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3 HOUSE WAYS AND MEANS EDUCATION SUBSTITUTE FOR SB90 AS  
4 ENGROSSED

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9 SYNOPSIS: This bill would amend the Alabama Broadband  
10 Accessibility Act to expand the definition of an  
11 "unserved area" eligible for grant funding,  
12 increase the percentage of project costs eligible  
13 for grant funding, and to broaden the permitted use  
14 of other federal and state support, including loans  
15 and grants, in projects receiving grants under the  
16 Act.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 To amend sections 41-23-212, 41-23-213 and  
23 41-23-214, Code of Alabama 1975, to change the definition of  
24 an "unserved area", increase the percentage of project costs  
25 that may be funded through the Act, and to broaden the  
26 permitted use of other federal and state support, including  
27 loans and grants, in projects receiving grants under the Act.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Sections 41-23-212, 41-23-213 and  
3 41-23-214, Code of Alabama 1975, are amended to read as  
4 follows:

5 "§41-23-212.

6 For the purposes of this article, the following  
7 words have the following meanings:

8 "(1) ADECA. The Alabama Department of Economic and  
9 Community Affairs.

10 "(2) END USER. A residential, business,  
11 institutional, or government entity that uses broadband  
12 services for its own purposes and does not resell such  
13 broadband services to other entities. An internet service  
14 provider (ISP) and mobile wireless service provider are not an  
15 end user for the purposes of this act.

16 "(3) MIDDLE MILE PROJECT. A broadband infrastructure  
17 project that does not provide broadband service to end users  
18 or to end-user devices.

19 "~~(2)~~ (4) MINIMUM SERVICE THRESHOLD. A connection to  
20 the Internet that provides capacity for transmission at an  
21 average speed per customer of at least ~~10~~ 25 megabits (~~10~~ 25  
22 Mbps) per second downstream and at least ~~one~~ three megabits (~~1~~  
23 3 Mbps) per second upstream.

24 "~~(3)~~ (5) RURAL AREA. Any area within this state not  
25 included within the boundaries of any incorporated city or  
26 town having a population in excess of 25,000 inhabitants,  
27 according to the last federal census.

1           "~~(4)~~ (6) UNSERVED AREA. Any rural area in which  
2 there is not at least one provider of terrestrial broadband  
3 service that is either: (1) offering a connection to the  
4 Internet meeting the minimum service threshold; or (2) is  
5 required, under the terms of the Federal Universal Service  
6 Fund or other federal or state grant, to provide a connection  
7 to the Internet at speeds meeting the minimum service  
8 threshold by March 28, 2023.

9           "§41-23-213.

10           "(a) The Director of ADECA may establish and  
11 administer the broadband accessibility grant program for the  
12 purpose of promoting the deployment and adoption of broadband  
13 Internet access services to unserved areas. By June 26, 2018,  
14 the director shall adopt rules and policies to administer the  
15 program and begin to accept applications for grants, and shall  
16 adopt such rules as may be necessary to meet the future needs  
17 of the grant program.

18           "(b) The program shall be administered pursuant to  
19 policies developed by ADECA in compliance with this article.  
20 The policies shall provide for the awarding of grants to  
21 non-governmental entities that are cooperatives, corporations,  
22 limited liability companies, partnerships, or other private  
23 business entities that provide broadband services. Nothing in  
24 this article shall expand the authority under state law of any  
25 entity to provide broadband service.

26           "(c) There is hereby created the Alabama Broadband  
27 Accessibility Fund in the State Treasury. The fund is subject

1 to appropriations by the Legislature and gifts, grants, and  
2 other donations received by ADECA for the broadband  
3 accessibility grant program or fund. ADECA may not spend  
4 appropriations for the program for purposes other than those  
5 listed in this section. Any monies appropriated to ADECA for  
6 broadband grants that are unspent at the end of a fiscal year  
7 shall be carried over for use by the program in the next  
8 fiscal year. ADECA shall develop rules ensuring that expenses  
9 incurred to administer the program must not exceed the lesser  
10 of seven~~three~~ percent ~~(3%)~~ (7%) of the total amount  
11 appropriated for the program in any fiscal year or seven  
12 hundred fifty thousand dollars (\$750,000). Moneys in the fund  
13 shall be invested by the State Treasurer for the sole benefit  
14 of the fund.

15 " (d) (1) Individual grants awarded by ADECA under  
16 this section may only be awarded for projects in unserved  
17 areas, and may not exceed the lesser of:

18 "a. ~~Twenty~~ Thirty-five percent (35%) of the project  
19 costs; or

20 "b. One million five hundred thousand dollars  
21 (\$1,500,000) for projects that will be capable of transmitting  
22 broadband signals at or above the minimum service threshold.

23 ~~"Seven hundred fifty thousand dollars (\$750,000) for~~  
24 ~~projects that will result in transmitting broadband signals at~~  
25 ~~speeds of at least 10 megabits per second of download speed~~  
26 ~~and one megabit per second of upload speed.~~

1                   ~~"c. One million four hundred thousand dollars~~  
2 ~~(\$1,400,000) for projects that will result in transmitting~~  
3 ~~broadband signals at speeds of at least 25 megabits per second~~  
4 ~~of download speed and three megabits per second of upload~~  
5 ~~speed.~~

6                   "(2) Grants may be given to any qualified entity  
7 pursuant to subsection (b) that meets the service criteria for  
8 expenditures after March 28, 2018.

9                   "(3) ADECA shall ensure that not less than 40  
10 percent of funds appropriated for grants be utilized in  
11 unincorporated areas of the state.

12                   "(4) Subject to the limitations in this subsection,  
13 grants shall be awarded pursuant to the service criteria  
14 developed by ADECA, with priority given to projects that meet  
15 any of the following:

16                   "a. Seek to leverage grant funds through private  
17 investment and extension of existing infrastructure.

18                   "b. Serve locations with demonstrated community  
19 support, including, but not limited to, documented support  
20 from local government.

21                   "c. Demonstrate the operator's technical and  
22 managerial capabilities to complete the project within two  
23 years of the grant.

24                   "d. Demonstrate the applicants' necessary financial  
25 resources.

26                   "e. Are most cost effective and technically  
27 efficient in that they propose to serve the highest number of

1 unserved homes, businesses and community anchor points for the  
2 least cost and best level of service, emphasizing projects  
3 including the highest broadband speeds.

4 "f. Provide material broadband enhancement to  
5 hospitals located in rural areas ~~as defined in Section~~  
6 ~~22-21-20~~.

7 "g. Support local libraries in this state for the  
8 purpose of assisting the libraries in offering digital  
9 literacy training pursuant to state library and archive  
10 guidelines.

11 "(5) For the purposes of awarding grants, ADECA  
12 shall take into consideration the average pole attachment  
13 rates that a grant applicant charges to an unaffiliated  
14 entity, provided that this subdivision (5) shall not apply to  
15 a utility as defined under Section 37-4-1 (7)a.

16 "~~(e) The first annual commencement date to submit~~  
17 ~~grant applications shall be by May 27, 2018, and shall be~~  
18 ~~March 1 in each subsequent year. For each fiscal year in which~~  
19 ~~grant funds are available, ADECA shall accept applications~~  
20 ~~within a 150-day 90-day grant window ~~after the annual~~~~  
21 ~~commencement date that it shall establish. Applications for~~  
22 eligible projects will be evaluated according to a scoring  
23 system developed by ADECA that incorporates the priorities  
24 listed in this section, with grant awards published within 90  
25 days after expiration of the filing window. Grant applications  
26 shall be published by ADECA on the Internet at the end of the  
27 filing window, and existing service providers shall have 30

1 business days from the date of publication to file objections  
2 to the eligibility of a proposed project. ADECA shall address  
3 any objections within 30 days of submission and shall make any  
4 appropriate changes to grant awards based on a finding of  
5 ineligibility resulting from such protest. Subject to such  
6 protest procedure, grants issued by ADECA shall be conditioned  
7 upon compliance with the terms of the grant but shall not  
8 otherwise be revocable. Providers' grants shall be paid within  
9 30 days upon ADECA receiving written certification of the  
10 completion of the project and evidence of compliance with the  
11 terms of the grant as prescribed by ADECA.

12 "(f) Grants shall be conditioned on project  
13 completion within two years of awarding of the grant. If a  
14 recipient fails to complete a project within the two-year  
15 deadline due to reasons other than delay caused by a  
16 government entity, ADECA may revoke the grant in its entirety  
17 and rededicate the funds to a new recipient.

18 "(g) ADECA shall condition the release of any grant  
19 funds awarded under this chapter on:

20 "(1) the progressive completion, as measured on not  
21 more than a quarterly basis, of the approved project; and

22 "(2) operational testing, when possible, to confirm  
23 the level of service proposed in the grant application. Such  
24 regulations shall not exceed in degree or differ in kind from  
25 testing and reporting requirements imposed on the grant  
26 recipient by the Federal Communications Commission, as

1 adjusted for the service specifications in the ADECA grant  
2 agreement.

3 ~~"(g)~~ (h) Notwithstanding any other provision of this  
4 section, eligible projects shall include ~~projects~~ any of the  
5 following:

6 "(1) Projects to serve unserved areas in which the  
7 grant applicant is either or both: (i) an existing or future  
8 service provider which has or will receive support through  
9 federal universal service funding programs designed  
10 specifically to encourage broadband deployment in an area  
11 without broadband access; or (ii) an existing or future  
12 service provider which has or will receive other forms of  
13 federal or state financial support or assistance, such as a  
14 grant or loan from the United States Department of  
15 Agriculture; provided, however, that any award of state funds  
16 under this act, when combined with other forms of state or  
17 federal support or assistance dedicated to the project, other  
18 than interest-bearing loans, may not exceed sixty percent  
19 (60%) of the total project costs. Nothing in this section  
20 shall prohibit a grant applicant who has not previously  
21 received any federal or state funds, grants, or loans for  
22 broadband deployment from applying for and receiving grant  
23 funds under this act. ~~that have received funds through other~~  
24 ~~federal universal service funding programs designed~~  
25 ~~specifically to encourage broadband deployment in an area~~  
26 ~~without broadband access in an amount not exceeding 50 percent~~  
27 ~~of the total project cost; provided, however, that any award~~



1 of state funds may only be utilized to either (i) fund project  
2 components that extend beyond the specifications supported by  
3 the federal funding, the eligible components being an  
4 extension of service to unserved rural areas not otherwise  
5 served by the federally supported project, or (ii) ensure that  
6 areas being served by the federal funding at speeds less than  
7 25 megabits per second of download speed and three megabits  
8 per second of upload speed will, in fact, receive faster  
9 speeds of not less than 25 megabits per second of download  
10 speed and three megabits per second of upload speed. Grants  
11 issued under this subsection shall not exceed 40 percent of  
12 total grant funding, with such grants not exceeding 20 percent  
13 of total project costs.

14 "(2) Middle Mile Projects, where the applicant  
15 demonstrates that the project will connect other service  
16 providers eligible for grants under this section with  
17 broadband infrastructure further upstream in order to enable  
18 such providers to offer broadband service to end users;  
19 provided that eligible projects under this subdivision may  
20 include projects in (i) an unserved area or (ii) a rural area  
21 that does not meet the definition of an unserved area but  
22 otherwise meets the requirements of this section, for which  
23 the grant applicant demonstrates, by specific evidence, the  
24 need for greater broadband speeds, capacity, or service which  
25 is not being offered by an existing service provider.

26 "(3) Projects to provide broadband service to a  
27 specific hospital, public school, public safety, or economic

1 development site in a rural area that does not meet the  
2 definition of an unserved area but otherwise meets the  
3 requirements of this section, for which the grant applicant  
4 demonstrates, by specific evidence, the need for greater  
5 broadband speeds, capacity, or service which is not being  
6 offered by an existing service provider.

7 "(4) Grants issued under subdivisions (2) and (3)  
8 shall not exceed forty percent (40%) of the total funds  
9 appropriated for grants on an annual basis.

10 "§41-23-214.

11 "(a) There is created the Alabama Rural Broadband  
12 Oversight Committee. The oversight committee shall consist of  
13 the Chair of the House Ways and Means Education Committee or  
14 his or her designee, the Chair of the Senate Finance and  
15 Taxation Education Committee or his or her designee, two  
16 members appointed by the Speaker of the House of  
17 Representatives, two members appointed by the President Pro  
18 Tempore of the Senate, and the Director of ADECA or his or her  
19 designee. The oversight committee shall meet at least  
20 annually, provide general oversight of the implementation of  
21 the article, and recommend further statutory changes to  
22 promote rural broadband development.

23 "(b) The committee shall reflect the racial, gender,  
24 geographic, urban/rural, and economic diversity of the state.

25 "(c) For any year in which grants are distributed  
26 under the program, ADECA shall produce a ~~quarterly~~ report on  
27 the status of grants under the program to the Oversight

1 Committee, including progress toward increased access to and  
2 adoption of broadband services. The report shall be provided  
3 at the oversight committee's first meeting of the year and  
4 ~~also~~ be published on ADECA's website. By March 28, 2019, ADECA  
5 shall produce a report on the availability of broadband within  
6 the state."

7 Section 2. Nothing in this act shall affect the  
8 approval and continued funding of grants awarded prior to the  
9 effective date of this act.

10 Section 3. If any provision of this act or its  
11 application to any person or circumstance is held invalid, the  
12 invalidity does not affect other provisions or applications of  
13 this act which can be given effect without the invalid  
14 provision or application, and to this end, the provisions of  
15 this act are severable.

16 Section 4. This act shall become effective  
17 immediately following the passage and approval of this act by  
18 the Governor, or its otherwise becoming law.