

1 SB90
2 200132-3
3 By Senators Scofield, Marsh, Ward, Reed, Allen, Livingston,
4 Jones, Whatley, Price, Holley, Waggoner, Williams, Sessions,
5 Chesteen, Beasley, Albritton, Chambliss, Smitherman and
6 Singleton
7 RFD: Fiscal Responsibility and Economic Development
8 First Read: 19-MAR-19

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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11 To amend sections 41-23-212, 41-23-213 and
12 41-23-214, Code of Alabama 1975, to change the definition of
13 an "unserved area", increase the percentage of project costs
14 that may be funded through the Act, and to broaden the
15 permitted use of other federal and state support, including
16 loans and grants, in projects receiving grants under the Act.
17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 41-23-212, 41-23-213 and
19 41-23-214, Code of Alabama 1975, are amended to read as
20 follows:

21 "§41-23-212.

22 For the purposes of this article, the following
23 words have the following meanings:

24 "(1) ADECA. The Alabama Department of Economic and
25 Community Affairs.

26 "(2) END USER. A residential, business,
27 institutional, or government entity that uses services for its

1 own purposes and does not resell such services to other
2 entities. An internet service provider (ISP) and mobile
3 wireless service provider are not an end user for the purposes
4 of this act.

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

8 "~~(2)~~ (4) MINIMUM SERVICE THRESHOLD. A connection to
9 the Internet that provides capacity for transmission at an
10 average speed per customer of at least ~~10~~ 25 megabits (~~10~~ 25
11 Mbps) per second downstream and at least ~~one~~ three megabits (~~1~~
12 3 Mbps) per second upstream.

13 "~~(3)~~ (5) RURAL AREA. Any area within this state not
14 included within the boundaries of any incorporated city or
15 town having a population in excess of 25,000 inhabitants,
16 according to the last federal census.

17 "~~(4)~~ (6) UNSERVED AREA. Any rural area in which
18 there is not at least one provider of terrestrial broadband
19 service that is either: (1) offering a connection to the
20 Internet meeting the minimum service threshold; or (2) is
21 required, under the terms of the Federal Universal Service
22 Fund or other federal or state grant, to provide a connection
23 to the Internet at speeds meeting the minimum service
24 threshold by March 28, 2023.

25 "§41-23-213.

26 "(a) The Director of ADECA may establish and
27 administer the broadband accessibility grant program for the

1 purpose of promoting the deployment and adoption of broadband
2 Internet access services to unserved areas. By June 26, 2018,
3 the director shall adopt rules and policies to administer the
4 program and begin to accept applications for grants, and shall
5 adopt such rules as may be necessary to meet the future needs
6 of the grant program.

7 "(b) The program shall be administered pursuant to
8 policies developed by ADECA in compliance with this article.
9 The policies shall provide for the awarding of grants to
10 non-governmental entities that are cooperatives, corporations,
11 limited liability companies, partnerships, or other private
12 business entities that provide broadband services. Nothing in
13 this article shall expand the authority under state law of any
14 entity to provide broadband service.

15 "(c) There is hereby created the Alabama Broadband
16 Accessibility Fund in the State Treasury. The fund is subject
17 to appropriations by the Legislature and gifts, grants, and
18 other donations received by ADECA for the broadband
19 accessibility grant program or fund. ADECA may not spend
20 appropriations for the program for purposes other than those
21 listed in this section. Any monies appropriated to ADECA for
22 broadband grants that are unspent at the end of a fiscal year
23 shall be carried over for use by the program in the next
24 fiscal year. ADECA shall develop rules ensuring that expenses
25 incurred to administer the program must not exceed ~~three~~ eight
26 percent (8%) of the total amount appropriated for the program

1 in any fiscal year. Moneys in the fund shall be invested by
2 the State Treasurer for the sole benefit of the fund.

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

6 "a. ~~Twenty~~ Fifty percent (50%) of the project
7 costs; or

8 "b. 1. Two million five hundred thousand dollars
9 (\$2,500,000) for projects that will be capable of transmitting
10 broadband signals at the minimum service threshold.

11 "2. Five million dollars (\$5,000,000) for projects
12 that will be capable of transmitting broadband signals with an
13 average speed per customer of at least fifty megabits per
14 second (50 Mbps) downstream and at least fifty megabits per
15 second (50 Mbps) upstream. ~~Seven hundred fifty thousand~~
16 dollars (~~\$750,000~~) for projects that will result in
17 transmitting broadband signals at speeds of at least 10
18 megabits per second of download speed and one megabit per
19 second of upload speed.

20 "c. ~~One million four hundred thousand dollars~~
21 ~~(\$1,400,000) for projects that will result in transmitting~~
22 ~~broadband signals at speeds of at least 25 megabits per second~~
23 ~~of download speed and three megabits per second of upload~~
24 ~~speed.~~

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

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

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

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

10 "b. Serve locations with demonstrated community
11 support, including, but not limited to, documented support
12 from local government.

13 "c. Demonstrate the operator's technical and
14 managerial capabilities to complete the project within two
15 years of the grant.

16 "d. Demonstrate the applicants' necessary financial
17 resources.

18 "e. Are most cost effective and technically
19 efficient in that they propose to serve the highest number of
20 unserved homes, businesses and community anchor points for the
21 least cost and best level of service, emphasizing projects
22 including the highest broadband speeds.

23 "f. Provide material broadband enhancement to
24 hospitals located in rural areas ~~as defined in Section~~
25 ~~22-21-20~~.

26 "g. Support local libraries in this state for the
27 purpose of assisting the libraries in offering digital

1 literacy training pursuant to state library and archive
2 guidelines.

3 "~~(e) The first annual commencement date to submit~~
4 ~~grant applications shall be by May 27, 2018, and shall be~~
5 ~~March 1 in each subsequent year.~~ For each fiscal year in which
6 grant funds are available, ADECA shall accept applications
7 within a ~~150-day~~ 90-day grant window ~~after the annual~~
8 ~~commencement date~~ that it shall establish. Applications for
9 eligible projects will be evaluated according to a scoring
10 system developed by ADECA that incorporates the priorities
11 listed in this section, with grant awards published within 90
12 days after expiration of the filing window. Grant applications
13 shall be published by ADECA on the Internet at the end of the
14 filing window, and existing service providers shall have 30
15 business days from the date of publication to file objections
16 to the eligibility of a proposed project. ADECA shall address
17 any objections within 30 days of submission and shall make any
18 appropriate changes to grant awards based on a finding of
19 ineligibility resulting from such protest. Subject to such
20 protest procedure, grants issued by ADECA shall be conditioned
21 upon compliance with the terms of the grant but shall not
22 otherwise be revocable. Providers' grants shall be paid within
23 30 days upon ADECA receiving written certification of the
24 completion of the project and evidence of compliance with the
25 terms of the grant as prescribed by ADECA.

26 "(f) Grants shall be conditioned on project
27 completion within two years of awarding of the grant. If a

1 recipient fails to complete a project within the two-year
2 deadline due to reasons other than delay caused by a
3 government entity, ADECA may revoke the grant in its entirety
4 and rededicate the funds to a new recipient.

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

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

9 "(2) operational testing, when possible, to confirm
10 the level of service proposed in the grant application. Such
11 regulations shall not exceed in degree or differ in kind from
12 testing and reporting requirements imposed on the grant
13 recipient by the Federal Communications Commission, as
14 adjusted for the service specifications in the ADECA grant
15 agreement.

16 ~~"(g)~~ (h) Notwithstanding any other provision of this
17 section, eligible projects shall include ~~projects~~ any of the
18 following:

19 "(1) Projects to serve unserved areas in which the
20 grant applicant is either or both: (i) an existing or future
21 service provider which has or will receive support through
22 federal universal service funding programs designed
23 specifically to encourage broadband deployment in an area
24 without broadband access; or (ii) an existing or future
25 service provider which has or will receive other forms of
26 federal or state financial support or assistance, such as a
27 grant or loan from the United States Department of

1 Agriculture; provided, however, that any award of state funds
2 under this act, when combined with other forms of state or
3 federal support or assistance, may not exceed ninety percent
4 (90%) of the total project costs. Nothing in this section
5 shall prohibit a grant applicant who has not previously
6 received any federal or state funds, grants, or loans for
7 broadband deployment from applying for and receiving grant
8 funds under this act. ~~that have received funds through other~~
9 ~~federal universal service funding programs designed~~
10 ~~specifically to encourage broadband deployment in an area~~
11 ~~without broadband access in an amount not exceeding 50 percent~~
12 ~~of the total project cost; provided, however, that any award~~
13 ~~of state funds may only be utilized to either (i) fund project~~
14 ~~components that extend beyond the specifications supported by~~
15 ~~the federal funding, the eligible components being an~~
16 ~~extension of service to unserved rural areas not otherwise~~
17 ~~served by the federally supported project, or (ii) ensure that~~
18 ~~areas being served by the federal funding at speeds less than~~
19 ~~25 megabits per second of download speed and three megabits~~
20 ~~per second of upload speed will, in fact, receive faster~~
21 ~~speeds of not less than 25 megabits per second of download~~
22 ~~speed and three megabits per second of upload speed. Grants~~
23 ~~issued under this subsection shall not exceed 40 percent of~~
24 ~~total grant funding, with such grants not exceeding 20 percent~~
25 ~~of total project costs.~~

26 "(2) Middle Mile Projects, where the applicant
27 demonstrates that the project will materially support the

1 provision of broadband service to others eligible for grants
2 under this subsection to provide service to end users;
3 provided that eligible projects under this subdivision may
4 include projects in (i) an unserved area or (ii) a rural area
5 that does not meet the definition of an unserved area but
6 otherwise meets the requirements of this section, for which
7 the grant applicant demonstrates, by specific evidence, the
8 need for greater broadband speeds, capacity, or service which
9 is not being offered by an existing service provider.

10 "(3) Projects to provide broadband service to a
11 specific hospital, public school, public safety, or economic
12 development site in a rural area that does not meet the
13 definition of an unserved area but otherwise meets the
14 requirements of this section, for which the grant applicant
15 demonstrates, by specific evidence, the need for greater
16 broadband speeds, capacity, or service which is not being
17 offered by an existing service provider.

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

21 "§41-23-214.

22 "(a) There is created the Alabama Rural Broadband
23 Oversight Committee. The oversight committee shall consist of
24 the Chair of the House Ways and Means Education Committee or
25 his or her designee, the Chair of the Senate Finance and
26 Taxation Education Committee or his or her designee, two
27 members appointed by the Speaker of the House of

1 Representatives, two members appointed by the President Pro
2 Tempore of the Senate, and the Director of ADECA or his or her
3 designee. The oversight committee shall meet at least
4 annually, provide general oversight of the implementation of
5 the article, and recommend further statutory changes to
6 promote rural broadband development.

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

9 "(c) For any year in which grants are distributed
10 under the program, ADECA shall produce a ~~quarterly~~ report on
11 the status of grants under the program to the Oversight
12 Committee, including progress toward increased access to and
13 adoption of broadband services. The report shall be provided
14 at the oversight committee's first meeting of the year and
15 ~~also~~ be published on ADECA's website. By March 28, 2019, ADECA
16 shall produce a report on the availability of broadband within
17 the state."

18 Section 2. Nothing in this act shall affect the
19 approval and continued funding of grants awarded prior to the
20 effective date of this act.

21 Section 3. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 invalidity does not affect other provisions or applications of
24 this act which can be given effect without the invalid
25 provision or application, and to this end, the provisions of
26 this act are severable.

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

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 19-MAR-19

Read for the second time and placed on the calen-
dar with 1 substitute and..... 02-MAY-19

Read for the third time and passed as amended 08-MAY-19

Yeas 27
Nays 0

Patrick Harris,
Secretary.