

1 HB400
2 201500-4
3 By Representatives Shedd and Ledbetter
4 RFD: Urban and Rural Development
5 First Read: 09-APR-19

1
2 ENROLLED, An Act,

3 Relating to broadband services; to authorize the
4 placement, construction, installation, operation, and use of
5 broadband and other advanced communication capabilities and
6 related facilities within electric easements by electric
7 providers; to authorize electric providers to engage in, and
8 to permit electric providers to authorize others to engage in,
9 operating broadband systems or providing broadband services
10 through advanced communications capabilities within electric
11 easements; to grant the right to electric providers to condemn
12 easements and rights-of-way for advanced communications
13 capabilities; to provide for the rates and the terms and
14 conditions of access for certain pole attachments; to provide
15 for the allocation and accounting of certain costs associated
16 with the provision of nonutility support services; and to
17 permit consents through service agreements, licenses, leases,
18 and membership agreements to place, construct, install,
19 operate, and use advanced communication capabilities within an
20 electric easement.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Chapter 16 is added to Title 37 of the
23 Code of Alabama 1975, to read as follows:

24 §37-16-1.

1 This chapter shall be known and may be cited as the
2 Broadband Using Electric Easements Accessibility Act.

3 §37-16-2.

4 (a) The Legislature finds and declares the
5 following:

6 (1) More advanced communication capabilities,
7 broadband facilities, and services are needed in many rural
8 and underserved areas of the state.

9 (2) Electric providers in those rural and
10 underserved areas are capable of providing infrastructure for
11 such advanced communications capabilities and providing,
12 directly or indirectly, broadband facilities or services.

13 (3) The investment in and development of advanced
14 communications capabilities for providing broadband facilities
15 and services are necessary to better serve the public in those
16 rural and underserved areas.

17 (4) The continued lack of advanced communication
18 capabilities, broadband facilities, and services in rural and
19 underserved areas deprives citizens residing in these areas
20 from access to opportunities such that the state needs to take
21 action to correct and eliminate these discrepancies.

22 (5) It is the public policy of this state to
23 encourage and facilitate the development and investment in
24 advanced communications capabilities and broadband facilities
25 and services in those rural and underserved areas in the

1 state, as this development is vital and necessary to induce,
2 create, and promote industrial and economic development in
3 those rural and underserved areas of the state and to create
4 job opportunities, enhance health care, and enhance
5 educational advancement in those areas.

6 (6) It is the public policy of the state to promote
7 the authorization of advanced communications capabilities to
8 be installed by electric providers within existing easements
9 and other rights-of-way.

10 (7) It is the intent of this chapter to authorize
11 electric providers to engage in arrangements, contracts, and
12 other collaborative activities with public or private persons
13 to facilitate the investment in or development of advanced
14 communications capabilities and broadband services and
15 broadband systems in this state.

16 (8) The limited grant of authorization to electric
17 providers in this chapter is reasonably related to the
18 proposed legislative objective of providing advanced
19 communications capabilities, broadband facilities, and
20 services in rural, underserved, and unserved areas.

21 (b) Except as provided in subsection (a), nothing
22 contained in this chapter is intended to exempt, except, or
23 exclude providers that engage in the provision of broadband
24 facilities or services through advanced communications
25 capabilities from complying with any provisions of federal law

1 which may at any time apply to the electric providers or their
2 broadband facilities or services.

3 §37-16-3.

4 As used in this chapter, the following terms shall
5 have the following meanings:

6 (1) ADVANCED COMMUNICATIONS CAPABILITIES. The
7 communications capabilities defined from time to time as
8 advanced telecommunications capabilities by the Federal
9 Communications Commission (FCC) through regulations, statutes,
10 or other written guidance or orders. The term also includes
11 broadband systems and broadband services.

12 (2) BROADBAND AFFILIATE. A person that is at least
13 10 percent owned by an electric provider, controlled by way of
14 ownership interests therein, directly or indirectly, by the
15 electric provider, or under common control with the electric
16 provider, and which is formed to provide, among other
17 services, utility support services or nonutility support
18 services.

19 (3) BROADBAND OPERATOR. A person that owns or
20 operates a broadband system within an electric easement,
21 including the electric provider if the electric provider is
22 operating the broadband system and including a person that
23 provides broadband services on a wholesale basis to another
24 broadband operator or broadband service provider.

1 (4) BROADBAND SERVICE PROVIDER. A person that
2 provides broadband services on a retail basis to end-use
3 customers.

4 (5) BROADBAND SERVICES. The provision of
5 connectivity to a high-speed, high-capacity transmission
6 medium or to a technology supporting, in the
7 provider-to-consumer (downstream) direction, a speed, in
8 technical terms ("bandwidth"), with minimum download speeds of
9 25 megabits per second and minimum upload speeds of 25
10 megabits per second for either of the following:

11 a. To provide access to the Internet.

12 b. To provide computer processing, information
13 sharing, information storage, information content, or protocol
14 conversion, including any service application or information
15 service over the electric delivery system of an electric
16 provider, and includes any advanced communications
17 capabilities that enable users to originate, send, and receive
18 high-quality voice, data, graphics, video programming, and
19 video communications using any technology including a
20 broadband system.

21 (6) BROADBAND SYSTEM. Any of the following that may
22 be used to facilitate, directly or indirectly, the provision
23 or transmission of broadband services, whether utility support
24 services or nonutility support services, or both: Materials;
25 wires; cables, including fiber optic and copper cables,

1 whether such cables are dark or lit, and whether such cables
2 are in use or dormant; conduits; antennas; equipment;
3 fixtures; switching multiplexers; poles; routers; switches;
4 servers; appurtenances; facilities; and ancillary or auxiliary
5 equipment.

6 (7) COMMISSION. The Alabama Public Service
7 Commission.

8 (8) ELECTRIC DELIVERY SYSTEM. Any product, fixture,
9 equipment, or technology, or part thereof, necessary or useful
10 in supporting the generation, transmission, transformation, or
11 distribution or delivery of electricity, including, but not
12 limited to, generators, electric transmission facilities and
13 lines, distribution facilities and lines, wires, cables, fiber
14 optic cables, poles, transformers, antennas, anchors, guys,
15 grounding systems, communications systems, insulators,
16 conduits, and any other related or ancillary facilities or
17 materials used by an electric provider to generate, transmit,
18 transform, deliver, or distribute electric energy, as such
19 lines and facilities may exist from time to time and whether
20 such lines or facilities are aboveground or underground.

21 (9) ELECTRIC EASEMENT. Any recorded or unrecorded
22 easement or right-of-way in favor of an electric provider that
23 permits the siting and use of an electric delivery system on,
24 over, under, or across the land of a property owner,
25 regardless of whether the easement or right-of-way is for the

1 exclusive benefit of the electric provider or for use in
 2 connection with the provision of other services, and
 3 regardless of whether the electric provider provides the other
 4 services. Electric easements include, but are not limited to,
 5 easements obtained under a law of this state, or by any of the
 6 following methods: Negotiation, condemnation, prescription, or
 7 grant, including, but not limited to, a grant pursuant to a
 8 bylaw provision, service agreement, or membership agreement,
 9 rate schedule, tariff, rule, regulation, practice, act,
 10 requirement, or privilege.

11 (10) ELECTRIC PROVIDER. A utility, as defined under
 12 paragraph a. of subdivision (7) of Section 37-4-1; or a
 13 cooperative nonprofit, membership organization formed,
 14 incorporated, or reincorporated under Chapter 6 of Title 37,
 15 that produces, generates, transmits, delivers, distributes, or
 16 furnishes electricity; or any board, authority, or public
 17 corporation incorporated or organized under Article 9, Article
 18 15, or Article 16 of Chapter 50 of Title 11, for the operation
 19 of an electric distribution system; or a municipal corporation
 20 that operates an electric distribution system.

21 (11) NONUTILITY SUPPORT SERVICES. Broadband services
 22 and related services that support services, uses, or purposes
 23 other than utility support services.

24 (12) PERSON. An individual, trust, estate,
 25 corporation, partnership, limited partnership, limited

1 liability partnership, or limited liability company having a
2 separate legal existence under state law.

3 (13) UTILITY SUPPORT SERVICES. Broadband services
4 and related services, uses, or purposes that support the
5 operational performance and service reliability of the
6 electric delivery system of an electric provider, including,
7 but not limited to, all of the following:

- 8 a. Automated meter reading.
- 9 b. Real-time or other system monitoring.
- 10 c. Remote service control.
- 11 d. Outage detection and restoration.
- 12 e. Predictive maintenance and diagnostics.
- 13 f. Monitoring and enhancement of power quality, load
14 control, voltage control, and flow.
- 15 g. Supervisory control and data acquisition.
- 16 h. Management and flow of electricity.
- 17 i. Internal communications.
- 18 j. Dispatch, start-up, ramping, shutdown,
19 curtailment, scheduling, or control of electric generation,
20 transmission, or distribution of resources or ancillary
21 services relating thereto, including, but not limited to,
22 generator imbalance, spinning and non-spinning reserves, and
23 reserve sharing.
- 24 k. All other uses supporting the reliability,
25 resilience, and security of the electric delivery system.

1 §37-16-4.

2 (a) To the extent not otherwise authorized by law,
3 and in addition to all other purposes, powers, and authority
4 currently granted to electric providers under the laws of this
5 state, an electric provider may do all of the following:

6 (1) Own, operate, maintain, construct, install, and
7 replace a broadband system on, over, under, or across the
8 electric provider's electric easements, whether used for or
9 supporting utility support services or used for or supporting
10 nonutility support services, whether on a wholesale or retail
11 basis.

12 (2) Allow a broadband affiliate or an unaffiliated
13 person to own, lease, manage, construct, superintend, install,
14 operate, maintain, and replace a broadband system on, over,
15 under, or across the electric provider's electric easements,
16 on such terms and conditions as specified by the electric
17 provider, whether used for or supporting utility support
18 services or used for or supporting wholesale or retail
19 nonutility support services, including the power and authority
20 to apportion the electric easement, to grant licenses, and to
21 grant other usage or operational rights to other broadband
22 operators for the broadband system located within the electric
23 easements.

1 (3) Provide broadband services, whether used for or
2 supporting utility support services or for wholesale or retail
3 nonutility support services.

4 (4) Allow a broadband affiliate or an unaffiliated
5 person to provide broadband services over or through a
6 broadband system within the electric easements of an electric
7 provider, on such terms and conditions as specified by the
8 electric provider, whether used for or supporting utility
9 support services or used for or supporting wholesale or retail
10 nonutility support services.

11 (b) In furtherance of its authority under subsection
12 (a), an electric provider shall have the sole authority to
13 determine which broadband affiliate or unaffiliated person,
14 including a broadband operator or broadband service provider,
15 may have access to the broadband system within its electric
16 easements and on its electric delivery system and to determine
17 the terms and conditions on which the broadband affiliate or
18 unaffiliated person may access the broadband system,
19 including, without limitation, whether the access will be on
20 an exclusive or non-exclusive basis.

21 (c) An electric provider engaged in providing retail
22 nonutility support services shall apply the same rate
23 methodology to determine pole attachment rates, and shall
24 require the same terms and conditions of access, for pole
25 attachments to its electric delivery system for its broadband

1 services, with such methodology and terms of access to be
2 determined at the time of the applicable pole attachment
3 request, as the provider applies for pole attachments to its
4 electric delivery system by persons not affiliated with the
5 electric provider. Nothing in this subsection shall apply to
6 an electric provider that is a Tennessee Valley Authority
7 distributor or to an electric provider that is a utility as
8 defined under paragraph a. of subdivision (7) of Section
9 37-4-1.

10 (d) This chapter does not require or obligate an
11 electric provider to install or implement a broadband system
12 or advanced communications capabilities, to provide broadband
13 services, or to allow others to install a broadband system or
14 facilities or use the electric provider's electric easements
15 and electric delivery system to provide broadband services.

16 (e) An electric provider may not require any person
17 to purchase broadband services from the electric provider, a
18 broadband affiliate, or unaffiliated broadband operator or
19 broadband service provider as a condition of receiving or
20 continuing to receive electric energy from the electric
21 provider.

22 (f) An electric provider shall not disconnect any
23 customer from receiving electric services pursuant to its
24 electric delivery system due to the customer's failure to pay

1 for broadband services provided to the customer by the
2 electric provider or its broadband affiliate.

3 (g) By June 30 of each year, an electric provider
4 engaged in providing retail nonutility support services
5 directly or through a broadband affiliate shall provide a
6 report to the Legislature detailing its pole attachment rates.
7 This subsection does not apply to an electric provider that is
8 a Tennessee Valley Authority distributor or to an electric
9 provider that is a utility as defined under paragraph a. of
10 subdivision (7) of Section 37-4-1.

11 §37-16-5.

12 In no event does this chapter authorize any electric
13 provider to provide retail electric service outside of its
14 electric service territory as determined under the applicable
15 provisions of Chapter 14 of this title. Nothing in this
16 chapter is intended to amend, repeal, enlarge, or otherwise
17 affect Chapter 14 of this title.

18 §37-16-6.

19 An electric provider may charge a broadband
20 affiliate or an unaffiliated person, including a broadband
21 operator or broadband service provider, for the costs of the
22 construction, installation, replacement, operation, use, and
23 maintenance of the broadband system or of those parts of its
24 electric delivery system that are used or may be reserved for
25 use by the broadband affiliate or unaffiliated broadband

1 operator or broadband service provider for the provision of
 2 broadband services. No electric provider shall be required to
 3 construct, install, replace, operate, or maintain a broadband
 4 system or to provide broadband services. An electric provider,
 5 broadband affiliate, or unaffiliated broadband operator or
 6 broadband services provider may charge for broadband services
 7 or any other uses of the broadband system, whether wholesale
 8 or retail, at rates determined by the provider thereof.

9 §37-16-7.

10 (a) If the owner of an interest in real property
 11 subject to an electric easement contends that the owner's
 12 property has been taken, injured, or destroyed by the
 13 construction, installation, use, or enlargement of broadband
 14 systems within the electric easement on the owner's property
 15 and the electric easement does not expressly provide for such,
 16 the owner may file a civil action in the circuit court for the
 17 county in which the property is located to recover damages as
 18 specified by this section. All such actions must be brought
 19 within three years after the later of: (1) The effective date
 20 of the act adding this section; or (2) the date broadband
 21 systems are first constructed or installed within the electric
 22 easement on the owner's real property. Nothing in this chapter
 23 shall revive any right or remedy which may have become barred
 24 by lapse of time, or by any law of this state, prior to the
 25 effective date of the act adding this section.

1 (b) (1) In any action under subsection (a), the
2 measure of damages shall be an amount equal to the difference,
3 if any, between the following:

4 a. The fair market value of the owner's real
5 property immediately before the construction or installation
6 of broadband systems within the electric easement on the
7 owner's real property.

8 b. The fair market value of the owner's real
9 property immediately after the construction or installation of
10 broadband systems within the electric easement on the owner's
11 real property.

12 (2) The damages, if any, shall be fixed and shall
13 not be deemed to continue, accumulate, or accrue. The judgment
14 in any such action for the plaintiff shall include the
15 plaintiff's costs and litigation expenses. Costs and
16 litigation expenses authorized by this section may be claimed,
17 taxed, and awarded under the same procedures that apply to
18 costs in other civil actions. Payment of the judgment in any
19 such action shall vest in the electric provider all property
20 rights necessary to construct, use, install, operate, replace,
21 and maintain, from time to time, the broadband systems within
22 the electric easement on the owner's real property and the
23 electric easement shall be thereafter permanently expanded to
24 include the right to construct, use, install, operate,
25 replace, and maintain the broadband system and broadband

1 services. The judgment shall have the same effect as a
2 conveyance executed by the owner in due form under applicable
3 law and shall run with the land. A certified copy of the
4 judgment may be filed by the electric provider, a broadband
5 affiliate, or other broadband operator in the land records of
6 the county in which the subject property is located, but is
7 not required to make such broadening of the electric easement
8 effective. The expansion for the broadband system shall
9 include the broadband system within the maintenance, egress,
10 and ingress provisions of the electric easement.

11 (c) The civil action and measure of damages
12 authorized by this section shall be the exclusive remedy for
13 any and all claims that the owner's property has been taken,
14 or the scope of the electric easement exceeded, by the
15 construction, installation, use, or enlargement of broadband
16 systems within the electric easement on the owner's property,
17 and the owner may not assert any other theory, claim, or cause
18 of action, either at law or in equity, nor recover any other
19 damages, including, without limitation, consequential,
20 compensatory, and punitive damages, or equitable relief.

21 (d) An owner bringing an action under this section
22 may not bring an action on behalf of a class. The limitation
23 in this subsection is a substantive limitation and allowing an
24 owner to bring a class action or other representative action

1 for a violation of this chapter would abridge, enlarge, or
2 modify the substantive rights created by this section.

3 (e) An electric provider may acquire by condemnation
4 ways, rights-of-way, and easements, without limitation as to
5 width, on, over, under, or across the lands or easements of
6 others, to erect, construct, replace, use, install, operate,
7 and maintain advanced communications capabilities. Such
8 condemnation is to be conducted in accordance with the
9 procedures of Chapter 1A of Title 18, except as otherwise
10 provided in this chapter.

11 (f) An electric provider, broadband affiliate, or
12 unaffiliated broadband operator or broadband service provider
13 may receive such rights from an owner of real property by
14 service agreement or service regulation, membership agreement,
15 license agreement, or other agreement to serve the property
16 with advanced communications capabilities without granting an
17 easement or right-of-way. The grant or agreement may permit
18 the construction, installation, replacement, operation, use,
19 and maintenance of the advanced communications capabilities on
20 the property without the requirement of further consent of any
21 other tenant, concessionaire, or occupant of that property.

22 (g) With respect to the installation of broadband
23 systems within an electric easement in effect prior to the
24 effective date of the act adding this section, the electric
25 provider shall provide the same notice as is required by the

1 express terms of the electric easement, if any, or as required
2 by other applicable law for the construction or installation
3 of the electric delivery system within the electric easement.
4 With respect to the installation of broadband systems within
5 an electric easement that is acquired other than by
6 condemnation after the effective date of the act adding this
7 section, the electric provider shall provide such notice as is
8 required by the express terms of the document creating the
9 electric easement, if any; or if there is no written document
10 creating the electric easement or no express terms in the
11 document, then the electric provider shall provide notice to
12 the owner of the real property subject to the electric
13 easement by informing such owner of the installation of the
14 broadband system within the electric easement prior to
15 installation. Notice shall be sufficient if mailed to the name
16 and address of the owner or owners listed in the real property
17 ad valorem tax records for the county where the real property
18 is located. Nothing in this section shall require the notice
19 from the electric provider when the electric easement is
20 acquired by condemnation or pursuant to an expansion of the
21 electric easement by civil action commenced by the owner.

22 (h) Nothing in this chapter shall be deemed to
23 relieve the broadband operator, broadband service provider, or
24 electric provider from liability for bodily injury or physical

1 damage to real or personal property located adjacent to the
2 electric easement.

3 §37-16-8.

4 (a) Nothing in this chapter shall interfere with the
5 commission's authority to regulate public utilities under this
6 title. Nothing in this chapter shall provide a basis for
7 creating or granting jurisdiction to the commission over any
8 electric providers or any broadband affiliate that are
9 otherwise exempt or are otherwise not subject to the
10 jurisdiction of the commission.

11 (b) Nothing in this chapter shall affect, abrogate,
12 or eliminate in any way any obligation of an electric provider
13 or any broadband affiliate or broadband operator to comply
14 with any applicable safety and permitting requirements of any
15 railroad company or any state governmental body or agency with
16 respect to property that is held or controlled by such
17 railroad company or state governmental body or agency, as the
18 case may be, and in, on, over, or across which an easement is
19 located.

20 (c) Any broadband system that encumbers the
21 right-of-way of the Department of Transportation shall require
22 a permit from the department regardless of whether the
23 broadband system is within a currently permitted electric
24 easement or an electric delivery system. Nothing in this
25 chapter shall provide an exemption from an existing applicable

1 regulation regarding access to county rights-of-way or be
2 construed to abrogate, limit, expand, or otherwise affect the
3 authority of a municipality to regulate the use of municipal
4 streets and rights-of-way.

5 (d) Except as provided in this section, nothing in
6 this chapter is intended to expand or contract an electric
7 provider's rights and obligations with regard to applicable
8 laws in connection with pole attachments to its electric
9 delivery system, or the terms of any pole attachment agreement
10 in effect with its electric delivery system.

11 §37-16-9.

12 (a) An electric provider providing broadband
13 services shall fully allocate and properly account for all
14 marginal costs, including the internal imputation of such
15 costs when the electric provider does not provide broadband
16 services through an affiliate, related to the provision of
17 nonutility support services, including any transactions
18 provided for in subsection (b), and shall not use its electric
19 services sales revenues for the subsidization of such
20 nonutility support services. No transaction treated in
21 accordance with subsection (b) shall be considered a
22 cross-subsidy. Nothing in this subsection shall apply to an
23 electric provider that is a Tennessee Valley distributor or an
24 electric provider that is a utility as defined under paragraph
25 a. of subdivision (7) of Section 37-4-1.

1 (b) Nothing in this section shall prevent an
2 electric provider from making investments in broadband
3 affiliates otherwise permitted by applicable law, making loans
4 to broadband affiliates otherwise permitted by applicable law
5 which have a repayment obligation from the affiliate, entering
6 into capital or operating leases with the broadband affiliate,
7 or entering into guarantees or other security arrangements for
8 the benefit of a broadband affiliate, all on such terms and
9 subject to such conditions as the board approves in the case
10 of member cooperatives which are electric providers or as
11 determined to be prudent or appropriate under applicable law
12 in the case of other electric providers. An electric provider
13 that is not a Tennessee Valley distributor or a utility as
14 defined under paragraph a. of subdivision (7) of Section
15 37-4-1 shall separately allocate and account for all
16 transactions described in this subsection as set forth in
17 subsection (a).

18 §37-16-10.

19 In no event shall funds be appropriated from the
20 Education Trust Fund under this act.

21 Section 2. If any part or provision of this act or
22 its application to any person or circumstances is held
23 invalid, the invalidity does not affect other parts,
24 provisions, or applications of this act which can be given

1 effect without the invalid provision or application, and to
2 this end, the parts and provisions of this act are severable.

3 Section 3. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 02-MAY-19, as amended.

Jeff Woodard
Clerk

Senate	22-MAY-19	Amended and Passed
House	22-MAY-19	Concurred in Senate Amendment