

1 SB90
2 202262-2
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

1 SB90

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4 ENROLLED, An Act,

5 To amend sections 41-23-212, 41-23-213 and
6 41-23-214, Code of Alabama 1975, to change the definition of
7 an "unserved area", increase the percentage of project costs
8 that may be funded through the Act, and to broaden the
9 permitted use of other federal and state support, including
10 loans and grants, in projects receiving grants under the Act.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 41-23-212, 41-23-213 and
13 41-23-214, Code of Alabama 1975, are amended to read as
14 follows:

15 "§41-23-212.

16 For the purposes of this article, the following
17 words have the following meanings:

18 "(1) ADECA. The Alabama Department of Economic and
19 Community Affairs.

20 "(2) END USER. A residential, business,
21 institutional, or government entity that uses broadband
22 services for its own purposes and does not resell such
23 broadband services to other entities. An internet service
24 provider (ISP) and mobile wireless service provider are not an
25 end user for the purposes of this act.

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

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

9 "~~(3)~~ (5) RURAL AREA. Any area within this state not
10 included within the boundaries of any incorporated city or
11 town having a population in excess of 25,000 inhabitants,
12 according to the last federal census.

13 "~~(4)~~ (6) UNSERVED AREA. Any rural area in which
14 there is not at least one provider of terrestrial broadband
15 service that is either: (1) offering a connection to the
16 Internet meeting the minimum service threshold; or (2) is
17 required, under the terms of the Federal Universal Service
18 Fund or other federal or state grant, to provide a connection
19 to the Internet at speeds meeting the minimum service
20 threshold by March 28, 2023.

21 "§41-23-213.

22 "(a) The Director of ADECA may establish and
23 administer the broadband accessibility grant program for the
24 purpose of promoting the deployment and adoption of broadband
25 Internet access services to unserved areas. By June 26, 2018,

1 the director shall adopt rules and policies to administer the
2 program and begin to accept applications for grants, and shall
3 adopt such rules as may be necessary to meet the future needs
4 of the grant program.

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

13 "(c) There is hereby created the Alabama Broadband
14 Accessibility Fund in the State Treasury. The fund is subject
15 to appropriations by the Legislature and gifts, grants, and
16 other donations received by ADECA for the broadband
17 accessibility grant program or fund. ADECA may not spend
18 appropriations for the program for purposes other than those
19 listed in this section. Any monies appropriated to ADECA for
20 broadband grants that are unspent at the end of a fiscal year
21 shall be carried over for use by the program in the next
22 fiscal year. ADECA shall develop rules ensuring that expenses
23 incurred to administer the program must not exceed the lesser
24 of seven~~three~~ percent ~~(3%)~~ (7%) of the total amount
25 appropriated for the program in any fiscal year or seven

1 hundred fifty thousand dollars (\$750,000). Moneys in the fund
2 shall be invested by the State Treasurer for the sole benefit
3 of the fund.

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

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

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

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

16 ~~"c. One million four hundred thousand dollars~~
17 ~~(\$1,400,000) for projects that will result in transmitting~~
18 ~~broadband signals at speeds of at least 25 megabits per second~~
19 ~~of download speed and three megabits per second of upload~~
20 ~~speed.~~

21 "(2) Grants may be given to any qualified entity
22 pursuant to subsection (b) that meets the service criteria for
23 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~~.

1 "g. Support local libraries in this state for the
2 purpose of assisting the libraries in offering digital
3 literacy training pursuant to state library and archive
4 guidelines.

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

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

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

24 "(f) Grants shall be conditioned on project
25 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

1 federal or state financial support or assistance, such as a
2 grant or loan from the United States Department of
3 Agriculture; provided, however, that any award of state funds
4 under this act, when combined with other forms of state or
5 federal support or assistance dedicated to the project, other
6 than interest-bearing loans, may not exceed sixty percent
7 (60%) of the total project costs. Nothing in this section
8 shall prohibit a grant applicant who has not previously
9 received any federal or state funds, grants, or loans for
10 broadband deployment from applying for and receiving grant
11 funds under this act. ~~that have received funds through other~~
12 ~~federal universal service funding programs designed~~
13 ~~specifically to encourage broadband deployment in an area~~
14 ~~without broadband access in an amount not exceeding 50 percent~~
15 ~~of the total project cost; provided, however, that any award~~
16 ~~of state funds may only be utilized to either (i) fund project~~
17 ~~components that extend beyond the specifications supported by~~
18 ~~the federal funding, the eligible components being an~~
19 ~~extension of service to unserved rural areas not otherwise~~
20 ~~served by the federally supported project, or (ii) ensure that~~
21 ~~areas being served by the federal funding at speeds less than~~
22 ~~25 megabits per second of download speed and three megabits~~
23 ~~per second of upload speed will, in fact, receive faster~~
24 ~~speeds of not less than 25 megabits per second of download~~
25 ~~speed and three megabits per second of upload speed. Grants~~

1 ~~issued under this subsection shall not exceed 40 percent of~~
2 ~~total grant funding, with such grants not exceeding 20 percent~~
3 ~~of total project costs.~~

4 "(2) Middle Mile Projects, where the applicant
5 demonstrates that the project will connect other service
6 providers eligible for grants under this section with
7 broadband infrastructure further upstream in order to enable
8 such providers to offer broadband service to end users;
9 provided that eligible projects under this subdivision may
10 include projects in (i) an unserved area or (ii) a rural area
11 that does not meet the definition of an unserved area but
12 otherwise meets the requirements of this section, for which
13 the grant applicant demonstrates, by specific evidence, the
14 need for greater broadband speeds, capacity, or service which
15 is not being offered by an existing service provider.

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

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

4 "§41-23-214.

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

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

19 "(c) For any year in which grants are distributed
20 under the program, ADECA shall produce a ~~quarterly~~ report on
21 the status of grants under the program to the Oversight
22 Committee, including progress toward increased access to and
23 adoption of broadband services. The report shall be provided
24 at the oversight committee's first meeting of the year and
25 ~~also~~ be published on ADECA's website. ADECA shall provide a

1 copy of the report to the Governor, the Alabama Senate
2 President Pro Tempore, the Alabama Senate Minority Leader, the
3 Speaker of the Alabama House of Representatives, and the
4 Alabama House of Representatives Minority Leader. By March 28,
5 2019, ADECA shall produce a report on the availability of
6 broadband within 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.

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB90
Senate 08-MAY-19
I hereby certify that the within Act originated in and passed
the Senate, as amended.

Senate 30-MAY-19
I hereby certify that the within Act originated in and passed
the Senate, as amended by Conference Committee Report.

Patrick Harris,
Secretary.

House of Representatives
Passed: 28-MAY-19, as amended
House of Representatives
Passed: 30-MAY-2019, as amended by Conference Committee
Report.

By: Senator Scofield