

1 SB149
2 190954-2
3 By Senators Scofield, Dial, Livingston, Singleton, Beasley,
4 Waggoner, Reed, Glover, Marsh, Albritton, Melson, Ward,
5 Whatley, Bussman, Holtzclaw, Williams, Holley, Allen, Sanford,
6 Stutts, McClendon, Orr, Smitherman, Coleman-Madison and
7 Hightower
8 RFD: Fiscal Responsibility and Economic Development
9 First Read: 11-JAN-18

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

1 and emergency services in Alabama, and that incentives set
2 forth in this act will further those objectives by encouraging
3 new investment in broadband infrastructure.

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

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

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

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

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

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

25 (4) RURAL AREAS. Any area of the state other than a
26 city or town that has a population of more than 25,000

1 inhabitants, according to the most recent decennial Census of
2 the United States.

3 (5) TAX YEAR. The calender year.

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

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

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

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

25 (2) An exemption from ad valorem taxation imposed or
26 authorized under Title 40 and any other applicable provision
27 of Code of Alabama, 1975, for any qualified broadband network

1 facilities, resulting from new investment, for a period of 10
2 years from the date the facilities are placed into service;
3 provided, there shall be no exemption from the county or
4 municipal portion of ad valorem taxation except as provided in
5 subdivision (4).

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

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

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

16 (5) No entity operating a qualified broadband
17 network facility may claim or receive an exemption or
18 abatement authorized in subdivisions (2), (3), and (4) unless
19 such entity has qualified and been granted a certificate to
20 receive the state income tax credits authorized in subdivision
21 (1).

22 (6) The tax credits and exemptions set forth in
23 subdivisions (1), (2), (3) and (4) shall only be applied for
24 by the entity operating the qualified broadband network
25 facilities, its parent company, affiliate or its
26 majority-owned subsidiary, hereinafter referred to as the
27 "operator". Contractors, vendors, and similar service

1 providers who help build, develop, and install the qualified
2 broadband network facility shall not have the right to apply
3 for the tax credits or exemptions; provided, however, that an
4 operator may obtain a refund of any sales or use taxes
5 remitted, paid, or otherwise reimbursed by the operator to a
6 service provider for qualified broadband network facilities
7 and ultimately remitted by the service provider to state and
8 local government, in the same manner and to the same extent as
9 if the taxes has been paid directly by the operator.

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

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

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

1 (4) Upon receiving this certification from the
2 department, the Department of Revenue and other state and
3 local taxing authorities shall allow and recognize the tax
4 credit and any exemptions granted pursuant to this section.

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

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

13 (d) Equipment vendors and other government entities
14 shall rely on a copy of the certifications provided by the
15 department for purposes of recognizing any tax credit or
16 exemption provided in this section, and operators obtaining a
17 certification from the department may obtain a refund of any
18 sales and use or ad valorem taxes paid for qualified broadband
19 network facilities covered by the certification by filing a
20 direct petition for refund that shall otherwise be subject to
21 the procedures and limitations, as applicable, in Section
22 40-2A-7.

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

1 (f) (1) The nonrefundable, transferable income tax
2 credit provided by this section, together with any credits
3 carried forward in any one taxable year, may not exceed the
4 lesser of the amount of income tax due under the Code of
5 Alabama 1975, after allowance for all other credits permitted
6 under law, or one of the following: (1) Seven hundred fifty
7 thousand dollars (\$750,000) per taxpayer if the qualified
8 broadband network facility is capable of transmitting
9 broadband signals at speeds of at least 10 megabits per second
10 of download speed and one megabit per second of upload speed;
11 (2) One million four hundred thousand dollars (\$1,400,000) per
12 taxpayer if the qualified broadband network facility is
13 capable of transmitting broadband signals at speeds of at
14 least 25 megabits per second of download speed and three
15 megabits per second of upload speed.

16 (2) The department shall maintain a tally of the
17 income tax credits associated with projects receiving a
18 certification from the department. The total income tax
19 credits granted in any tax year, measured from the date of
20 department certification, may not exceed twenty million
21 dollars (\$20,000,000). Of this amount, eighteen million
22 dollars (\$18,000,000) shall be designated for projects in
23 rural areas and two million dollars (\$2,000,000) shall be
24 designated for project in areas which do not have broadband
25 speeds of at least 10 megabits down/one megabit up. Should the
26 income tax credits for projects receiving certification from
27 the department equal the total amount available during the tax

1 year, all operators with applications then awaiting approval
2 or thereafter submitted shall be notified by the department
3 that no additional tax credits shall be granted during that
4 tax year. Unless withdrawn, such applications shall remain in
5 active status from the date of the original application and
6 shall be considered for recommendations of tax credits if
7 additional credits become available or when a new tax year's
8 allocation of tax credits becomes available. If all the
9 allowable income tax credit amount for any tax year is not
10 granted by the department, any unreserved tax credits may be
11 utilized by the department in awarding income tax credits in
12 subsequent years. The department may adopt rules revising the
13 procedure for the processing and consideration of applications
14 pursuant to Section 6.

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

20 (h) (1) Any income tax credit granted pursuant to
21 this section to an operator that is a partnership, limited
22 liability company or subchapter S corporation shall be passed
23 through to the partners, members, shareholders or owners,
24 including any not-for-profit private entity that is a partner,
25 member, shareholder or owner, respectively, on a pro rata
26 basis or pursuant to an executed agreement among the partners,
27 members, shareholders or owners documenting an alternate

1 distribution method, without regard to their sharing of other
2 tax or economic attributes of the entity.

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

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

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

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

1 (j) (1) The Department of Revenue shall adopt a
2 transfer statement form to be filed by the operator with the
3 Department of Revenue prior to the proposed transfer of any
4 credit issued under this section.

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

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

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

15 (1) A completed transfer statement form.

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

19 (3) A copy of the proposed written transfer
20 agreement.

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

24 (1) (1) The operator shall file with the Department
25 of Revenue a fully executed copy of the written transfer
26 agreement it holds with each transferee within 30 days after
27 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.

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Senate

Read for the first time and referred to the Senate
committee on Fiscal Responsibility and Economic
Development..... 11-JAN-18

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dar..... 25-JAN-18

Read for the third time and passed as amended 01-FEB-18

Yeas 29
Nays 0

Patrick Harris,
Secretary.