

1 HB400  
2 198702-1  
3 By Representatives Shedd and Ledbetter  
4 RFD: Urban and Rural Development  
5 First Read: 09-APR-19

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8 SYNOPSIS: This bill would authorize the placement,  
9 construction, installation, operation, and use of  
10 broadband and other advanced communication  
11 capabilities and related facilities within electric  
12 easements by electric providers.

13 This bill would authorize electric providers  
14 to engage in, and to permit electric providers to  
15 authorize others to engage in, providing broadband  
16 services through advanced communications  
17 capabilities within electric easement.

18 This bill would grant the right to electric  
19 providers to condemn easements and rights-of-way  
20 for advanced communications capabilities.

21 This bill would also permit consents through  
22 service agreements, licenses, leases, and  
23 membership agreements to place, construct, install,  
24 operate and use advance communication capabilities  
25 within an electric easement.

26  
27 A BILL

1 TO BE ENTITLED

2 AN ACT

3  
4 Relating to broadband services; to authorize the  
5 placement, construction, installation, operation, and use of  
6 broadband and other advanced communication capabilities and  
7 related facilities within electric easements by electric  
8 providers; to authorize electric providers to engage in, and  
9 to permit electric providers to authorize others to engage in,  
10 providing broadband services through advanced communications  
11 capabilities within electric easements; to grant the right to  
12 electric providers to condemn easements and rights-of-way for  
13 advanced communications capabilities; and to permit consents  
14 through service agreements, licenses, leases, and membership  
15 agreements to place, construct, install, operate, and use  
16 advance communication capabilities within an electric  
17 easement.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 §37-16-1.

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

24 §37-16-2.

25 (a) The Legislature finds and declares the  
26 following:

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

4           (2) Electric providers in many rural and underserved  
5 areas are capable of providing infrastructure for such  
6 advanced communications capabilities and providing, directly  
7 or indirectly, broadband facilities, or services.

8           (3) The investment in and development of advanced  
9 communications capabilities for providing broadband facilities  
10 and services are necessary to better serve the public in those  
11 rural and underserved areas.

12           (4) The continued lack of advanced communication  
13 capabilities, broadband facilities, and services in rural and  
14 underserved areas deprives citizens residing in these areas  
15 from access to opportunities such that the state needs to take  
16 action to correct and eliminate such discrepancies.

17           (5) It is the public policy of this state to  
18 encourage and facilitate the development and investment in  
19 advanced communications capabilities and broadband facilities  
20 and services in those rural and underserved areas in the  
21 state, as such development is vital and necessary to induce,  
22 create, and promote industrial and economic development in  
23 these rural and underserved areas of this state, to create job  
24 opportunities in these areas, to enhance health care, and to  
25 enhance educational advancement in those areas.

26           (6) Permitting advanced communications capabilities  
27 to be installed by electric providers within existing

1 easements and other rights-of-way furthers the public policy  
2 of the state.

3 (7) It is the intent of this chapter to authorize  
4 electric providers to engage in arrangements, contracts, and  
5 other collaborative activities with public or private persons  
6 to facilitate the investment in or development of advanced  
7 communications capabilities and broadband services and  
8 broadband systems in this state. It is also the intent of the  
9 chapter for such authorization to apply regardless of whether  
10 competition is displaced, stifled, or interrupted in the  
11 development or provision of broadband services and broadband  
12 systems.

13 (8) The furtherance of the goals and purposes of  
14 this chapter advance the public interest in this state to a  
15 greater extent than would the application of federal and state  
16 antitrust laws to the arrangements, contracts, and activities  
17 authorized under this chapter.

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

23 (b) Except as provided in subsection (a), nothing  
24 contained in this chapter is intended to exempt, except, or  
25 exclude providers that engage in the provision of broadband  
26 facilities or services through advanced communications  
27 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 and also broadband systems  
11 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 on an electric delivery system,  
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.

25 (4) BROADBAND SERVICE PROVIDER. A person that  
26 provides broadband services on a retail basis to end-use  
27 customers.

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

8                   a. To provide access to the Internet.

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

18                  (6) BROADBAND SYSTEM. Any of the following that may  
19                  be used to facilitate, directly or indirectly, the provision  
20                  or transmission of broadband services, whether utility support  
21                  services or nonutility support services, or both: Materials;  
22                  wires; cables, including fiber optic and copper cables,  
23                  whether such cables are dark or lit, and whether such cables  
24                  are in use or dormant; conduits; antennas; equipment;  
25                  fixtures; switching multiplexers; poles; routers; switches;  
26                  servers; appurtenances; facilities; and ancillary or auxiliary  
27                  equipment.

1                   (7) COMMISSION. The Alabama Public Service  
2 Commission.

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

16                   (9) ELECTRIC EASEMENT. Any recorded or unrecorded  
17 easement or right-of-way in favor of an electric provider that  
18 permits the siting and use of an electric delivery system on,  
19 over, under, or across the land of a property owner,  
20 regardless of whether the easement or right-of-way is for the  
21 exclusive benefit of the electric provider or for use in  
22 connection with the provision of other services, and  
23 regardless of whether the electric provider provides the other  
24 services. The easement may be obtained under a law of this  
25 state, or by any of the following methods that in any way  
26 relate to the services of the electric provider: Negotiation;  
27 condemnation; prescription; grant, including, but not limited



1 to, a bylaw provision, service agreement or membership  
2 agreement; rate schedule; tariff; rule; regulation; practice;  
3 act; requirement; or privilege.

4 (10) ELECTRIC PROVIDER. A utility, as defined under  
5 Section 37-4-1, or a cooperative nonprofit, membership  
6 organization formed, incorporated, or reincorporated under  
7 Chapter 6 of Title 37, that produces, generates, transmits,  
8 delivers, distributes, or furnishes electricity.

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

12 (12) PERSON. An individual, trust, estate,  
13 corporation, partnership, limited partnership, limited  
14 liability partnership, or limited liability company having a  
15 separate legal existence under state law.

16 (13) UTILITY SUPPORT SERVICES. Broadband services  
17 and related services, uses, or purposes that support the  
18 operational performance and service reliability of the  
19 electric delivery system of an electric provider, including,  
20 but not limited to, all of the following:

- 21 a. Automated meter reading.
- 22 b. Real-time or other system monitoring.
- 23 c. Remote service control.
- 24 d. Outage detection and restoration.
- 25 e. Predictive maintenance and diagnostics.
- 26 f. Monitoring and enhancement of power quality, load  
27 control, voltage control, and flow.

1 g. Supervisory control and data acquisition.

2 h. Management and flow of electricity.

3 i. Internal communications.

4 j. Dispatch, start-up, ramping, shutdown,  
5 scheduling, curtailment, or control of electric generation,  
6 transmission or distribution of resources or ancillary  
7 services relating thereto, including, but not limited to,  
8 generator imbalance, spinning and non-spinning reserves, and  
9 reserve sharing.

10 k. All other uses supporting the reliability,  
11 resilience, and security of the electric delivery system.

12 §37-16-4.

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

17 (1) Own, operate, maintain, construct, install, and  
18 replace a broadband system on, over, under, or across the  
19 electric provider's electric easements, whether used for or  
20 supporting utility support services or used for or supporting  
21 nonutility support services, whether on a wholesale or retail  
22 basis.

23 (2) Allow a broadband affiliate or an unaffiliated  
24 person to own, lease, manage, construct, superintend, install,  
25 operate, maintain, and replace a broadband system on, over,  
26 under, or across the electric provider's electric easements,  
27 on such terms and conditions as specified by the electric

1 provider, whether used for or supporting utility support  
2 services or used for or supporting wholesale or retail  
3 nonutility support services, including the power and authority  
4 to apportion the electric easement, to grant licenses, and to  
5 grant other usage or operational rights to other broadband  
6 operators for the broadband system located within the electric  
7 easements.

8 (3) Provide broadband services, whether used for or  
9 supporting utility support services or for wholesale or retail  
10 nonutility support services.

11 (4) Allow a broadband affiliate or an unaffiliated  
12 person to provide broadband services over or through a  
13 broadband system within the electric easements of an electric  
14 provider, on such terms and conditions as specified by the  
15 electric provider, whether used for or supporting utility  
16 support services or used for supporting wholesale or retail  
17 nonutility support services.

18 (b) In furtherance of its authority under subsection  
19 (a), an electric provider shall have the sole authority to  
20 determine which broadband affiliate or unaffiliated person,  
21 including a broadband operator or broadband service provider,  
22 may have access to the broadband system within its electric  
23 easements and on its electric delivery system and to determine  
24 the terms and conditions on which the broadband affiliate or  
25 unaffiliated person may access the broadband system,  
26 including, without limitation, whether the access will be on  
27 an exclusive or non-exclusive basis.

1           (c) This chapter does not require or obligate an  
2 electric provider to install or implement a broadband system  
3 or advanced communications capabilities, to provide broadband  
4 services, or to allow others to install a broadband system or  
5 facilities or use the electric provider's electric easements  
6 and electric delivery system to provide broadband services.

7           (d) An electric provider may not require any person  
8 to purchase broadband services from the electric provider, a  
9 broadband affiliate, or unaffiliated broadband operator or  
10 broadband service provider as a condition of receiving or  
11 continuing to receive electric energy from the electric  
12 provider.

13           §37-16-5.

14           In no event does this chapter authorize any electric  
15 provider to provide retail electric service outside of its  
16 electric service territory as determined under the applicable  
17 provisions of Chapter 14 of Title 37. Nothing in this chapter  
18 is intended to amend, repeal, enlarge, or otherwise affect  
19 Chapter 17 of Title 37.

20           §37-16-6.

21           An electric provider may charge a broadband  
22 affiliate or an unaffiliated person, including a broadband  
23 operator or broadband service provider, for the costs of the  
24 construction, installation, replacement, operation, use, and  
25 maintenance of the broadband system or of those parts of its  
26 electric delivery system that are used or may be reserved for  
27 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 real property subject to an  
11 electric easement contends that the owner's property has been  
12 taken, injured, or destroyed by the construction,  
13 installation, use, or enlargement of broadband systems within  
14 the electric easement on the owner's property and the electric  
15 easement does not expressly provide for such, the owner may  
16 file a civil action in the circuit court for the county in  
17 which the property is located to recover damages as specified  
18 by this section. All such actions must be brought within two  
19 years after the later of: (1) The effective date of this  
20 chapter; or (2) the date broadband systems are first  
21 constructed or installed within the electric easement on the  
22 owner's real property. Nothing in this chapter shall revive  
23 any right or remedy which may have become barred by lapse of  
24 time, or by any law of this state, prior to the effective date  
25 of this act.

26 (b) (1) If the court determines that the  
27 construction, installation, use, or enlargement of a broadband

1 system exceeds the scope of the rights granted by the electric  
2 easement on the owner's real property, the measure of damages  
3 shall be an amount equal to the difference, if any, between  
4 the following:

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

9 b. The fair market value of the owner's real  
10 property immediately after the construction or installation of  
11 broadband systems within the electric easement on the owner's  
12 real property and taking into account the incidental benefits  
13 to the owner's property resulting from the availability of the  
14 broadband services to the property.

15 (2) The damages, if any, shall be fixed and shall  
16 not be deemed to continue, accumulate, or accrue. Payment of  
17 the judgment in any such action shall vest in the electric  
18 provider all property rights necessary to construct, use,  
19 install, operate, replace, and maintain, from time to time,  
20 the broadband systems within the electric easement on the  
21 owner's real property and the electric easement shall be  
22 thereafter permanently expanded to include the right to  
23 construct, use, install, operate, replace, and maintain the  
24 broadband system and broadband services. The judgment shall  
25 have the same effect as a conveyance executed by the owner in  
26 due form under applicable law and shall run with the land. A  
27 certified copy of the judgment may be filed by the electric

1 provider, a broadband affiliate, or other broadband operator  
2 in the land records of the county in which the subject  
3 property is located, but is not required to make such  
4 broadening of the electric easement effective.

5 (c) The civil action and measure of damages  
6 authorized by this section shall be exclusive and the owner  
7 may not assert any other theory, claim, or cause of action,  
8 either at law or in equity, nor recover any other damages,  
9 punitive damages, costs, attorney's fees, or equitable relief.  
10 Evidence of past, current, or future revenues, profits, or any  
11 other fees derived by an electric provider, broadband  
12 affiliate, or other broadband operator from the construction,  
13 installation, use, enlargement, or operation of a broadband  
14 system within the electric easement on the owner's real  
15 property is not admissible for any purpose in any civil action  
16 under this section.

17 (d) An owner bringing an action under this section  
18 may not bring an action on behalf of a class. The limitation  
19 in this subsection is a substantive limitation and allowing an  
20 owner to bring a class action or other representative action  
21 for a violation of this chapter would abridge, enlarge, or  
22 modify the substantive rights created by this section.

23 (e) An electric provider may acquire by condemnation  
24 ways, rights-of-way, and easements, without limitation as to  
25 width, on, over, under, or across the lands or easements of  
26 others, to erect, construct, replace, use, install, operate,  
27 and maintain advanced communications capabilities. Such

1 condemnation is to be conducted in accordance with the  
2 procedures of Chapter 1A of Title 18, Code of Alabama 1975,  
3 except as otherwise provided in this chapter.

4 (f) An electric provider, broadband affiliate, or  
5 unaffiliated broadband operator or broadband service provider  
6 may receive such rights from an owner of real property by  
7 service agreement or service regulation, membership agreement,  
8 license agreement, or other agreement to serve the property  
9 with advanced communications capabilities without granting an  
10 easement or right-of-way. The grant or agreement may permit  
11 the construction, installation, replacement, operation, use,  
12 and maintenance of the advanced communications capabilities on  
13 the property without the requirement of further consent of any  
14 other tenant, concessionaire, or occupant of that property.  
15 Any grant or agreement shall preclude the owner from any  
16 action for relief under this section.

17 §37-16-8.

18 Nothing in this chapter shall interfere with the  
19 commission's authority to regulate public utilities under this  
20 title. Nothing in this chapter shall provide a basis for  
21 creating or granting jurisdiction to the commission over any  
22 electric providers or any broadband affiliate that are  
23 otherwise exempt or are otherwise not subject to the  
24 jurisdiction of the commission.

25 Section 2. The provisions of this act are severable.  
26 If any part of this act is declared invalid or



1       unconstitutional, that declaration shall not affect the part  
2       which remains.

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.