

1 SB149

2 189432-3

3 By Senators Scofield, Dial, Livingston, Singleton, Beasley,
4 Waggoner, Reed, Glover, Marsh, Albritton, Melson, Ward,
5 Whatley, Bussman, Holtzclaw, Williams, Holley, Allen, Sanford,
6 Stutts, McClendon, Orr, Smitherman, Coleman-Madison and
7 Hightower

8 RFD: Fiscal Responsibility and Economic Development

9 First Read: 11-JAN-18

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8 SYNOPSIS: This bill would encourage accelerated
9 private investment in broadband infrastructure
10 through telecommunications companies, cable
11 companies, and electric cooperatives in rural areas
12 by creating the Alabama Rural Broadband Act to
13 provide a nonrefundable, transferable income tax
14 credit equal to 10 percent of the investment in new
15 qualified broadband network facilities in rural
16 areas, subject to a cap.

17 This bill would authorize a 10-year
18 exemption of the state portion of property taxes
19 for new qualified broadband network facilities in
20 rural areas and an exemption from sales and use tax
21 for equipment and materials incorporated into or
22 used to operate any qualified broadband network
23 facility, and a similar exemption of the county or
24 municipal portion of property taxes and local sales
25 and use taxes if not disapproved by local governing
26 bodies.

This bill would also provide for the termination of the tax credits allowed by this bill following the close of the tax year in 2023, with certain conditions.

A BILL

TO BE ENTITLED

AN ACT

To provide for new, qualified broadband network facilities and a nonrefundable, transferable credit against income tax liability imposed by state law; to authorize and provide an exemption from ad valorem taxation and from sales and use taxes levied, assessed, or payable under state law; to limit the term of the ad valorem tax exemptions and to cap the income tax credits; to provide for the carry-forward of certain earned but unused credits; to provide procedures for claiming the exemptions or credits; and to provide for the termination of tax credits allowed under the provisions of this bill after the 2023 tax year under certain conditions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Alabama Rural Broadband Act.

Section 2. The Legislature finds the availability of high-speed broadband services in rural Alabama is important for economic development, education, health care, and emergency services in Alabama, and that incentives set forth

in this act will further those objectives by encouraging new investment in broadband infrastructure.

Section 3. (a) For the purposes of this chapter, the following words have the following meanings:

(1) QUALIFIED BROADBAND NETWORK FACILITIES.

Electronics, equipment, transmission facilities, fiber optic and copper cables, fixed wireless facilities, mobile wireless facilities, and any other real or personal property forming part of a system used directly or indirectly to transmit broadband signals capable of speeds of at least 10 megabits per second of download speed and one megabit per second of upload speed to end user locations in rural areas, purchased, constructed, or installed for use in Alabama after December 31, 2017.

(2) RURAL AREAS. An area not in a city or town that has a population of more than 25,000 inhabitants, according to the most recent decennial Census of the United States.

(b) Notwithstanding any other provision of law, and subject to the limitations of this act, for all tax years beginning after December 31, 2017, and ending December 31, 2023, any entity operating qualified broadband network facilities for direct provision by the entity of broadband services to Alabama consumers shall be allowed the following tax credits or exemptions:

(1) A nonrefundable, transferable credit against state income tax liability imposed under Title 40 or any other applicable provision of Code of Alabama 1975, equal to 10

1 percent of the new investment by the entity in qualified
2 broadband network facilities. For purposes of this
3 subdivision, an entity's new investment shall include, but not
4 be limited to:

5 a. All funds expended for the purchase,
6 construction, or installation of qualified broadband network
7 facilities through borrowings, gifts, contributions, capital
8 liquidity, investments obtained from third party investors or
9 otherwise; and

10 b. The present value of the minimum lease payments
11 under all real or personal property leases.

12 (2) An exemption from ad valorem taxes imposed or
13 authorized under Title 40 and any other applicable provision
14 of Code of Alabama 1975, for any qualified broadband network
15 facilities for a period of 10 years from the date the
16 facilities are placed into service; provided, there shall be
17 no exemption from the county or municipal portion of ad
18 valorem taxation except as provided in subdivision (4).

19 (3) An exemption for any qualified broadband network
20 facilities from all sales and use tax levied, assessed, or
21 payable under Title 40 and any other applicable provision of
22 the Code of Alabama 1975; provided there shall be no exemption
23 of local sales and use taxes except as provided in subdivision
24 (4).

25 (4) A request for an exemption from the county or
26 municipal portion of ad valorem taxes and any county or
27 municipal sales and use taxes shall be submitted to the local

1 governing body and shall be effective unless disapproved by
2 resolution of the respective local governing body within 60
3 days of the date a written request for an exemption is
4 received by the local governing body.

5 (5) The tax credits and exemptions set forth in
6 subdivisions (1), (2), (3) and (4) shall only be applied for
7 by the entity operating the qualified broadband network
8 facility, its parent company, or its majority-owned
9 subsidiary, hereinafter referred to as the "operator".
10 Contractors, vendors, and similar service providers who help
11 build, develop, and install the qualified broadband network
12 facility shall not have the right to apply for the tax credits
13 or exemptions; provided, however, that an operator may obtain
14 a refund of any sales or use taxes remitted, paid, or
15 otherwise reimbursed by the operator to a service provider for
16 qualified broadband network facilities and ultimately remitted
17 by the service provider to state and local government, in the
18 same manner and to the same extent as if the taxes has been
19 paid directly by the operator.

20 (c) (1) Prior to claiming a credit or exemption under
21 this section, an operator shall submit to the Alabama
22 Department of Economic and Community Affairs information
23 adequate to prove the entity is entitled to a credit or
24 exemption provided by this section for prior or future
25 periods.

26 (2) An operator seeking recognition of a credit or
27 exemption provided by this section, following its investment

in qualified broadband network facilities, shall submit the required information to the Alabama Department of Economic and Community Affairs within 12 months of completion of the project or phase of the project covered by the submission.

(3) Following any necessary examination, the Alabama Department of Economic and Community Affairs may issue a certification and deliver that certification to the Department of Revenue and any local governing body that has granted an exemption pursuant to subdivision (4) of subsection (b) along with sending a copy of the certification to the operator seeking the exemption or credit.

(4) Upon receiving this certification from the Alabama Department of Economic and Community Affairs, the Department of Revenue and other state and local taxing authorities shall allow and recognize the tax credit and any exemptions provided in this section.

(5) Any local governing body that has authorized an exemption pursuant to subdivision (4) of subsection (b) shall allow and recognize any authorized exemptions upon receipt of this certification.

(d) Property exempt from the ad valorem tax under this section shall be listed separately on any property tax return filed under Chapter 21 of this title, and any other applicable provision of this title.

(e) Equipment vendors and other government entities shall rely on a copy of the certifications provided by the Alabama Department of Economic and Community Affairs for

1 purposes of recognizing any tax credit or exemption provided
2 in this section, and operators obtaining a certification from
3 the Alabama Department of Economic and Community Affairs may
4 obtain a refund of any sales and use or ad valorem taxes paid
5 for qualified broadband network facilities covered by the
6 certification by filing a direct petition for refund that
7 shall otherwise be subject to the procedures and limitations,
8 as applicable, in Section 40-2A-7.

9 (f) The Alabama Department of Economic and Community
10 Affairs and the Department of Revenue shall develop forms and
11 rules consistent with this section, which may not delay the
12 effectiveness of the credits or exemptions authorized by this
13 section.

14 (g) (1) The nonrefundable, transferable income tax
15 credit provided by this section, together with any credits
16 carried forward in any one taxable year, may not exceed the
17 lesser of the amount of income tax due under the Code of
18 Alabama 1975, after allowance for all other credits permitted
19 by Article 19 of this chapter, or one of the following: (1)
20 seven hundred fifty thousand dollars (\$750,000) per taxpayer
21 if the qualified broadband network facility is capable of
22 transmitting broadband signals at speeds of at least 10
23 megabits per second of download speed and one megabit per
24 second of upload speed; (2) one million four hundred thousand
25 dollars (\$1,400,000) per taxpayer if the qualified broadband
26 network facility is capable of transmitting broadband signals

1 at speeds of at least 25 megabits per second of download speed
2 and three megabits per second of upload speed.

3 (2) The total income tax credits granted in any tax
4 year may not exceed twenty million dollars (\$20,000,000). Of
5 this amount, eighteen million dollars (\$18,000,000) shall be
6 designated for projects in rural areas and two million dollars
7 (\$2,000,000) shall be designated for projects in areas which
8 do not have broadband speeds of at least 10 megabits per
9 second of download speed and one megabit per second of upload
10 speed.

11 (h) If the nonrefundable, transferable income tax
12 credit provided by this section exceeds the limitation under
13 subsection (g), the excess amount may be carried forward for a
14 period that does not exceed the next 19 taxable years.

15 (i) (1) Any income tax credit granted pursuant to
16 this section to an operator that is a partnership, limited
17 liability company or subchapter S corporation shall be passed
18 through to the partners, members, shareholders or owners,
19 including any not-for-profit private entity that is a partner,
20 member, or owner, respectively, on a pro rata basis or
21 pursuant to an executed agreement among the partners, members,
22 shareholders or owners documenting an alternate distribution
23 method, without regard to their sharing of other tax or
24 economic attributes of the entity.

25 (2) The tax credit certificate shall contain a
26 section to be completed by the operator that provides the
27 percentage or amount of credit that will be allocated to each

1 partner, member, shareholder or owner and the completed tax
2 credit certificate may be provided to the Department of
3 Revenue to transfer all or any portion of the tax credits
4 passed through to the partner, member, shareholder or owner in
5 accordance with this subsection.

6 (j) (1) Except as provided in subdivision (2), all or
7 any portion of the income tax credits under this section shall
8 be transferable and assignable, subject to any transfer notice
9 and verification requirements to be determined by the
10 Department of Revenue, regardless of whether the transferee is
11 a provider of broadband services, without the requirement of
12 transferring any ownership interest in the qualified broadband
13 network facilities or any interest in the operator which
14 originally qualified for the credits.

15 (2) Once a credit is transferred, only the
16 transferee may utilize the credit and the credit cannot be
17 transferred again.

18 (3) A transferee of the tax credit may use the
19 amount of tax credits transferred to offset any state tax due
20 under this chapter.

21 (k) (1) The Department of Revenue shall adopt a
22 transfer statement form to be filed by the operator with the
23 Department of Revenue prior to the proposed transfer of any
24 credit issued under this chapter.

25 (2) The transfer statement form shall include the
26 name and federal taxpayer identification number of the
27 operator and each transferee listed therein, along with the

1 amount of the tax credit to be transferred to each transferee
2 listed on the form.

3 (3) The transfer statement form shall also contain
4 any other information as the Department of Revenue may from
5 time to time reasonably require.

6 (1) For each transfer, the operator shall file with
7 the Department of Revenue all of the following:

8 (1) A completed transfer statement form.
9 (2) A copy of the certification issued by the
10 Alabama Department of Economic and Community Affairs
11 documenting the amount of tax credits which the operator
12 intends to transfer.

13 (3) A copy of the proposed written transfer
14 agreement.

15 (4) A transfer fee payable to the Department of
16 Revenue in the amount of one thousand dollars (\$1,000) per
17 transferee listed on the transfer statement form.

18 (m) (1) The operator shall file with the Department
19 of Revenue a fully executed copy of the written transfer
20 agreement it holds with each transferee within 30 days after
21 the completed transfer.

22 (2) Filing of the fully executed copy of the written
23 transfer agreement with the Department of Revenue shall
24 perfect the transfer with respect to the transferee.

25 (n) (1) The Department of Revenue shall issue a tax
26 credit certificate to each transferee listed in the agreement
27 in the amount of the tax credit so transferred within 30 days

after receipt by the Department of Revenue of the fully executed written transfer agreement.

(2) The tax credit certificate shall be used by the transferee in claiming the income tax credit pursuant to this section.

(o) The Department of Revenue may adopt additional rules as are necessary to permit verification of the ownership of the tax credits but may not adopt any rules which unduly restrict or hinder the transfer of the tax credits. Nothing in this article shall be construed to limit the powers otherwise existing for the Department of Revenue to audit and assess an incentivized company.

(p) There is created the Alabama Rural Broadband Oversight Committee. The oversight committee shall consist of the Chair of the House Ways and Means Education Committee or his or her designee, the Chair of the Senate Finance and Taxation Education Committee or his or her designee, two members appointed by the Speaker of the House of Representatives, two members appointed by the President Pro Tempore of the Senate, and the Director of the Alabama Department of Economic and Community Affairs or his or her designee. The oversight committee shall be charged with providing general oversight of the implementation of the act and recommending further statutory changes to promote rural broadband development.

(q) The Alabama Department of Economic and Community Affairs shall periodically verify the actual qualifying

1 broadband services and new broadband network facilities during
2 the relevant year. If the Alabama Department of Economic and
3 Community Affairs is not able to provide the verification
4 utilizing all available resources, it may request any
5 additional information from the incentivized company as may be
6 necessary. The Department of Revenue may periodically audit
7 any incentivized company to monitor compliance by the
8 incentivized company with this article. Nothing in this
9 article shall be construed to limit the powers otherwise
10 existing for the Department of Revenue to audit and assess an
11 incentivized company.

12 (r) (1) An incentivized company shall be liable for
13 any unearned portion of the investment credit it claims or
14 transfers pursuant to this article. This investment credit
15 will be considered unearned when the incentivized company
16 fails to make the full capital investment upon which the
17 credit was based and claimed or upon which the credit was
18 valued and then transferred. The incentivized company shall
19 be liable for only that portion of the investment credit that
20 was unearned. Any credit claimed by an owner of an
21 incentivized company is deemed to have been claimed by the
22 incentivized company for purposes of this subsection.

23 (2) The Director of the Alabama Department of
24 Economic and Community Affairs may report to the Department of
25 Revenue any failure of an incentivized company to meet the
26 investment requirements specified in the project agreement.
27 The report will be made by March 31 of the year following the

calendar year in which the failure occurs and shall contain sufficient information for the Department of Revenue to calculate the unearned portion of the investment credit. The underpayment of the applicable tax will be deemed to have occurred upon the filing of the report. The report shall be treated as the filing of a return by the incentivized company for purposes of any applicable period of limitation.

(3) The Department of Revenue may assess an incentivized company for any unearned portion of the credits granted under this act, with allowed interest and penalties, pursuant to the terms of Chapter 2A or 29 of Title 40, Code of Alabama 1975. The liability shall be considered an underpayment of the tax against which the respective credit was applied or refunded.

(4) If more than one company is considered the incentivized company under the terms of the project agreement, each such company will be jointly and severally liable for any liability associated with the unearned credit.

(s) The Director of the Alabama Department of Economic and Community Affairs shall provide an annual report to the Chair or the House Ways and Means Education Committee and the Chair of the Senate Finance and Taxation Education Committee regarding the effectiveness of the program under the act.

Section 4. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of

1 this chapter which can be given effect without the invalid
2 provision or application, and to this end the provisions of
3 this chapter are severable.

4 Section 5. This act shall become effective
5 immediately following its passage and approval by the
6 Governor, or its otherwise becoming a law.