

By: Senator(s) Michel

To: Finance

SENATE BILL NO. 2433

1 AN ACT TO AMEND SECTIONS 77-3-1 AND 77-3-3, MISSISSIPPI CODE
2 OF 1972, TO EXEMPT ELIGIBLE HOMEOWNERS ASSOCIATIONS IN ELIGIBLE
3 MUNICIPALITIES FROM CERTAIN UTILITY REGULATION WHEN PROVIDING
4 WATER TO THEIR OWN RESIDENTS; TO CREATE NEW SECTION 77-3-99,
5 MISSISSIPPI CODE OF 1972, TO CLARIFY CONTINUING OBLIGATIONS ON THE
6 PART OF THE ELIGIBLE MUNICIPALITY; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 77-3-1, Mississippi Code of 1972, is
9 amended as follows:

10 77-3-1. (1) Except as otherwise provided in Section 77-3-6,
11 any public utility as defined in paragraph (d) of Section 77-3-3,
12 owned or operated by a municipality shall not be subject to the
13 provisions of this article, except as to extension of utilities
14 greater than one (1) mile outside corporate boundaries after March
15 29, 1956.

16 (2) The provisions of this chapter shall not apply to the
17 distribution of water by an eligible homeowners association only
18 to its residents, irrespective of the subdivision's location
19 inside of an area subject to a Certificate of Public Convenience
20 and Necessity held by an eligible municipality. Additionally, the



21 provisions of this chapter shall not apply to any entity supplying
22 water to an eligible homeowner's association for purposes of
23 supplying water only to its residents. These provisions shall not
24 apply whether an eligible homeowners association elects to provide
25 water to its residents on a full-time basis or opts for an
26 emergency connection to a private water source for use only when
27 water from an eligible municipality is unavailable, unreliable or
28 unsafe.

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

31 77-3-3. As used in this chapter:

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

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

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

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



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

47 (ii) The transmission, sale, sale for resale, or
48 distribution of natural, artificial, or mixed natural and
49 artificial gas to the public for compensation by means of
50 transportation, transmission, or distribution facilities and
51 equipment located within this state; however, the term shall not
52 include the production and gathering of natural gas, the sale of
53 natural gas in or within the vicinity of the field where produced,
54 or the distribution or sale of liquefied petroleum gas or the sale
55 to the ultimate consumer of natural gas for use as a motor vehicle
56 fuel;

57 (iii) The transmission, conveyance or reception of
58 any message over wire, of writing, signs, signals, pictures and
59 sounds of all kinds by or for the public, where such service is
60 offered to the public for compensation, and the furnishing, or the
61 furnishing and maintenance, of equipment or facilities to the
62 public, for compensation, for use as a private communications
63 system or part thereof; however, no person or corporation not
64 otherwise a public utility within the meaning of this chapter
65 shall be deemed such solely because of engaging in this state in
66 the furnishing, for private use as last aforementioned, and
67 moreover, nothing in this chapter shall be construed to apply to
68 television stations, radio stations, community television antenna
69 services, video services, Voice over Internet Protocol services



70 ("VoIP"), any wireless services, including commercial mobile
71 services, Internet Protocol ("IP") - enabled services or broadband
72 services; and

73 (iv) The transmission, distribution, sale or
74 resale of water to the public for compensation, or the collection,
75 transmission, treatment or disposal of sewage, or otherwise
76 operating a sewage disposal service, to or for the public for
77 compensation.

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

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

88 (e) The term "rate" means and includes every
89 compensation, charge, fare, toll, customer deposit, rental and
90 classification, or the formula or method by which such may be
91 determined, or any of them, demanded, observed, charged or
92 collected by any public utility for any service, product or
93 commodity described in this section, offered by it to the public,
94 and any rules, regulations, practices or contracts relating to any



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

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

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

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

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

110 (iii) Any corporation of which fifteen percent
111 (15%) or more of the voting securities is owned or controlled,
112 directly or indirectly, by a public utility;

113 (iv) Any corporation of which twenty-five percent
114 (25%) or more of the voting securities is owned or controlled,
115 directly or indirectly, by any person or corporation that owns or
116 controls, directly or indirectly, twenty-five percent (25%) or
117 more of the voting securities of any public utility or by any
118 person or corporation in any chain of successive ownership of
119 twenty-five percent (25%) of such securities;



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

124 (vi) Any person or corporation that the
125 commission, after notice and hearing, determines actually
126 exercises any substantial influence or control over the policies
127 and actions of a public utility, or over which a public utility
128 exercises such control, or that is under a common control with a
129 public utility, such control being the possession, directly or
130 indirectly, of the power to direct or cause the discretion of the
131 management and policies of another, whether such power is
132 established through ownership of voting securities or by any other
133 direct or indirect means.

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

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



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

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

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

162 (i) Is used to provide access to the internet, or

163 (ii) Provides computer processing, information
164 storage, information content or protocol conversion, including any
165 service applications or information service provided over such
166 high-speed access service.

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



169 Protocol technology ("Internet Protocol television or IPTV") and
170 video programming provided as a part of a service that enables
171 users to access content, information, email or other services
172 offered over the public internet. The term "video programming"
173 means any programming as defined in 47 USCS Section 522(20).

174 (m) The term "Voice over Internet Protocol services" or
175 "VoIP services" means any service that: (i) enables real-time,
176 two-way voice communications that originate from or terminate to
177 the user's location in Internet Protocol or any successor
178 protocol; (ii) uses a broadband connection from the user's
179 location; and (iii) permits users generally to receive calls that
180 originate on the Public Switched Telephone Network and to
181 terminate calls to the Public Switched Telephone Network.

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

184 (o) The term "Internet Protocol-enabled services" or
185 "IP-enabled services" means any service, capability,
186 functionality, or application provided using Internet Protocol, or
187 any successor protocol, that enables an end user to send or
188 receive a communication in Internet Protocol format, or any
189 successor format, regardless of whether the communications is
190 voice, data or video. Nothing contained in this paragraph shall
191 apply to retail services that are tariffed by the commission.



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

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

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

204 (s) "Eligible municipality" means any municipality with
205 a population of greater than One Hundred Thousand (100,000)
206 according to the latest decennial census which has been the
207 subject of litigation by the United States Environmental
208 Protection Agency for violations of the Safe Drinking Water Act,
209 42 USC Section 300(f) et seq.

210 (t) "Eligible homeowners association" means any
211 homeowners association created and governed by restrictive
212 covenants, if the subdivision subject to these covenants:

213 (i) Was constructed prior to 1970 outside of
214 municipal boundaries;

215 (ii) Was subsequently annexed by an eligible
216 municipality, irrespective of whether the municipality was an



217 eligible municipality at the time of annexation or subsequently
218 became eligible; and

219 (iii) Is adjacent to which a ground water well
220 system originally designed to supply the subdivision which
221 continues to provide drinking water to a private user is located.

222 **SECTION 3.** The following shall be codified as Section
223 77-3-99, Mississippi Code of 1972:

224 77-3-99. (1) In the event an eligible homeowners
225 association elects to provide water service to its residents, the
226 eligible municipality shall sell and convey any water assets to
227 the homeowners association that the association deems necessary to
228 supply its residents with water. These assets shall include,
229 without limitation, main water lines, service lines to residential
230 buildings, meters, and any other assets located within the
231 subdivision that are owned by the municipality and used for the
232 purpose of delivering water, which the homeowners association has
233 determined are necessary or useful to provide its residents with
234 water. The homeowners association shall pay the municipality fair
235 market value for such assets, which value shall be determined by
236 an independent appraisal conducted by an appraiser of the eligible
237 homeowners association's choosing. At such time as the eligible
238 homeowners association closes on the municipal water assets, it
239 shall obtain as a function of law an easement in municipal roads
240 and rights-of-way through or under which these assets reside, and
241 on municipal roads adjacent to these roads, which will allow the



242 homeowners association to repair, replace or improve these assets
243 as needed at its cost, including repairing any damage to municipal
244 roads that result from these repairs or replacements.

245 (2) The provisions of this chapter shall continue to apply
246 to sewer services and the eligible municipality shall continue to
247 furnish sewage disposal services to the residents of the eligible
248 homeowners association on the same terms at which they are offered
249 to other residents of the municipality.

250 (3) If an eligible homeowners association elects to provide
251 water to its residents, the eligible municipality shall continue
252 to provide water service to the residents of this subdivision
253 until such time as the homeowners association notifies the
254 municipality in writing that it is prepared to begin providing
255 water service to the subdivision's residents.

256 (4) Nothing in this chapter shall be construed to diminish
257 or eliminate the eligible municipality's continued obligation to
258 provide emergency fire suppression services to a subdivision, the
259 eligible homeowners association of which has elected to provide
260 its residents with water.

261 **SECTION 4.** This act shall take effect and be in force from
262 and after July 1, 2023.

