

By: Senator(s) Chassaniol, Carter, Butler, England, Fillingane, Ladner, Sparks, Boyd, Williams, Whaley, Younger, Thompson, Hill, Simmons (13th), McLendon, Branning, McMahan, Suber, McCaughn, Seymour, Brumfield, Wiggins, Chism, Robinson, Jordan, Frazier, Rhodes, Harkins, DeLano, Barnett, Barrett, Blackmon

To: Energy

SENATE BILL NO. 2601

1 AN ACT TO DEFINE THE TERMS "GOVERNMENTAL ENTITY", "UTILITY
2 SERVICE" AND "APPLIANCE"; TO PROHIBIT A GOVERNMENTAL ENTITY FROM
3 ENACTING OR ENFORCING ANY RESOLUTION, ORDINANCE, REGULATION, RULE,
4 CODE, OR POLICY TO TAKE ANY ACTION THAT RESTRICTS OR PROHIBITS, OR
5 HAS THE EFFECT OF RESTRICTING OR PROHIBITING, ANY PERSON OR ENTITY
6 FROM USING ANY APPLIANCE BASED ON THE TYPE OF UTILITY SERVICE
7 REQUIRED TO OPERATE THE APPLIANCE; TO BRING FORWARD SECTIONS
8 77-3-3 AND 77-3-201, MISSISSIPPI CODE OF 1972, WHICH RELATE TO THE
9 REGULATION OF PUBLIC UTILITIES, FOR PURPOSES OF POSSIBLE
10 AMENDMENT; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** For purposes of this section, the following terms
13 shall be defined as follows, unless the context clearly indicates
14 otherwise:

15 (a) "Governmental entity" means any agency, department,
16 institution, instrumentality or political subdivision of the State
17 of Mississippi, or any agency, department or institution of a
18 political subdivision.

19 (b) "Utility service" means electrical, natural gas, or
20 liquified petroleum (L.P.) gas service provided to an end user.

21 (c) "Appliance" means a device or apparatus which uses
22 a utility service for its energy operating requirements and has



23 been manufactured and designed to perform a specific task in a
24 domestic or household setting or manufactured and designed to
25 perform similar functions in a commercial or industrial setting.
26 The term "appliance" includes a device used for cooking, space
27 heating, water heating or another end use.

28 **SECTION 2.** A governmental entity shall not enact or enforce
29 any resolution, ordinance, regulation, rule, code or policy to
30 take any action that restricts or prohibits, or has the effect of
31 restricting or prohibiting, any person or entity from using any
32 appliance based on the type of utility service required to operate
33 the appliance.

34 **SECTION 3.** Nothing in this act shall be construed as
35 affecting a governmental entity's authority to do the following:

36 (a) Require that utility services necessary to operate
37 an appliance be obtained from a provider that is authorized to do
38 business in the location;

39 (b) Prohibit the usage of any appliance for an illegal
40 purpose;

41 (c) Exercise existing police powers to review and
42 approve an application before building permits, or to otherwise
43 enforce building, fire, and other public safety codes or
44 subdivision regulations. However, no governmental entity may deny
45 a building permit or subdivision regulation application based
46 solely on the type of appliance and/or utility service proposed
47 for the project; or



48 (d) Take actions to ensure the safe use of appliances
49 in accordance with the manufacturer's recommendations for usage.

50 **SECTION 4.** Section 77-3-3, Mississippi Code of 1972, is
51 brought forward as follows:

52 77-3-3. As used in this chapter:

53 (a) The term "corporation" includes a private or public
54 corporation, a municipality, an association, a joint-stock
55 association or a business trust.

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

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

62 (d) The term "public utility" includes persons and
63 corporations, or their lessees, trustees and receivers now or
64 hereafter owning or operating in this state equipment or
65 facilities for:

66 (i) The generation, manufacture, transmission,
67 distribution, provision, or furnishing of electricity to or for
68 the public, whether an individual person or an entity or a
69 collection of persons or entities, for compensation;

70 (ii) The transmission, sale, sale for resale, or
71 distribution of natural, artificial, or mixed natural and
72 artificial gas to the public for compensation by means of



73 transportation, transmission, or distribution facilities and
74 equipment located within this state; however, the term shall not
75 include the production and gathering of natural gas, the sale of
76 natural gas in or within the vicinity of the field where produced,
77 or the distribution or sale of liquefied petroleum gas or the sale
78 to the ultimate consumer of natural gas for use as a motor vehicle
79 fuel;

80 (iii) The transmission, conveyance or reception of
81 any message over wire, of writing, signs, signals, pictures and
82 sounds of all kinds by or for the public, where such service is
83 offered to the public for compensation, and the furnishing, or the
84 furnishing and maintenance, of equipment or facilities to the
85 public, for compensation, for use as a private communications
86 system or part thereof; however, no person or corporation not
87 otherwise a public utility within the meaning of this chapter
88 shall be deemed such solely because of engaging in this state in
89 the furnishing, for private use as last aforementioned, and
90 moreover, nothing in this chapter shall be construed to apply to
91 television stations, radio stations, community television antenna
92 services, video services, Voice over Internet Protocol services
93 ("VoIP"), any wireless services, including commercial mobile
94 services, Internet Protocol ("IP") - enabled services or broadband
95 services; and

96 (iv) The transmission, distribution, sale or
97 resale of water to the public for compensation, or the collection,



98 transmission, treatment or disposal of sewage, or otherwise
99 operating a sewage disposal service, to or for the public for
100 compensation.

101 The term "public utility" shall not include any person not
102 otherwise a public utility, who provides or furnishes the services
103 or commodity described in this paragraph only to himself, his
104 employees or tenants as an incident of such employee service or
105 tenancy, if such services are not sold or resold to such tenants
106 or employees on a metered or consumption basis other than the
107 submetering authorized under Section 77-3-97.

108 The term "public utility" shall not include any person not
109 otherwise a public utility, who purchases electricity on a metered
110 retail basis from the electric public utility that holds a
111 certificate of public convenience and necessity for the area in
112 which the person is located, and provides or furnishes a portion
113 of that electricity, but not electricity from any other source, to
114 the public for compensation directly and exclusively to charge
115 battery-powered electric vehicles and plug-in hybrid electric
116 vehicles. Any such person described in this paragraph is an
117 end-use customer, whether or not such person receives compensation
118 for battery or vehicle charging.

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



122 (e) The term "rate" means and includes every
123 compensation, charge, fare, toll, customer deposit, rental and
124 classification, or the formula or method by which such may be
125 determined, or any of them, demanded, observed, charged or
126 collected by any public utility for any service, product or
127 commodity described in this section, offered by it to the public,
128 and any rules, regulations, practices or contracts relating to any
129 such compensation, charge, fare, toll, rental or classification;
130 however, the term "rate" shall not include charges for electrical
131 current furnished, delivered or sold by one (1) public utility to
132 another for resale.

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

136 (g) The term "affiliated interest" or "affiliate"
137 includes:

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

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

144 (iii) Any corporation of which fifteen percent
145 (15%) or more of the voting securities is owned or controlled,
146 directly or indirectly, by a public utility;



147 (iv) Any corporation of which twenty-five percent
148 (25%) or more of the voting securities is owned or controlled,
149 directly or indirectly, by any person or corporation that owns or
150 controls, directly or indirectly, twenty-five percent (25%) or
151 more of the voting securities of any public utility or by any
152 person or corporation in any chain of successive ownership of
153 twenty-five percent (25%) of such securities;

154 (v) Any person who is an officer or director of a
155 public utility or of any corporation in any chain of successive
156 ownership of fifteen percent (15%) or more of voting securities of
157 a public utility; or

158 (vi) Any person or corporation that the
159 commission, after notice and hearing, determines actually
160 exercises any substantial influence or control over the policies
161 and actions of a public utility, or over which a public utility
162 exercises such control, or that is under a common control with a
163 public utility, such control being the possession, directly or
164 indirectly, of the power to direct or cause the discretion of the
165 management and policies of another, whether such power is
166 established through ownership of voting securities or by any other
167 direct or indirect means.

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



171 (h) The term "facilities" includes all the plant and
172 equipment of a public utility, used or useful in furnishing public
173 utility service, including all real and personal property without
174 limitation, and any and all means and instrumentalities in any
175 manner owned, operated, leased, licensed, used, controlled,
176 furnished or supplied for, by or in connection with its public
177 utility business.

178 (i) The term "cost of service" includes operating
179 expenses, taxes, depreciation, net revenue and operating revenue
180 requirement at a claimed rate of return from public utility
181 operations.

182 (j) The term "lead-lag study" includes an analysis to
183 determine the amount of capital which investors in a public
184 utility, the rates of which are subject to regulation under the
185 provisions of this chapter, must provide to meet the day-to-day
186 operating costs of the public utility prior to the time such costs
187 are recovered from customers, and the measurement of (i) the lag
188 in collecting from the customer the cost of providing service, and
189 (ii) the lag in paying the cost of providing service by the public
190 utility.

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



196 (i) Is used to provide access to the Internet, or
197 (ii) Provides computer processing, information
198 storage, information content or protocol conversion, including any
199 service applications or information service provided over such
200 high-speed access service.

201 (l) The term "video services" means video programming
202 services without regard to delivery technology, including Internet
203 Protocol technology ("Internet Protocol television or IPTV") and
204 video programming provided as a part of a service that enables
205 users to access content, information, email or other services
206 offered over the public internet. The term "video programming"
207 means any programming as defined in 47 USCS Section 522(20).

208 (m) The term "Voice over Internet Protocol services" or
209 "VoIP services" means any service that: (i) enables real-time,
210 two-way voice communications that originate from or terminate to
211 the user's location in Internet Protocol or any successor
212 protocol; (ii) uses a broadband connection from the user's
213 location; and (iii) permits users generally to receive calls that
214 originate on the Public Switched Telephone Network and to
215 terminate calls to the Public Switched Telephone Network.

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

218 (o) The term "Internet Protocol-enabled services" or
219 "IP-enabled services" means any service, capability,
220 functionality, or application provided using Internet Protocol, or



221 any successor protocol, that enables an end user to send or
222 receive a communication in Internet Protocol format, or any
223 successor format, regardless of whether the communications is
224 voice, data or video. Nothing contained in this paragraph shall
225 apply to retail services that are tariffed by the commission.

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

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

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

238 (s) "Eligible municipality" means any municipality with
239 a population of greater than One Hundred Thousand (100,000)
240 according to the latest decennial census which has been the
241 subject of litigation by the United States Environmental
242 Protection Agency for violations of the Safe Drinking Water Act,
243 42 USC Section 300(f) et seq.



244 (t) "Eligible homeowners association" means any
245 homeowners association created and governed by restrictive
246 covenants, if the subdivision subject to these covenants:

247 (i) Was constructed prior to 1970 outside of
248 municipal boundaries;

249 (ii) Was subsequently annexed by an eligible
250 municipality, irrespective of whether the municipality was an
251 eligible municipality at the time of annexation or subsequently
252 became eligible; and

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

256 **SECTION 5.** Section 77-3-201, Mississippi Code of 1972, is
257 brought forward as follows:

258 77-3-201. As used in this article, the following words and
259 phrases shall include the meanings ascribed by this section unless
260 the context requires a different meaning:

261 (a) "Owner" shall specifically refer to a holder of an
262 interest in real property which is proposed to be served by a
263 public utility as defined in subparagraph (iv) of paragraph (d) of
264 Section 77-3-3. "Owner" shall include both the plural and the
265 singular and any person, firm, corporation, association or
266 combination of such entities.

267 (b) "Public utility" includes any person, firm,
268 corporation or association and any public body, political



269 subdivision, agency or instrumentality thereof owning or owning
270 and operating a public utility service described by subparagraph
271 (iv) of paragraph (d) of Section 77-3-3. However, an incorporated
272 municipality which owns or owns and operates such a described
273 public utility service shall not be subject to the provisions of
274 this article. The term "public utility" also includes the
275 successors and assigns of any such public utility.

276 **SECTION 6.** This act shall take effect and be in force from
277 and after July 1, 2024.

