

1 SB124  
2 216375-4  
3 By Senator Scofield  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 01-FEB-22

1 SB124

2  
3  
4 ENGROSSED

5  
6  
7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to the Alabama Broadband Accessibility Act;  
12 to amend Sections 41-23-211, 41-23-212, 41-23-213, and  
13 41-23-214, Code of Alabama 1975; to increase the minimum  
14 threshold speeds for broadband service grants; to include  
15 references to the Alabama broadband mapping program and  
16 state-wide connectivity plan; to revise criteria and  
17 eligibility for the awarding of grants; to revise the window  
18 for grant applications; to revise the grant application  
19 procedures; and to allow for a project extension in certain  
20 circumstances.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 41-23-211, 41-23-212, 41-23-213,  
23 and 41-23-214, Code of Alabama 1975, are amended to read as  
24 follows:

25 "§41-23-211.

26 "The Legislature finds that the availability of  
27 high-speed broadband services, with the preference of speeds

1 of ~~25~~ 100 megabits per second of download speed and ~~three~~ 100  
2 megabits per second of upload speed or greater, in unserved  
3 rural Alabama is important for economic development,  
4 education, health care, and emergency services in Alabama, and  
5 that grants and other incentives set forth in this article  
6 will further those objectives by encouraging new investment in  
7 broadband infrastructure.

8 "§41-23-212.

9 "For the purposes of this article, the following  
10 words have the following meanings:

11 "(1) ADECA. The Alabama Department of Economic and  
12 Community Affairs.

13 "(2) END USER. A residential, business,  
14 institutional, or government entity that uses broadband  
15 services for its own purposes and does not resell such  
16 broadband services to other entities. An Internet service  
17 provider (ISP) and mobile wireless service provider are not an  
18 end user for the purposes of Sections 41-23-212, 41-23-213,  
19 and 41-23-214.

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

23 "(4) MINIMUM SERVICE THRESHOLD. A connection to the  
24 Internet that provides capacity for transmission at an average  
25 speed per customer of at least ~~25 megabits (25 Mbps)~~ 100  
26 megabits (100 Mbps) per second downstream and at least ~~three~~  
27 20 megabits (~~3~~ 20 Mbps) per second upstream.

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

5           "(6) UNSERVED AREA. Any rural area in which there is  
6 not at least one provider of terrestrial broadband service  
7 that is either: (1) offering a connection to the Internet  
8 meeting the minimum service threshold; or (2) ~~is required,~~  
9 ~~under the terms of the Federal Universal Service Fund or other~~  
10 ~~federal or state grant,~~ another state or federal grant to  
11 provide a connection to the Internet at speeds meeting the  
12 minimum service threshold ~~by March 28, 2023~~ within the same or  
13 similar timeframe of projects of similar complexity or scale  
14 awarded during each grant cycle.

15           "§41-23-213.

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

24           "(b) The program shall be administered pursuant to  
25 policies developed by ADECA in compliance with this article.  
26 The policies shall provide for the awarding of grants to  
27 ~~non-governmental~~ entities that are cooperatives, corporations,

1 limited liability companies, partnerships, or other private  
2 business entities, or units of government that provide  
3 broadband services. An entity is not eligible for a grant  
4 under this article unless the entity has submitted, within the  
5 one-year period preceding the awarding of the grant, the  
6 entity's broadband service availability information to  
7 Alabama's broadband mapping program. Nothing in this article  
8 shall expand the authority under state law of any entity to  
9 provide broadband service.

10 "(c) There is hereby created the Alabama Broadband  
11 Accessibility Fund in the State Treasury. The fund is subject  
12 to appropriations by the Legislature and gifts, grants, and  
13 other donations received by ADECA for the broadband  
14 accessibility grant program or fund. All state and federal  
15 grant monies deposited in the fund shall be expended by ADECA  
16 in accordance with the statewide connectivity plan and any  
17 legal requirements applicable to those grant monies, including  
18 their program eligibility, deployment, and reporting  
19 requirements. ADECA may not spend appropriations for the  
20 program for purposes other than those listed in this section.  
21 Any monies appropriated to ADECA for broadband grants that are  
22 unspent at the end of a fiscal year shall be carried over for  
23 use by the program in the next fiscal year. ADECA shall  
24 develop rules ensuring that expenses incurred to administer  
25 the program must not exceed the lesser of seven percent of the  
26 total amount appropriated for the program in any fiscal year  
27 or seven hundred fifty thousand dollars (\$750,000). ~~Moneys~~

1 Monies in the fund shall be invested by the State Treasurer  
2 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. ~~Thirty-five~~ Eighty percent of the project costs.

7 "b. ~~One Five million five hundred thousand~~ dollars  
8 ~~(\$1,500,000)~~ (\$5,000,000) for projects that will be capable of  
9 transmitting broadband signals at or above ~~the minimum service~~  
10 ~~threshold~~ 100 megabits per second of download speed and 100  
11 megabits per second of upload speed.

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

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

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

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

24 "b. Serve locations with demonstrated community  
25 support, including, but not limited to, documented support  
26 from local government.

1 "c. Demonstrate the operator's technical and  
2 managerial capabilities to complete the project within ~~two~~  
3 ~~years of the grant~~ the required timeframe.

4 "d. Demonstrate the applicants' necessary financial  
5 resources.

6 "e. Are most cost effective and technically  
7 efficient in that they propose to serve the highest number of  
8 unserved homes, businesses, and community anchor points for  
9 the least grant fund cost and best level of service,  
10 emphasizing projects including the highest broadband speeds.

11 "f. Provide material broadband enhancement to  
12 hospitals, clinics, and other medical facilities located in  
13 rural areas.

14 "g. Support local libraries in this state for the  
15 purpose of assisting the libraries in offering digital  
16 literacy training pursuant to state library and archive  
17 guidelines.

18 "h. Provide support for the deployment of  
19 infrastructure to be owned and operated exclusively by  
20 Internet service providers serving subscribers in Alabama for  
21 at least three years or organizations incorporated,  
22 headquartered, or with a principal place of business in  
23 Alabama.

24 "i. Commit to improving the adoption rate of  
25 broadband services by offering programs to households that  
26 meet guidelines established by ADECA or the funding source,  
27 including, but not limited to, special service rates,

1 Internet-enabled devices that meet the needs of the user, and  
2 digital skills training.

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

8 "(6) In order to promote the deployment of grant  
9 funds in an inclusive manner that is consistent with the  
10 racial, gender, geographic, urban, rural, and economic  
11 diversity of the state, ADECA may give additional  
12 consideration to an applicant that provides documentation that  
13 it has been certified by the ADECA Office of Minority Business  
14 Enterprise or otherwise as a Disadvantaged Business  
15 Enterprise. For projects funded under ~~Sections 41-23-212,~~  
16 ~~41-23-213, and 41-23-214~~ this article, ADECA shall encourage  
17 grant applicants to use vendors and subcontractors that have  
18 been certified by the Office of Minority Business Enterprise  
19 or that are Disadvantaged Business Enterprises. ADECA shall  
20 include in its report to the Alabama Rural Broadband Oversight  
21 Committee a list of entities certified by the Office of  
22 Minority Business Enterprise and Disadvantaged Business  
23 Enterprises that have been awarded grants since the prior  
24 report.

25 "(e) For each ~~fiscal~~ year in which grant funds are  
26 available, ADECA shall accept applications within a  
27 60-to-90-day grant window that it shall establish. However,



1 when necessary to meet the requirements of other funding  
2 sources, a grant window of 30 days may be established by  
3 ADECA. ADECA shall review each application for eligibility as  
4 determined by the state map. Any applicant submitting a  
5 project that includes served areas as documented by the state  
6 map shall be given an opportunity to revise the application to  
7 eliminate ineligible portions or rescind the application.

8 Applications for eligible projects ~~will~~ shall be evaluated  
9 according to a scoring system developed by ADECA that  
10 incorporates the priorities listed in this section, with grant  
11 awards published ~~within 90 days after expiration of the filing~~  
12 ~~window~~ as soon as possible, but no more than 60 days after  
13 expiration of the filing window. ~~Grant applications shall be~~  
14 ~~published by ADECA on the Internet at the end of the filing~~  
15 ~~window, and existing service providers shall have 30 business~~  
16 ~~days from the date of publication to file objections to the~~  
17 ~~eligibility of a proposed project. ADECA shall address any~~  
18 ~~objections within 30 days of submission and shall make any~~  
19 ~~appropriate changes to grant awards based on a finding of~~  
20 ~~ineligibility resulting from such protest. Subject to such~~  
21 ~~protest procedure, grants~~ Grants issued by ADECA shall be  
22 conditioned upon compliance with the terms of the grant but  
23 shall not otherwise be revocable. Providers' grants shall be  
24 paid within 30 days upon ADECA receiving written certification  
25 of the completion of the project and evidence of compliance  
26 with the terms of the grant as prescribed by ADECA.

1           "(f) Grants shall be conditioned on project  
2 completion within two years of awarding of the grant.  
3 Applicants who demonstrate project complexity may request more  
4 than two years to complete the project. Recipients who  
5 demonstrate that the project is progressing may request an  
6 extension for up to one year for project delays beyond the  
7 recipient's control. If a recipient fails to complete a  
8 project within the two-year deadline, or within the extended  
9 deadline due to reasons other than delay caused by a  
10 government entity, ADECA may revoke the grant in its entirety  
11 and rededicate the funds to a new recipient.

12           "(g) ADECA shall condition the release of any grant  
13 funds awarded under this chapter on ~~both of~~ all of the  
14 following:

15           "(1) The progressive completion, as measured on not  
16 more than a quarterly basis, of the approved project. Grants  
17 for projects not showing progress may be rescinded.

18           "(2) Operational testing, when possible, to confirm  
19 the level of service proposed in the grant application. Such  
20 regulations shall not exceed in degree or differ in kind from  
21 testing and reporting requirements imposed on the grant  
22 recipient by the Federal Communications Commission, as  
23 adjusted for the service specifications in the ADECA grant  
24 agreement.

25           "(3) Continued participation in Alabama's broadband  
26 mapping program throughout the entire project period.

1           "(h) Notwithstanding any other provision of this  
2 section, eligible projects shall include any of the following:

3           "(1) Projects to serve unserved areas in which the  
4 grant applicant is either or both: a. an existing or future  
5 service provider which has or will receive support through  
6 federal universal service funding programs designed  
7 specifically to encourage broadband deployment in an area  
8 without broadband access; or b. an ~~existing or future service~~  
9 ~~provider~~ entity that currently provides services which has or  
10 will receive other forms of federal or state financial support  
11 or assistance, such as a grant or loan from the United States  
12 Department of Agriculture; provided, however, that any award  
13 of state funds under this section, when combined with other  
14 forms of state or federal support or assistance dedicated to  
15 the project, other than interest-bearing loans, may not exceed  
16 ~~60~~ 90 percent of the total project costs. Nothing in this  
17 section shall prohibit a grant applicant who has not  
18 previously received any federal or state funds, grants, or  
19 loans for broadband deployment from applying for and receiving  
20 grant funds under this section.

21           "(2) Middle mile projects, where the applicant  
22 demonstrates that the project will connect other service  
23 providers eligible for grants under this section with  
24 broadband infrastructure further upstream in order to enable  
25 the providers to offer broadband service to end users;  
26 provided that eligible projects under this subdivision may  
27 include projects in an unserved area or a rural area that does

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

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

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

19 "(i) Nothing in this section shall affect the  
20 approval and continued funding of grants awarded prior to May  
21 30, 2019.

22 "§41-23-214.

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

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

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

11 "(c) For any year in which grants are distributed  
12 under the program, ADECA shall produce a report on the status  
13 of grants under the program to the oversight committee,  
14 including progress toward increased access to and adoption of  
15 broadband services. The report shall be provided at the  
16 oversight committee's first meeting of the year and be  
17 published on ADECA's website. ADECA shall provide a copy of  
18 the report to the Governor, the Alabama Senate President Pro  
19 Tempore, the Alabama Senate Minority Leader, the Speaker of  
20 the Alabama House of Representatives, and the Alabama House of  
21 Representatives Minority Leader. By March 28, 2019, ADECA  
22 shall produce a report on the availability of broadband within  
23 the state."

24 Section 2. This act shall become effective  
25 immediately following its passage and approval by the  
26 Governor, or its otherwise becoming law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

Senate

Read for the first time and referred to the Senate  
committee on Fiscal Responsibility and Economic  
Development..... 01-FEB-22

Read for the second time and placed on the calen-  
dar 1 amendment..... 09-FEB-22

Read for the third time and passed as amended .... 10-FEB-22

Yeas 25  
Nays 0

Patrick Harris,  
Secretary.