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To: Public Utilities

HOUSE BILL NO. 366
 (As Passed the House)

1 AN ACT TO CREATE THE MISSISSIPPI BROADBAND ENABLING ACT; TO
 2 PROVIDE DEFINITIONS FOR THE ACT; TO PROVIDE FOR OWNERSHIP AND/OR
 3 OPERATION OF BROADBAND SYSTEMS BY ELECTRIC COOPERATIVES THROUGH
 4 AFFILIATES OR OPERATORS; TO REQUIRE ELECTRIC COOPERATIVES TO
 5 CHARGE OR PAY ANY ENTITY THE SAME AMOUNT OF FEES THAT IT CHARGES
 6 OR PAYS AN AFFILIATE FOR POLE ATTACHMENT FEES OR OTHER ITEMS; TO
 7 REQUIRE AN ELECTRIC COOPERATIVE TO CONDUCT AN ECONOMIC FEASIBILITY
 8 STUDY BEFORE BROADBAND SERVICES MAY BE PROVIDED; TO REQUIRE THAT
 9 ELECTRIC COOPERATIVES MAINTAIN THE RELIABILITY OF THEIR ELECTRIC
 10 SYSTEMS; TO REGULATE EASEMENTS UNDER THIS ACT; TO REQUIRE AN
 11 ANNUAL COMPLIANCE AUDIT; TO AMEND SECTIONS 77-5-205 AND 77-5-231,
 12 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS
 13 ACT; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** This act shall be known and may be cited as the
 16 "Mississippi Broadband Enabling Act."

17 **SECTION 2.** As used in this act, the following terms shall
 18 have the following meanings unless the context clearly indicates
 19 otherwise:

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



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

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

31 (d) "Broadband services" means any service that
32 consists of or includes the provision of or connectivity to a
33 high-speed, high-capacity transmission medium that can carry
34 signals from or to multiple sources and that either: (i) is used
35 to provide access to the Internet, or (ii) provides computer
36 processing, information storage, information content or protocol
37 conversion, including any service applications or information
38 service provided over such high-speed access service. As used
39 herein, "broadband services" also includes video services, voice
40 over Internet protocol services, any wireless services, and
41 Internet protocol-enabled services.

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

45 (f) "Electric delivery system" means the poles, lines,
46 fiber, cables, broadband system, materials, equipment, easements
47 and other facilities or properties used by an electric cooperative



48 to deliver or facilitate the delivery, sale or use of electric
49 energy.

50 (g) "Electric cooperative" means an electric power
51 association formed or operating under Sections 77-5-201, et seq.

52 (h) "Internet protocol-enabled services" means any
53 service, capability, functionality or application provided using
54 Internet protocol, or any successor protocol, that enables an end
55 user to send or receive a communication in Internet protocol
56 format, or any successor format, regardless of whether the
57 communications is voice, data or video.

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

60 (j) "Video services" means video programming services
61 without regard to delivery technology, including Internet protocol
62 technology ("Internet Protocol television or IPTV") and video
63 programming provided as a part of a service that enables users to
64 access content, information, email or other services offered over
65 the public Internet. The term "video programming" means any
66 programming generally considered comparable to programming
67 provided by a television broadcast station or others.

68 (k) "Voice over Internet protocol services" means any
69 service that: (i) enables real-time, two-way voice communications
70 that originate from or terminate to the user's location in
71 Internet protocol or any successor protocol; (ii) uses a broadband
72 connection from the user's location; and (iii) permits users



73 generally to receive calls that originate on the public switched
74 telephone network and to terminate calls to the public switched
75 telephone network.

76 **SECTION 3.** (1) Every electric cooperative is authorized to
77 establish, acquire, and wholly or partially own one or more
78 broadband affiliates.

79 (2) An electric cooperative may allow its broadband
80 affiliate(s) or an unaffiliated broadband operator to own, lease,
81 construct, maintain and operate a broadband system on the electric
82 cooperative's electric delivery system and to provide broadband
83 services to the public utilizing the electric cooperative's
84 broadband system or other parts of its electric delivery system.

85 (3) An electric cooperative is not required to implement a
86 broadband system or allow others to use broadband capacity on the
87 electric cooperative's electric delivery system to provide
88 broadband services.

89 (4) An electric cooperative may determine, in its sole
90 discretion, which broadband operators, if any, may have access to
91 broadband capacity on the electric cooperative's broadband system;
92 and it shall be lawful for an electric cooperative to provide an
93 affiliate or other broadband operator exclusive access to
94 broadband capacity on the electric cooperative's broadband system.

95 (5) (a) An electric cooperative may charge an affiliate or
96 an unaffiliated broadband operator for the construction,
97 installation, operation, use, and maintenance of those parts of



98 its electric delivery system that are used or may be reserved for
99 use by the affiliate or unaffiliated broadband operator for the
100 provision of broadband services. Any lease of facilities by an
101 electric cooperative to a broadband affiliate that includes the
102 use of the electric cooperative's poles shall specifically include
103 pole attachment fees to be paid by the broadband affiliate to the
104 electric cooperative equal to pole attachment fees charged by the
105 electric cooperative to like unaffiliated, private entities.

106 (b) An electric cooperative shall not:

107 (i) Charge an affiliate under this act an amount
108 less than the electric cooperative charges an unaffiliated entity
109 for the same item or class of items; or

110 (ii) Pay an affiliate under this act an amount more
111 than the affiliate charges an unaffiliated entity for the same
112 item or class of items.

113 (6) An electric cooperative shall not use its electric
114 energy sales revenues to subsidize the provision by an affiliate
115 or unaffiliated broadband operator of broadband services to the
116 public. An electric cooperative may, however, make capital
117 investments in an affiliate, make loans to an affiliate at fair
118 market rate, and enter loan guarantees for the benefit of an
119 affiliate, all of which may be in such amounts and on such terms
120 as the electric cooperative's board of directors determines to be
121 prudent and authorizes.



122 (7) Electric cooperatives exercising their authority granted
123 by this act shall comply with all financial performance and loan
124 covenant obligations required by the United States Department of
125 Agriculture/Rural Utilities Service and/or National Rural Utility
126 Cooperative Finance Corporation or other like entities.

127 (8) Before broadband services may be offered under this act,
128 an electric cooperative must, by resolution of the board of
129 directors and spread upon its minutes, have an economic
130 feasibility study conducted and adopt a plan that will provide
131 service to its entire certificated area. Such feasibility study
132 shall be made available to electric cooperative members upon
133 request.

134 **SECTION 4.** The passage of House Bill No. 366, 2019 Regular
135 Session, does not expand the regulatory authority of any state
136 agency, instrumentality or political subdivision of the State of
137 Mississippi beyond the existing state or federal law and
138 regulations in place at the time of its passage.

139 **SECTION 5.** (1) An electric cooperative shall not allow the
140 installation or operation of a broadband system on its electric
141 delivery system by an affiliate or other broadband operator to
142 diminish the reliability of the electric delivery system.

143 (2) An electric cooperative shall not require any person to
144 purchase broadband services from an affiliate or other broadband
145 operator as a condition of receiving or continuing to receive
146 electric energy from the electric cooperative.



147 (3) An electric cooperative shall not disconnect, nor
148 threaten to disconnect, its electric service to any customer due
149 to the customer's failure to pay for broadband services provided
150 to the customer by an affiliate or other broadband operator.

151 **SECTION 6.** (1) An electric cooperative may grant permission
152 to an affiliate or other broadband operator to use the electric
153 delivery system of the electric cooperative to provide broadband
154 services. The use of the electric cooperative's electric delivery
155 system for the provision of broadband services by the affiliate or
156 other broadband operator shall not be considered an additional
157 burden on the real property upon which the electric cooperative's
158 electric delivery system is located and shall not require the
159 affiliate or other broadband operator to obtain the consent of
160 anyone having an interest in the real property upon which the
161 electric cooperative's electric delivery system is located.

162 (2) If a portion of an electric cooperative's electric
163 delivery system is used by an affiliate or other broadband
164 operator for the provision of broadband services and the landowner
165 of the real property on which such portion is located believes his
166 property has been damaged by such use, the landowner may petition
167 the circuit court of the county in which the property is situated
168 for any damages to which the landowner may be entitled under this
169 subsection.

170 (a) The petition allowed and damages recoverable under
171 this subsection (2) shall be the landowner's exclusive remedy, and



172 the landowner shall not be entitled to assert any other theory,
173 claims or causes of action nor recover any other damages, punitive
174 damages, costs, attorneys' fees, or other relief.

175 (b) The recoverable damages, if any, shall be
176 recoverable only from the affiliate or other broadband operator
177 and not from the electric cooperative.

178 (c) The damages recoverable shall be an amount equal to
179 the difference between (i) the fair market value of the
180 landowner's interest in the real property immediately before the
181 electric cooperative's electric delivery system on the owner's
182 property was first used by an affiliate or other broadband
183 operator for the provision of broadband services, and (ii) the
184 fair market value of the landowner's interest in the real property
185 immediately after the electric cooperative's electric delivery
186 system on the landowner's property was first used by an affiliate
187 or other broadband operator for the provision of broadband
188 services. The before and after values must be established by the
189 testimony of a qualified real estate appraiser. The damages, if
190 any, shall be fixed and shall not be deemed to continue,
191 accumulate, or accrue. The court shall as part of its judgment
192 vest a permanent easement in favor of the affiliate or other
193 broadband operator and their respective successors and assigns for
194 the placement or use of a broadband system on or as part of the
195 electric delivery system. The judgment will have the same effect
196 of a conveyance executed in due form of law and shall run with the



197 land; and a certified copy of said judgment may be filed by the
198 affiliate or other broadband operator in the land records of the
199 county in which the subject property is located.

200 (d) Evidence of past, current or future revenues or
201 profits derived or to be derived by an affiliate or other
202 broadband operator from providing broadband services is not
203 admissible for any purpose in any such proceeding.

204 (e) The landowner shall not be entitled to any damages
205 or other relief relating to any broadband system or portion
206 thereof that is located on the landowner's property and is used or
207 could be used by the electric cooperative for its own operations.

208 (f) The landowner shall not be entitled to any relief
209 or damages if an easement has been granted to the affiliate or
210 other broadband operator or if the landowner has, either directly
211 or through his membership in the electric cooperative, authorized
212 the electric cooperative to use or allow others to use its
213 electric delivery system for the provision of broadband services.

214 **SECTION 7.** This act is to be liberally construed, and the
215 enumeration of any object, power, manner, method or thing shall
216 not be deemed to exclude like or similar objects, purposes,
217 powers, manners, methods or things. Nothing in this act shall be
218 interpreted or construed to infringe upon nor otherwise encumber
219 the property or property interests used by any investor-owned
220 electric public utility to provide electric service to its
221 customers.



222 **SECTION 8.** Every electric cooperative shall conduct an
223 annual audit of compliance with this act, which shall be made
224 publicly available. Any electric cooperative electing to operate
225 under the provisions of this act must send notice by mail to its
226 members of its elections for board of directors separately from
227 any bill, and must send notice by mail to its members of (i)
228 application for candidacy to the board of directors, and (ii)
229 annual meetings at least ninety (90) days before an election or
230 annual meeting. Any electric cooperative electing to operate
231 under the provisions of this act must publish, by paid
232 advertisement in a newspaper or newspapers of general circulation
233 in the electric cooperative's certificated area, results of its
234 elections to each member.

235 **SECTION 9.** Section 77-5-205, Mississippi Code of 1972, is
236 amended as follows:

237 77-5-205. Three (3) or more natural persons may, by
238 executing, filing and recording a certificate as hereafter
239 provided in this article, form a corporation not organized for
240 pecuniary profit for the purpose of promoting and encouraging the
241 fullest possible use of electric energy by making electric energy
242 available at the lowest cost consistent with sound economy and
243 prudent management of the business of such corporations. In
244 addition, such corporations may serve the purposes provided under
245 the Mississippi Broadband Enabling Act.



246 **SECTION 10.** Section 77-5-231, Mississippi Code of 1972, is
247 amended as follows:

248 77-5-231. (1) A corporation shall have power to do any and
249 all acts or things necessary or convenient for carrying out the
250 purposes for which it was formed, including, but not limited to:

251 (a) To sue and be sued.

252 (b) To have a seal and alter the same at pleasure.

253 (c) To acquire, hold and dispose of property, real and
254 personal, tangible and intangible, or interests therein and to pay
255 therefor in cash or property or on credit, and to secure and
256 procure payment of all or any part of the purchase price thereof
257 on such terms and conditions as the board shall determine.

258 (d) To render service and to acquire, own, operate,
259 maintain and improve a system or systems within the state and in
260 counties adjacent thereto.

261 (e) To pledge all or any part of its revenues and to
262 mortgage or otherwise incumber all or any part of its property for
263 the purpose of securing the payment of the principal of and
264 interest on any of its bonds or other obligations.

265 (f) To use any right-of-way, easement or other similar
266 property right necessary or convenient in connection with the
267 acquisition, improvement, operation or maintenance of a system,
268 granted by the state or any political subdivision thereof,
269 provided that the governing body of such political subdivision
270 shall consent to such use, and to have and exercise the power of



271 eminent domain in the manner provided by the condemnation laws of
272 this state for acquiring private property for public use, such
273 right to be paramount except as to the property of the state or of
274 any political subdivision thereof.

275 (g) To accept gifts or grants of money, property, real
276 or personal, from any person, municipality or federal agency and
277 to accept voluntary and uncompensated services.

278 (h) To make any and all contracts necessary or
279 convenient for the full exercise of the powers in this article
280 granted, including, but not limited to, contracts with any person,
281 federal agency, state agency or municipality for the purchase,
282 transfer or sale of energy and/or the acquisition of all or any
283 part of any system, and in connection with any such contract to
284 stipulate and agree to such covenants, terms and conditions as the
285 board may deem appropriate, including covenants, terms and
286 conditions with respect to the resale rates, financial and
287 accounting methods, services, operation and maintenance practices
288 and the manner of disposing of the revenues of the system operated
289 and maintained by the corporation.

290 (i) To sell, lease, or otherwise dispose of all or any
291 part of its property, subject however to the provisions of Section
292 77-5-237.

293 (j) To contract debts, borrow money and to issue,
294 assume or indorse the payment of bonds or other evidences of
295 indebtedness.



296 (k) To fix, maintain and collect fees, rents, tolls and
297 other charges for services rendered.

298 (l) To acquire and to sell, lease, distribute and
299 generally to deal in electrical and plumbing appliances,
300 apparatus, machinery and equipment for the purpose of and in
301 connection with the promotion of the sale of electric energy to
302 its customers; to assist its customers to purchase or otherwise
303 obtain such appliances, apparatus, machinery and equipment; to
304 assist its customers to wire their premises and to install therein
305 such appliances, apparatus, machinery and equipment; to acquire
306 and to indorse, sell, pledge, hypothecate and dispose of notes,
307 bonds and other obligations of its customers in carrying out the
308 purposes expressed in this paragraph.

309 (m) To maintain, in any reasonable manner and in its
310 discretion, its easements and rights-of-way and adjacent property
311 within a reasonable or necessary distance of its energy facilities
312 free of vegetation, trees, limbs or other impediments in order to
313 foster the integrity and reliability of the corporation's electric
314 energy system or the safety of the public or its members, agents
315 or employees.

316 (n) To condemn any land, easements, or rights-of-way,
317 either on, under, or above the ground, as the association may deem
318 necessary for any purposes mentioned in this article other than
319 the purposes described in subsection (2) of this section, and such
320 property or interest in such property may be so acquired whether



321 or not the same is owned or held for public use by corporations,
322 associations or persons having the power of eminent domain, or
323 otherwise held or used for public purposes. Such power of
324 condemnation may be exercised in the mode or method of procedure
325 prescribed by Chapter 27, Title 11, Mississippi Code of 1972, or
326 in the mode or method of procedure prescribed by any other
327 applicable statutory provisions now in force or hereafter enacted
328 for the exercise of the power of eminent domain. Where
329 condemnation proceedings become necessary, the judge of the
330 circuit court or the judge of the county court in counties where
331 the county court exists, in which such proceedings are filed,
332 shall, upon application of the authority, and upon the deposit in
333 court, to the use of the person or persons lawfully entitled
334 thereto, of such amount as the judge may deem necessary to assure
335 just compensation, order that the right of possession shall issue
336 immediately or as soon and upon such terms as the judge, in his
337 discretion, may deem just and proper. Upon application of the
338 parties in interest other than the corporation, the judge may
339 order that the money deposited in the court, or any part thereof,
340 be paid forthwith for or on account of the just compensation to be
341 awarded in said proceedings.

342 (o) To operate across state lines.

343 (p) To perform any and all of the foregoing acts and to
344 do any and all of the foregoing things under, through or by means



345 of its own officers, agents and employees, or by contracts with
346 any person, federal agency or municipality.

347 (q) To perform as provided under the Mississippi
348 Broadband Enabling Act.

349 (2) Any generation and transmission electric corporation
350 created under this article may undertake economic development
351 activities, whether directly, indirectly, or in conjunction with
352 other entities, including activities such as providing capital, or
353 investment in or acquisition and development of business or
354 industrial sites and the necessary infrastructure or services
355 needed to attract new or existing businesses or industry, to
356 create or maintain employment opportunities, or otherwise to
357 positively impact its service territory or in some manner promote
358 the sale of electric energy.

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

