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3 SCOFIELD FLOOR SUBSTITUTE FOR SB149  
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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 facilities, and a similar exemption of the county  
24 or municipal portion of property taxes and local  
25 sales and use taxes if not disapproved by local  
26 governing bodies.

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

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6                   A BILL  
7                   TO BE ENTITLED  
8                   AN ACT

9  
10                  To provide for new, qualified broadband network  
11                  facilities and a nonrefundable, transferable credit against  
12                  income tax liability imposed by state law; to authorize and  
13                  provide an exemption from ad valorem taxation and from sales  
14                  and use tax levied, assessed, or payable under state law; to  
15                  limit the term of the ad valorem tax exemptions and to cap the  
16                  income tax credits; to provide for the carry forward of  
17                  certain earned but unused credits; to provide methods for  
18                  claiming the exemptions or credits; and to provide for the  
19                  repeal of tax credits allowed under this act after the 2023  
20                  tax year under certain conditions.

21                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

3               Section 3. For the purposes of this section, the  
4       following words have the following meanings:

5               (1) DEPARTMENT. The Alabama Department of Economic  
6       and Community Affairs.

7               (2) EXCLUDED INVESTMENT. The amount of any new  
8       investment in qualified broadband facilities which are both:

9               a. funded through Phase I and Phase II of the  
10       Connect America Fund administered by the Federal  
11       Communications Commission; and

12              b. not capable of transmitting broadband signals at  
13       speeds of at least 25 megabits per second of download speed  
14       and three megabits per second of upload speed.

15              (3) QUALIFIED BROADBAND NETWORK FACILITIES.  
16       Electronics, equipment, transmission facilities, fiber optic  
17       and copper cables, fixed wireless facilities, mobile wireless  
18       facilities, and any other real or personal property forming  
19       part of a system used to transmit broadband signals capable of  
20       speeds of at least 10 megabits per second of download speed  
21       and one megabit per second of upload speed to end user  
22       locations in rural areas, purchased, constructed, or installed  
23       for use in Alabama after December 31, 2017.

24              (4) RURAL AREAS. Any area of the state other than a  
25       city or town that has a population of more than 25,000  
26       inhabitants, according to the most recent decennial Census of  
27       the United States.

1 (5) TAX YEAR. The calender year.

2 Section 4. (a) Notwithstanding any other provision  
3 of law, and subject to the limitations of this act, for all  
4 tax years beginning after December 31, 2017, any entity  
5 operating qualified broadband network facilities for the  
6 provision by the entity or its affiliates of broadband  
7 services to Alabama consumers shall be allowed the following  
8 tax credits or exemptions:

9 (1) A nonrefundable, transferable credit against  
10 state income tax liability imposed under Title 40 or any other  
11 applicable provision of Code of Alabama, 1975, equal to 10  
12 percent of the new investment by the entity in qualified  
13 broadband network facilities. For purposes of this section, an  
14 entity's new investment shall not include any excluded  
15 investment but shall include, but not be limited to,

16 a. All funds expended for the purchase,  
17 construction, or installation of qualified broadband network  
18 facilities through borrowings, gifts, contributions, capital  
19 liquidity, investments obtained from third party investors or  
20 otherwise; and

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

23 (2) An exemption from ad valorem taxation imposed or  
24 authorized under Title 40 and any other applicable provision  
25 of Code of Alabama, 1975, for any qualified broadband network  
26 facilities, resulting from new investment, for a period of 10  
27 years from the date the facilities are placed into service;

1 provided, there shall be no exemption from the county or  
2 municipal portion of ad valorem taxation except as provided in  
3 subdivision (4).

4 (3) An exemption for the purchase of any qualified  
5 broadband network facilities from all sales and use tax  
6 levied, assessed, or payable under Title 40 and any other  
7 applicable provision of Code of Alabama, 1975; provided there  
8 shall be no exemption of local sales and use taxes except as  
9 provided in subdivision (4).

10 (4) Within forty-five days of the effective date of  
11 this act, the department shall provide a copy of this Act to  
12 the local governing bodies of each county and each  
13 municipality in a rural area. A county or municipality located  
14 in a rural area may participate in the broadband incentives  
15 provided under this Act by providing notice to the department  
16 of its election to participate within sixty-five days of  
17 receipt of such notice. Such notice shall result in the grant  
18 of an exemption for the county or municipal portion of ad  
19 valorem taxation under subdivision (2) and local sales taxes  
20 provided in subdivision (3) in such jurisdiction for any  
21 project certified by the department, without further action by  
22 such local governing body. The department shall publish and  
23 maintain on the internet a current list of all counties and  
24 municipalities participating in the broadband incentives.  
25 Local governing bodies not providing notice of participation  
26 in the incentive program may subsequently approve the local  
27 exemptions provided in subdivisions (2) and (3) for an

1 individual project upon application of an eligible operator.  
2 Such operator shall submit to the local governing body  
3 information adequate to provide that the entity is eligible  
4 for a credit or exemption provided by this section. The local  
5 governing body shall have no fewer than forty-five (45) days  
6 from the date of application to place the application for a  
7 tax exemption on a meeting agenda for action by such body. A  
8 tax exemption shall be granted by the local governing body if  
9 approved by resolution; otherwise, an application for a tax  
10 exemption shall be deemed denied. Any approval by the local  
11 governing body shall be conditioned upon the eligible provider  
12 obtaining necessary certification from the department and  
13 compliance with the remaining provisions of this act.

14 (5) No entity operating a qualified broadband  
15 network facility may claim or receive an exemption or  
16 abatement authorized in subdivisions (2), (3), and (4) unless  
17 such entity has qualified and been granted a certificate to  
18 receive the state income tax credits authorized in subdivision  
19 (1).

20 (6) The tax credits and exemptions set forth in  
21 subdivisions (1), (2), (3) and (4) shall only be applied for  
22 by the entity operating the qualified broadband network  
23 facilities, its parent company, affiliate or its  
24 majority-owned subsidiary, hereinafter referred to as the  
25 "operator". Contractors, vendors, and similar service  
26 providers who help build, develop, and install the qualified  
27 broadband network facility shall not have the right to apply

1 for the tax credits or exemptions; provided, however, that an  
2 operator may obtain a refund of any sales or use taxes  
3 remitted, paid, or otherwise reimbursed by the operator to a  
4 service provider for qualified broadband network facilities  
5 and ultimately remitted by the service provider to state and  
6 local government, in the same manner and to the same extent as  
7 if the taxes has been paid directly by the operator.

8 (b) (1) Prior to qualifying for or claiming a credit  
9 or exemption under this section, an operator shall submit to  
10 the department information adequate to prove that the entity  
11 is entitled to a credit provided by this section for prior or  
12 future periods.

13 (2) An operator seeking recognition of a credit or  
14 exemption provided by this section, following its investment  
15 in qualified broadband network facilities, shall submit the  
16 required information to the department within 12 months of  
17 completion of the project or phase of the project covered by  
18 the submission.

19 (3) Following any necessary examination, the  
20 department may issue a certification and deliver that  
21 certification to the Department of Revenue and any local  
22 governing body that has granted an exemption pursuant to  
23 subdivision (4) of subsection (a) along with sending a copy of  
24 the certification to the operator seeking the exemption or  
25 credit.

26 (4) Upon receiving this certification from the  
27 department, the Department of Revenue and other state and

1 local taxing authorities shall allow and recognize the tax  
2 credit and any exemptions granted pursuant to this section.

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

7 (c) Property exempt from ad valorem tax under this  
8 section shall be listed separately on any property tax return  
9 filed under Chapter 21 of Title 40, and any other applicable  
10 provision of Code of Alabama, 1975.

11 (d) Equipment vendors and other government entities  
12 shall rely on a copy of the certifications provided by the  
13 department for purposes of recognizing any tax credit or  
14 exemption provided in this section, and operators obtaining a  
15 certification from the department may obtain a refund of any  
16 sales and use or ad valorem taxes paid for qualified broadband  
17 network facilities covered by the certification by filing a  
18 direct petition for refund that shall otherwise be subject to  
19 the procedures and limitations, as applicable, in Section  
20 40-2A-7.

21 (e) The department and the Department of Revenue  
22 shall develop forms and rules consistent with this section,  
23 which may not delay the effectiveness of the credits or  
24 exemptions authorized by this section.

25 (f) (1) The nonrefundable, transferable income tax  
26 credit provided by this section, together with any credits  
27 carried forward in any one taxable year, may not exceed the

1 lesser of the amount of income tax due under the Code of  
2 Alabama 1975, after allowance for all other credits permitted  
3 under law, or one of the following: (1) Seven hundred fifty  
4 thousand dollars (\$750,000) per taxpayer if the qualified  
5 broadband network facility is capable of transmitting  
6 broadband signals at speeds of at least 10 megabits per second  
7 of download speed and one megabit per second of upload speed;  
8 (2) One million four hundred thousand dollars (\$1,400,000) per  
9 taxpayer if the qualified broadband network facility is  
10 capable of transmitting broadband signals at speeds of at  
11 least 25 megabits per second of download speed and three  
12 megabits per second of upload speed.

13 (2) The department shall maintain a tally of the  
14 income tax credits associated with projects receiving a  
15 certification from the department. The total income tax  
16 credits granted in any tax year, measured from the date of  
17 department certification, may not exceed twenty million  
18 dollars (\$20,000,000). Of this amount, eighteen million  
19 dollars (\$18,000,000) shall be designated for projects in  
20 rural areas and two million dollars (\$2,000,000) shall be  
21 designated for project in areas which do not have broadband  
22 speeds of at least 10 megabits down/one megabit up. Should the  
23 income tax credits for projects receiving certification from  
24 the department equal the total amount available during the tax  
25 year, all operators with applications then awaiting approval  
26 or thereafter submitted shall be notified by the department  
27 that no additional tax credits shall be granted during that

1 tax year. Unless withdrawn, such applications shall remain in  
2 active status from the date of the original application and  
3 shall be considered for recommendations of tax credits if  
4 additional credits become available or when a new tax year's  
5 allocation of tax credits becomes available. If all the  
6 allowable income tax credit amount for any tax year is not  
7 granted by the department, any unreserved tax credits may be  
8 utilized by the department in awarding income tax credits in  
9 subsequent years. The department may adopt rules revising the  
10 procedure for the processing and consideration of applications  
11 pursuant to Section 6.

12 (g) If the nonrefundable, transferable income tax  
13 credit provided by this section exceeds the limitation under  
14 subdivision (1) of subsection (f), the excess amount may be  
15 carried forward for a period that does not exceed the next 19  
16 taxable years.

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

1           (2) The tax credit certificate shall contain a  
2 section to be completed by the operator that provides the  
3 percentage or amount of credit that will be allocated to each  
4 partner, member, shareholder or owner and the completed tax  
5 credit certificate may be provided to the Department of  
6 Revenue to transfer all or any portion of the tax credits  
7 passed through to the partner, member, shareholder or owner in  
8 accordance with this subsection.

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

18           (2) Once an income tax credit is transferred, only  
19 the transferee may utilize the credit and the credit cannot be  
20 transferred again.

21           (3) A transferee of the income tax credit may use  
22 the amount of tax credits transferred to offset any state  
23 income tax due under this Title 40 or the state portion of any  
24 other applicable provision of Code of Alabama, 1975.

25           (j) (1) The Department of Revenue shall adopt a  
26 transfer statement form to be filed by the operator with the

1 Department of Revenue prior to the proposed transfer of any  
2 credit issued under this section.

3 (2) The transfer statement form shall include the  
4 name and federal taxpayer identification number of the  
5 operator and each transferee listed therein, along with the  
6 amount of the tax credit to be transferred to each transferee  
7 listed on the form.

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

11 (k) For each transfer, the operator shall file with  
12 the Department of Revenue all of the following:

13 (1) A completed transfer statement form.

14 (2) A copy of the certification issued by the  
15 department documenting the amount of tax credits which the  
16 operator intends to transfer.

17 (3) A copy of the proposed written transfer  
18 agreement.

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

22 (1)(1) The operator shall file with the Department  
23 of Revenue a fully executed copy of the written transfer  
24 agreement it holds with each transferee within 30 days after  
25 the completed transfer.

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

4           (m) (1) The Department of Revenue shall issue a tax  
5 credit certificate to each transferee listed in the agreement  
6 in the amount of the tax credit so transferred within 30 days  
7 after the receipt by the Department of Revenue of the fully  
8 executed written transfer agreement.

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

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

19           Section 5. There is created the Alabama Rural  
20 Broadband Oversight Committee. The oversight committee shall  
21 consist of the Chair of the House Ways and Means Education  
22 Committee or designee, the Chair of the Senate Finance and  
23 Taxation Education Committee or designee, two members  
24 appointed by the Speaker of the House of Representatives, two  
25 members appointed by the President Pro Tempore of the Senate,  
26 and the Director of the Alabama Department of Economic and  
27 Community Affairs or his or her designee. The oversight

1 committee shall be charged with providing general oversight of  
2 the implementation of the act and recommending further  
3 statutory changes to promote rural broadband development.

4 Section 6. (a) The department shall periodically,  
5 but not less than bi-annually, verify the actual qualifying  
6 broadband services and new broadband network facilities during  
7 the relevant year. If the department is not able to provide  
8 the verification utilizing all available resources, it shall  
9 request any additional information from the incentivized  
10 company as may be necessary. The Department of Revenue may  
11 periodically audit any incentivized company to monitor  
12 compliance by the incentivized company with the article.  
13 Nothing in this article shall be construed to limit the powers  
14 otherwise existing for the Department of Revenue to audit and  
15 assess an incentivized company.

16 (b) Within eighteen months after the effective date  
17 of the act, the department shall conduct an initial review of  
18 the effectiveness of the act in promoting a. the extension of  
19 broadband to rural areas without access to broadband at speeds  
20 of at least 10 megabits per second of download speed and one  
21 megabit per second of upload speed; and b. participation by  
22 multiple operators. Based upon such review, the department may  
23 adopt rules granting a priority to qualified broadband network  
24 facilities in unserved rural areas and adopting mechanisms  
25 designed to ensure that the income tax credit is available to  
26 multiple operators, the latter of which may include, but not  
27 be limited to, procedures for the proration or other

1 limitation of tax credits should certification applications  
2 exceed the annual income tax credit cap in Section 4. Any  
3 rules adopted pursuant to this subdivision shall take effect  
4 at the beginning of the next tax year after adoption.

5 (c) (1) An incentivized company shall be liable for  
6 the taxes associated with any unearned portion of the  
7 investment credit it claims or transfers pursuant to this  
8 article. For purposes of this subdivision, an investment  
9 credit shall be deemed claimed when applied to income tax  
10 liability. This investment credit will be considered unearned  
11 when the incentivized company fails to make the full capital  
12 investment upon which the credit was based and claimed or upon  
13 which the credit was valued and then transferred. The  
14 incentivized company shall be liable for only that portion of  
15 the investment credit that was unearned. Any credit claimed by  
16 an owner of an incentivized company is deemed to have been  
17 claimed by the incentivized company for purposes of this  
18 subsection.

19 (2) The Director of the department shall report to  
20 the Department of Revenue any failure of an incentivized  
21 company to meet the investment requirements specified in the  
22 project agreement. The report will be made by March 31 of the  
23 year following the tax year in which the failure occurs and  
24 shall contain sufficient information for the Department of  
25 Revenue to calculate the unearned portion of the investment  
26 credit. The under payment of the applicable tax will be deemed  
27 to have occurred upon the filing of the report. The report

1 shall be treated as the filing of a return by the incentivized  
2 company for purpose of any applicable period of limitation.

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

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

14 (d) The Director of the department shall provide an  
15 annual report to the Chair or the House Ways and Means  
16 Education Committee and the Chair or the Senate Finance and  
17 Taxation Education Committee regarding the effectiveness of  
18 the program under this act.

19 Section 7. The tax credits, sales tax exemptions and  
20 ad valorem abatements allowed under this act shall be repealed  
21 following the close of tax year 2023, but the repeal shall not  
22 cause a reduction, suspension, or early termination of any  
23 credits or exemptions authorized under the section resulting  
24 from investment occurring in 2023 or prior years during which  
25 the laws creating those credits or exemptions were in effect,  
26 including, without limitation, the carry forward of income tax  
27 credits.

1                   Section 8. If any provision of this act or its  
2 application to any person or circumstance is held invalid, the  
3 invalidity does not affect other provisions or applications of  
4 this act which can be given effect without the invalid  
5 provision or application, and to this end the provisions of  
6 this act are severable.

7                   Section 9. This act shall become effective  
8 immediately following its passage and approval by the  
9 Governor, or its otherwise becoming a law.