINARY RECOMMENDATIONS; TO REQUIRE THE
8 PUBLIC UTILITIES STAFF TO ESTABLISH AND PUBLISH ON ITS WEBSITE ITS
9 CRITERIA FOR COMPETITIVELY SCORING APPLICATIONS; TO REQUIRE AN
10 APPLICANT TO PROVIDE CERTAIN INFORMATION AT A MINIMUM ON THE
11 APPLICATION; TO REQUIRE THE COMMISSION TO MAKE PRELIMINARY
12 DETERMINATIONS, FINAL DETERMINATIONS AND AWARDS AFTER
13 RECOMMENDATIONS AND INVESTIGATIONS BY THE PUBLIC UTILITIES STAFF;
14 TO REQUIRE THE PUBLIC UTILITIES STAFF TO ACCEPT COMMENTS AND
15 OBJECTIONS CONCERNING EACH PRELIMINARY DETERMINATION AND
16 INVESTIGATE THEM AS APPROPRIATE; TO AMEND SECTION 31-3-1,
17 MISSISSIPPI CODE OF 1972, TO EXEMPT FROM LICENSING REQUIREMENTS
18 UNDER THE STATE BOARD OF CONTRACTORS CERTAIN UNDERTAKINGS BY A
19 SUBCONTRACTOR OR SUB-SUBCONTRACTOR INVOLVING THE CONSTRUCTION IN
20 THE BUILDOUT AND EXPANSION OF BROADBAND INFRASTRUCTURE; AND FOR
21 RELATED PURPOSES.

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Eugene S. Clarke
Secretary of the Senate