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Chapter No. 301
19/HR31/R1427PH
EW / FF

HOUSE BILL NO. 366

Originated in House _____ Clerk

HOUSE BILL NO. 366

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

SECTION 2. As used in this act, 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-use 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.

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

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

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

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

(5) (a) An electric cooperative may charge an affiliate or an unaffiliated broadband operator for the construction,

installation, operation, use, and maintenance of those parts of its electric delivery system that are used or may be reserved for use by the affiliate or unaffiliated broadband operator for the provision of broadband services. Any lease of facilities by an electric cooperative to a broadband affiliate that includes the use of the electric cooperative's poles shall specifically include pole attachment fees to be paid by the broadband affiliate to the electric cooperative equal to pole attachment fees charged by the electric cooperative to like unaffiliated, private entities.

(b) An electric cooperative shall not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) To sue and be sued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) To operate across state lines.

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

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

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

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

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

PASSED BY THE HOUSE OF REPRESENTATIVES
January 15, 2019

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
January 23, 2019

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

Jan 30, 2019
9:05