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MISSISSIPPI LEGISLATURE

2020 Regular Session

To: Energy

By: Senator(s) Carter

Senate Bill 3054

(As Sent to Governor)

AN ACT TO AMEND CHAPTER 487, 2020 REGULAR SESSION (SENATE BILL NO. 3046), TO CREATE THE "PUBLIC UTILITIES APPLICATION FUND," TO CHANGE THE APPLICATION FEE DEPOSITS FROM "PUBLIC UTILITIES STAFF REGULATION FUND" TO THE "PUBLIC UTILITIES APPLICATION FUND," AND TO AUTHORIZE A THIRD ROUND OF APPLICATIONS FOR THE MISSISSIPPI ELECTRIC COOPERATIVES BROADBAND COVID-19 GRANT PROGRAM; AND FOR RELATED PURPOSES.

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

SECTION 1. Chapter 487, 2020 Regular Session (Senate Bill No. 3046), is amended as follows:

Section 1. (1) Upon the effective date of this act, the State Fiscal Officer shall transfer to the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund out of the Budget Contingency Fund.....$ 65,000,000.00.

(2) Upon the effective date of this act, the State Fiscal Officer shall transfer to the COVID-19 Broadband Provider Grant Program Fund out of the Budget Contingency Fund..... $ 10,000,000.00.

Section 2. This act shall be known and may be cited as the "Mississippi Electric Cooperatives Broadband COVID-19 Act."

Section 3. (1) The Legislature finds and declares that the State of Emergency and ongoing public health crisis related to COVID-19 has caused significant challenges in the immediate delivery of educational, health care and other services. The Legislature further finds and declares that due to the COVID-19 pandemic there is an immediate increased need for reliable internet service in rural Mississippi, including expanded rural broadband capacity to facilitate and assist with distance learning, telemedicine, and telework* * * , which is required for citizens to continue their education, receive necessary services, and work in a healthy and safe environment.

(2) Therefore, as part of this state's response to the COVID-19 public health emergency, the Legislature determines that it is necessary to create and there is hereby created in the State Treasury a special fund to be designated as the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. The Department of Finance and Administration, in conjunction with the Mississippi Public Utilities Staff, shall establish the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program" ("Cooperative Program") to provide grants to electric cooperatives for the purpose of expanding immediately broadband access in unserved and underserved areas of the State of Mississippi, as determined by the Mississippi Public Utilities Staff which the Legislature hereby finds and determines are necessary expenditures due to the public health emergency with respect to COVID-19.

(3) The Legislature further determines, as part of this state's response to the COVID-19 public health emergency, that it is necessary to create and there is hereby created in the State Treasury a special fund to be designated as the "COVID-19 Broadband Provider Grant Program Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund; and the Department of Finance and Administration, in conjunction with the Mississippi Public Utilities Staff, shall establish the "COVID-19 Broadband Grant Program" ("General Program") to provide grants to broadband providers, as defined in subsection (4) of this section, for the purpose of expanding broadband access in unserved and underserved areas of the State of Mississippi, as determined by the Mississippi Public Utilities Staff, which the Legislature hereby finds and determines are necessary expenditures due to the public health emergency with respect to COVID-19.

(4) As used in this act, the following words and phrases shall have the meanings ascribed in this section unless the context clearly indicates otherwise:

(a) "Applicant" means an electric cooperative or broadband provider that makes an application for a grant under this act.

(b) "Broadband 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* * * .

(c) "Broadband provider" means an entity that (i) is not an electric cooperative or an affiliate of an electric cooperative and (ii) is authorized to provide broadband services in Mississippi* * * .

(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 at a rate not less than one hundred (100) megabits per second in the downstream direction and not less than one hundred (100) megabits per second in the upstream direction, 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.

(e) "Census block" means a geographic area defined as a census block by the United States Department of Commerce, Bureau of the Census, in conducting the 2010 decennial census.

(f) "COVID-19" means the Coronavirus Disease 2019;

(g) "Department" means the Department of Finance and Administration; and

(h) "Electric cooperative" means a corporation formed or operating under Section 77-5-201 et seq.

(i) "Grant Funds" means the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund" and the "COVID-19 Broadband Provider Grant Program Fund."

(j) "Grant Programs" means the "Mississippi Electric Cooperatives Broadband COVID-19 Grant Program" and the "COVID-19 Broadband Provider Grant Program."

(k) "Primary application" means the initial application filed by an applicant under this act for the purpose of obtaining a grant from one (1) of the grant funds.

(l) "Public Utilities Staff" or "staff" means the Mississippi Public Utilities Staff.

(m) "Public Utilities Staff Regulation Fund" means the fund established under Section 77-2-19.

(n) "Secondary application" means an application filed by an applicant under this act after its primary application has been filed and that is submitted for the purpose of obtaining an additional grant from one (1) of the grant funds. Approved grants for secondary applications will be distributed from each grant fund on a pro rata basis, as determined by the department.

(o) "Tertiary application" means an application filed by an electric cooperative after its secondary application has been filed and that is submitted for the purposes of obtaining an additional grant from the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program Fund.

(5) Unexpended amounts remaining in either of the grant funds at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the grant funds shall be deposited to the credit of the grant funds, respectively. Monies in the grant funds shall be used for the purpose of providing payments to eligible applicants as provided in this act. Monies in the grant funds shall be administered and disbursed by the department and Staff in compliance with this act and in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. If on October 1, 2020, there are unobligated monies in one or both of the grant funds, or if at any other time undistributed monies in either grant funds are determined by the department to be ineligible to be spent by the department, those monies shall be transferred into the Unemployment Compensation Fund.

Section 4. (1) From the date of the beginning of the period for applications for grants under this section, the Staff shall consider and review applications from any eligible applicant. Any project applied for by an electric cooperative must be for the purpose of the electric cooperative immediately installing broadband fiber on its electric delivery system and thereby facilitating the provision of broadband services by its broadband affiliate or an unaffiliated broadband provider. Any project applied for by a broadband provider must be for the purpose of the broadband provider's delivery of broadband services. All projects under each of the Grant Programs must be designed to immediately provide increased broadband services to an area or areas that have been determined by the Public Utilities Staff to be unserved or underserved according to the latest publicly available Federal Communications Commission broadband data. Under this act, electric cooperatives may only apply for and receive grants under the Cooperative Program, and broadband providers may only apply for and receive grants under the General Program.

(2) As to each of those specific Mississippi counties for which such information is requested by an electric cooperative or broadband provider, the Public Utilities Staff shall, by no later than July 10, 2020, specifically identify census blocks that are unserved or underserved according to the latest publicly available Federal Communications Commission broadband data. In order to create efficiencies in the administration of the Grant Programs and avoid the imposition of undue and unnecessary burdens on the Staff, a single electric cooperative or broadband provider may not request such information for more than three (3) counties and any requests for such information must be submitted to the Staff by no later than the close of business on July 7, 2020. The Staff shall provide its identification of such census blocks directly to the department and to each electric cooperative and broadband provider requesting the

Staff for such information, and also provide such information to the public through a posting on the Public Utilities Staff's website. Each applicant shall rely on the Public Utilities Staff's identification of unserved and underserved census blocks in making its application(s) for grant funds and spending awarded grant funds.

(3) In an attempt to facilitate broader participation in the Cooperative Program, an electric cooperative's project or projects, for which grant monies are provided under this act, shall be considered pilot or special purpose projects and shall not obligate the electric cooperative receiving the grant monies or such electric cooperative's broadband affiliate to provide broadband access to the entire service area of the electric cooperative.

(4) For each dollar of grant monies requested for a project or projects by an applicant, the applicant must commit and spend a dollar of nongrant monies toward such project or projects. Universal Service Fund, Connect America Fund, or other grants awarded for broadband expansion through a separate state or federal program shall not be used for the required matching funds* * * , but this limitation shall not include or extend to any loans of any kind. The primary application made by an applicant shall be for a grant totaling not more than Six Million Dollars ($6,000,000.00).

(5) An applicant submitting a primary application may also submit a secondary application at the same time or soon thereafter with no maximum to the amount of grant monies that may be requested. The department shall first obligate all primary applications made that meet the eligibility criteria and are approved by the Staff. Then, if grant monies are still available the department shall consider and obligate any secondary applications that meet the eligibility criteria and are approved by the Staff. During the secondary application process, if one (1) of the grant funds has unobligated monies remaining after all qualifying secondary applications are considered, then the State Fiscal Officer shall transfer those unobligated monies into the other grant fund for distribution in the secondary application process of such other grant fund.

(6) From and after the effective date of this act, an electric cooperative may submit a tertiary application for the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program with no maximum amount of grant monies that may be requested. During the tertiary application process, if one (1) of the grant funds has unobligated monies remaining after all qualifying applications have been considered, then the State Fiscal Officer shall transfer those unobligated monies into the other grant fund for distribution in the tertiary application process.

(* * * 7) Any grant monies provided under this act shall be spent no later than December 30, 2020, or by such later date as may be specified in the guidelines, guidance, rules, regulations and/or other criteria of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

Section 5. There is hereby created in the State Treasury a special fund to be designated as the "Public Utilities Application Fund," which shall consist of funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used for administration expenses related to the processing of grants by the Public Utilities Staff. Any application fee collected under the grant programs and deposited to the Public Utilities Staff Regulation Fund before the effective date of this act shall be transferred to the Public Utilities Application Fund.

Section* * * 6. (1) An applicant desiring to participate in one (1) of the grant programs shall make written application to the Staff for a grant.

(2) Any primary application must be submitted on or before the close of business on July 17, 2020. A primary application must include the following: (a) a description of the applicant, (b) a description of the proposed project, (c) a project map depicting the projects unserved or underserved census blocks, as identified by the Public Utilities Staff, (d) an engineering map of the project, (e) an estimate of the total number of households along the route of the project, (f) the total estimated miles of fiber to be installed, (g) the proposed maximum speeds to be delivered both downstream and upstream, (h) the total estimated cost of the project, (i) the grant amount requested by the electric cooperative, subject, however, to the limit set forth in Section 3 of this act, and (j) confirmation by the applicant of its obligation under this act to refund any awarded funds in the event it is found by the Public Utilities Staff to be fully or materially noncompliant with this act.

(3) In order to assist with the payment of reasonable expenses the Public Utilities Staff will incur in the administration of the Grant Programs, any application for a grant under this act, whether primary* * * , secondary or tertiary, must include an application fee that is: (a) made payable to the Public Utilities* * * Application Fund, and (b) equal to one-half of one percent (1/2 of 1%) of the grant amount requested in the application. An application fee paid by an applicant shall be immediately returned if the proposed project is rejected by the Staff. In the event a requested grant is partially awarded, the application fee shall be reduced on a proportionate basis and the difference refunded to the applicant.

(4) The Staff shall expeditiously review the primary application submitted by an applicant and determine if the application and proposed project meet the criteria set forth in this act. On July 28, 2020, by close of business, the Staff shall notify the applicant and the department which primary applications have been approved. The department shall then distribute the approved grants to the approved applicant(s) by close of business July 31, 2020.

(5) In the event two (2) or more applicants submit projects that include one (1) or more common census blocks, the Staff shall determine which proposed project best serves that census block or blocks using the following criteria:

(a) Maximum speeds, including both downstream and upstream,

(b) Total miles of fiber to be deployed based on the entire application, and

(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

The applicant whose project is rejected based on the Staff's determination may, within three (3) days after the Staff's determination, revise its proposed project and refile an amended application with the Staff. The refiled project shall continue as the same designation (primary* * * , secondary or tertiary) as the rejected project.

(6) If after approval by the Staff of all primary applications, the department determines that the requested grants are greater than the monies in a given grant fund, the Staff shall determine a ranking of the primary applications for whichever grant fund is overdrawn. Such ranking shall be determined by the following criteria:

(a) Maximum speeds, including both downstream and upstream,

(b) Total miles of fiber to be deployed, and

(c) Total value of the project, including both grant and match, with preference given to projects of greater value.

After the Staff has determined primary application rankings, it shall transmit said rankings to the department for disbursement. The department shall disburse grant funds in order of the primary application rankings until all the grant funds are disbursed.

(7) Any secondary application by an applicant shall be submitted on or before July 29, 2020, and meet the same application content criteria as a primary application. The department shall notify the Staff if there are any grant funds remaining after the department's distributions of grant funds for primary applications. In the event there are monies remaining in a given grant fund, the Staff shall review the secondary applications for approval. Upon its approval of secondary applications, the Staff shall notify the department of such application approvals by no later than the close of business on August 11, 2020, and the department shall distribute monies on a pro rata basis, as determined by the department, to all qualifying secondary applicants on or before August 14, 2020.

(8) Any tertiary application for the Mississippi Electric Cooperatives Broadband COVID-19 Grant Program as authorized in Section 4 of this act must be submitted on or before the close of business on September 4, 2020, and meet the same application content criteria as a primary application. Upon approval of any tertiary application, the Staff shall notify the department of such application approval by no later than the close of business on September 11, 2020, and the department shall distribute monies on a pro-rata basis to all qualifying applicants on or before September 18, 2020.

Section* * * 7. (1) Each applicant receiving any grant funds under this act shall monthly file project status reports with the Public Utilities Staff. The initial project status report shall be due on or before September 15, 2020, and updates shall be provided on or before the fifteenth day of each month thereafter until such time as the project is completed. Such reports shall include the following information concerning the project: (a) a summary of the work performed, (b) an itemization of the expenditures on the project, (c) the number of miles of broadband fiber installed, (d) the number of residential properties along the route of the installed fiber, (e) the number of residential properties taking broadband service using the installed fiber, and (f) the estimated project completion percentage.

(2) Upon its completion of a project funded under this act, the applicant shall promptly file a notice of project completion with the Public Utilities Staff. The notice shall contain the same information as is required to be provided in a monthly status report.

(3) The Public Utilities Staff may, in its discretion, conduct field audits, onsite audits, or engineering reviews regarding the matters set forth in the report or notice. The Staff may also require the applicant to provide such additional or other information or documentation that the Staff determines is reasonably necessary to ensure compliance with this act and the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(4) Except for the total amount of an applicant's expenditures, any and all financial information contained within an applicant's application, monthly status reports or notice of project completion, including, but not limited to, the cost of fiber or equipment and any other itemized expenditures, is and shall be treated as confidential and proprietary information. Such confidential and proprietary information may be submitted by the applicant to the Staff and/or the department under seal; and such information, if submitted under seal, shall be exempt from the provisions of the Mississippi Public Records Act of 1983 and withheld from public disclosure.

(5) If the Public Utilities Staff, after reviewing monthly status reports or a notice of project completion, determines that an applicant's project is not in compliance with this act, the Staff shall so notify the applicant in writing and provide the applicant with a reasonable opportunity to bring its project into compliance. If the Staff thereafter determines that the applicant has failed to bring its project into compliance, the Staff shall provide written notice of same to the applicant and the department.

(6) If the Staff, after reviewing a notice of project completion, finds that a funded project is in compliance with this act, then the Staff shall provide a written notice of compliance to the applicant and to the department.

(7) An applicant found by the Public Utilities Staff to be fully or materially noncompliant with this act shall return to the state all or a portion of the grant monies received, as determined by the department. Applicants shall confirm their understanding of these terms in their primary and/or secondary applications.

(8) The Mississippi Public Utilities Staff shall ensure grant monies are spent in compliance with this act and in compliance with the guidelines, guidance, rules, regulations and/or other criteria, as may be amended from time to time, of the United States Department of the Treasury regarding the use of monies from the Coronavirus Relief Fund established in Section 5001 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Upon request of the Governor, Lieutenant Governor, the Speaker of the House, the Chairman of the Senate Energy Committee or the Chairman of the House Public Utilities Committee, the Staff shall provide a report of the status of the Grant Programs, provided that said report does not disclose any confidential or proprietary information.

Section*** * *** 8. If any section, paragraph, sentence, clause, phrase or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

Section*** * *** 9. This act shall take effect and be in force from and after its passage.

SECTION 2. This act shall take effect and be in force from and after its passage.

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