SB149

189432-3

By Senators Scofield, Dial, Livingston, Singleton, Beasley, Waggoner, Reed, Glover, Marsh, Albritton, Melson, Ward, Whatley, Bussman, Holtzclaw, Williams, Holley, Allen, Sanford, Stutts, McClendon, Orr, Smitherman, Coleman-Madison and Hightower

RFD: Fiscal Responsibility and Economic Development

First Read: 11-JAN-18
SYNOPSIS: This bill would encourage accelerated private investment in broadband infrastructure through telecommunications companies, cable companies, and electric cooperatives in rural areas by creating the Alabama Rural Broadband Act to provide a nonrefundable, transferable income tax credit equal to 10 percent of the investment in new qualified broadband network facilities in rural areas, subject to a cap.

This bill would authorize a 10-year exemption of the state portion of property taxes for new qualified broadband network facilities in rural areas and an exemption from sales and use tax for equipment and materials incorporated into or used to operate any qualified broadband network facility, and a similar exemption of the county or municipal portion of property taxes and local sales and use taxes if not disapproved by local governing bodies.
This bill would also provide for the termination of the tax credits allowed by this bill following the close of the tax year in 2023, with certain conditions.

A BILL
TO BE ENTITLED
AN ACT

To provide for new, qualified broadband network facilities and a nonrefundable, transferable credit against income tax liability imposed by state law; to authorize and provide an exemption from ad valorem taxation and from sales and use taxes levied, assessed, or payable under state law; to limit the term of the ad valorem tax exemptions and to cap the income tax credits; to provide for the carry-forward of certain earned but unused credits; to provide procedures for claiming the exemptions or credits; and to provide for the termination of tax credits allowed under the provisions of this bill after the 2023 tax year under certain conditions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

Section 2. The Legislature finds the availability of high-speed broadband services in rural Alabama is important for economic development, education, health care, and emergency services in Alabama, and that incentives set forth
in this act will further those objectives by encouraging new
investment in broadband infrastructure.

Section 3. (a) For the purposes of this chapter, the
following words have the following meanings:

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

(2) RURAL AREAS. An area not in a city or town that
has a population of more than 25,000 inhabitants, according to
the most recent decennial Census of the United States.

(b) Notwithstanding any other provision of law, and
subject to the limitations of this act, for all tax years
beginning after December 31, 2017, and ending December 31,
2023, any entity operating qualified broadband network
facilities for direct provision by the entity of broadband
services to Alabama consumers shall be allowed the following
tax credits or exemptions:

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

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

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

(2) An exemption from ad valorem taxes imposed or authorized under Title 40 and any other applicable provision of Code of Alabama 1975, for any qualified broadband network facilities for a period of 10 years from the date the facilities are placed into service; provided, there shall be no exemption from the county or municipal portion of ad valorem taxation except as provided in subdivision (4).

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

(4) A request for an exemption from the county or municipal portion of ad valorem taxes and any county or municipal sales and use taxes shall be submitted to the local
governing body and shall be effective unless disapproved by
resolution of the respective local governing body within 60
days of the date a written request for an exemption is
received by the local governing body.

(5) The tax credits and exemptions set forth in
subdivisions (1), (2), (3) and (4) shall only be applied for
by the entity operating the qualified broadband network
facility, its parent company, or its majority-owned
subsidiary, hereinafter referred to as the "operator".

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

(c)(1) Prior to claiming a credit or exemption under
this section, an operator shall submit to the Alabama
Department of Economic and Community Affairs information
adequate to prove the entity is entitled to a credit or
exemption provided by this section for prior or future
periods.

(2) An operator seeking recognition of a credit or
exemption provided by this section, following its investment
in qualified broadband network facilities, shall submit the required information to the Alabama Department of Economic and Community Affairs within 12 months of completion of the project or phase of the project covered by the submission.

(3) Following any necessary examination, the Alabama Department of Economic and Community Affairs may issue a certification and deliver that certification to the Department of Revenue and any local governing body that has granted an exemption pursuant to subdivision (4) of subsection (b) along with sending a copy of the certification to the operator seeking the exemption or credit.

(4) Upon receiving this certification from the Alabama Department of Economic and Community Affairs, the Department of Revenue and other state and local taxing authorities shall allow and recognize the tax credit and any exemptions provided in this section.

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

(d) Property exempt from the ad valorem tax under this section shall be listed separately on any property tax return filed under Chapter 21 of this title, and any other applicable provision of this title.

(e) Equipment vendors and other government entities shall rely on a copy of the certifications provided by the Alabama Department of Economic and Community Affairs for
purposes of recognizing any tax credit or exemption provided
in this section, and operators obtaining a certification from
the Alabama Department of Economic and Community Affairs may
obtain a refund of any sales and use or ad valorem taxes paid
for qualified broadband network facilities covered by the
certification by filing a direct petition for refund that
shall otherwise be subject to the procedures and limitations,
as applicable, in Section 40-2A-7.

(f) The Alabama Department of Economic and Community
Affairs and the Department of Revenue shall develop forms and
rules consistent with this section, which may not delay the
effectiveness of the credits or exemptions authorized by this
section.

(g) (1) The nonrefundable, transferable income tax
credit provided by this section, together with any credits
carried forward in any one taxable year, may not exceed the
lesser of the amount of income tax due under the Code of
Alabama 1975, after allowance for all other credits permitted
by Article 19 of this chapter, or one of the following: (1)
seven hundred fifty thousand dollars ($750,000) per taxpayer
if the qualified broadband network facility is capable of
transmitting broadband signals at speeds of at least 10
megabits per second of download speed and one megabit per
second of upload speed; (2) one million four hundred thousand
dollars ($1,400,000) per taxpayer if the qualified broadband
network facility is capable of transmitting broadband signals
at speeds of at least 25 megabits per second of download speed
and three megabits per second of upload speed.

(2) The total income tax credits granted in any tax
year may not exceed twenty million dollars ($20,000,000). Of
this amount, eighteen million dollars ($18,000,000) shall he
designated for projects in rural areas and two million dollars
($2,000,000) shall be designated for projects in areas which
do not have broadband speeds of at least 10 megabits per
second of download speed and one megabit per second of upload
speed.

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

(i)(1) Any income tax credit granted pursuant to
this section to an operator that is a partnership, limited
liability company or subchapter S corporation shall be passed
through to the partners, members, shareholders or owners,
including any not-for-profit private entity that is a partner,
member, or owner, respectively, on a pro rata basis or
pursuant to an executed agreement among the partners, members,
shareholders or owners documenting an alternate distribution
method, without regard to their sharing of other tax or
economic attributes of the entity.

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

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

(2) Once a credit is transferred, only the transferee may utilize the credit and the credit cannot be transferred again.

(3) A transferee of the tax credit may use the amount of tax credits transferred to offset any state tax due under this chapter.

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

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

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

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

(1) A completed transfer statement form.

(2) A copy of the certification issued by the Alabama Department of Economic and Community Affairs documenting the amount of tax credits which the operator intends to transfer.

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

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

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

(2) Filing of the fully executed copy of the written transfer agreement with the Department of Revenue shall perfect the transfer with respect to the transferee.

(n)(1) The Department of Revenue shall issue a tax credit certificate to each transferee listed in the agreement in the amount of the tax credit so transferred within 30 days
after receipt by the Department of Revenue of the fully 
executed written transfer agreement.

(2) The tax credit certificate shall be used by the 
transferee in claiming the income tax credit pursuant to this 
section.

(o) The Department of Revenue may adopt additional 
rules as are necessary to permit verification of the ownership 
of the tax credits but may not adopt any rules which unduly 
restrict or hinder the transfer of the tax credits. Nothing in 
this article shall be construed to limit the powers otherwise 
existing for the Department of Revenue to audit and assess an 
incentivized company.

(p) There is created the Alabama Rural Broadband 
Oversight Committee. The oversight committee shall consist of 
the Chair of the House Ways and Means Education Committee or 
his or her designee, the Chair of the Senate Finance and 
Taxation Education Committee or his or her designee, two 
members appointed by the Speaker of the House of 
Representatives, two members appointed by the President Pro 
Tempore of the Senate, and the Director of the Alabama 
Department of Economic and Community Affairs or his or her 
designee. The oversight committee shall be charged with 
providing general oversight of the implementation of the act 
and recommending further statutory changes to promote rural 
broadband development.

(q) The Alabama Department of Economic and Community 
Affairs shall periodically verify the actual qualifying
broadband services and new broadband network facilities during the relevant year. If the Alabama Department of Economic and Community Affairs is not able to provide the verification utilizing all available resources, it may request any additional information from the incentivized company as may be necessary. The Department of Revenue may periodically audit any incentivized company to monitor compliance by the incentivized company with this article. Nothing in this article shall be construed to limit the powers otherwise existing for the Department of Revenue to audit and assess an incentivized company.

(r)(1) An incentivized company shall be liable for any unearned portion of the investment credit it claims or transfers pursuant to this article. This investment credit will be considered unearned when the incentivized company fails to make the full capital investment upon which the credit was based and claimed or upon which the credit was valued and then transferred. The incentivized company shall be liable for only that portion of the investment credit that was unearned. Any credit claimed by an owner of an incentivized company is deemed to have been claimed by the incentivized company for purposes of this subsection.

(2) The Director of the Alabama Department of Economic and Community Affairs may report to the Department of Revenue any failure of an incentivized company to meet the investment requirements specified in the project agreement. The report will be made by March 31 of the year following the
calendar year in which the failure occurs and shall contain
sufficient information for the Department of Revenue to
calculate the unearned portion of the investment credit. The
underpayment of the applicable tax will be deemed to have
occurred upon the filing of the report. The report shall be
treated as the filing of a return by the incentivized company
for purposes of any applicable period of limitation.

(3) The Department of Revenue may assess an
incentivized company for any unearned portion of the credits
granted under this act, with allowed interest and penalties,
pursuant to the terms of Chapter 2A or 29 of Title 40, Code of
Alabama 1975. The liability shall be considered an
underpayment of the tax against which the respective credit
was applied or refunded.

(4) If more than one company is considered the
incentivized company under the terms of the project agreement,
each such company will be jointly and severally liable for any
liability associated with the unearned credit.

(s) The Director of the Alabama Department of
Economic and Community Affairs shall provide an annual report
to the Chair or the House Ways and Means Education Committee
and the Chair of the Senate Finance and Taxation Education
Committee regarding the effectiveness of the program under the
act.

Section 4. If any provision of this chapter or its
application to any person or circumstance is held invalid, the
invalidity does not affect other provisions or applications of
this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 5. This act shall become effective immediately following its passage and approval by the Governor, or its otherwise becoming a law.