

# Mississippi Broadband Enabling Act

A Summary of House Bill No. 366, a/k/a “Mississippi Broadband Enabling Act.”

The Act amends the current law pursuant to which electric cooperatives are created and maintained and provides as follows:

- The Act authorizes electric cooperatives to “establish, acquire, and wholly or partially own one or more broadband affiliates.”
  - A “broadband affiliate” is an entity that is formed to own or operate a broadband system or provide broadband services.
  - A “broadband system” is the infrastructure (fiber, cables, equipment, poles, easements, etc.) over which broadband services can be delivered.
  - “Broadband services” means providing the actual connectivity to high-speed Internet services such as video services, voice over Internet protocol (“voip”) services, wireless service, and Internet.
  - Electric cooperatives have sole discretion in determining which broadband operator(s) may have access to any broadband system that is deployed, including determining that one operator might have sole access to the system.
  - An electric cooperative can charge affiliated and/or unaffiliated operators for the use of the system.
  - A “broadband operator” is a broadband service provider; that is it is an entity that provides broadband services to wholesale or retail consumers.
- Accountability:
  - Before providing or acquiring broadband affiliates or services, an electric cooperative will have to conduct a feasibility study.
  - The Act provides for annual audits of compliance which must be available to the public.
  - The Act also provides for how directors are to be nominated and elected.
- An electric cooperative cannot –
  - Discriminate in the fees it charges or payments it makes to affiliated vs unaffiliated operators;
  - Subsidize broadband services using electric energy sales;
  - Provide or acquire a broadband system to the detriment of the provision, reliability and delivery of electric energy;
  - Require members of the cooperative to subscribe to broadband services; or
  - Disconnect or threaten to disconnect electric service to any customer for failure to pay a bill for broadband services.
- Financing:
  - An electric cooperative can make loans, guarantee loans and make capital investments in affiliates so long as these are at fair market rates.
  - This specifically includes compliance with federal regulations required by federal agencies such as the Department of Agriculture/Rural Utilities Service.
- Easements:
  - The use of an electric cooperative’s infrastructure for the provision or delivery of broadband services (whether by an affiliated or unaffiliated operator) will not be considered an additional burden on any real property on which the system is located;
  - No additional easement will be required to be obtained;
  - However, a landowner who feels that real property value has been negatively impacted can bring an action to show that provision of broadband services over the system has resulted in a reduction in the fair market value of the landowner’s property; and
  - The landowner cannot argue that revenue from the broadband services should be considered in such an action.