HB189

216563-1

By Representative Shedd

RFD: Urban and Rural Development

First Read: 01-FEB-22
SYNOPSIS: Under the Connect Alabama Act of 2021, the minimum service threshold for Internet is defined as the minimum speed necessary to meet certain federal requirements.

This bill would increase the minimum service threshold for Internet under the act to at least 100 megabits per second downstream and 20 megabits per second upstream.

This bill would authorize the Alabama Digital Expansion Division chief to enter into nondisclosure agreements to protect provider-specific information unless release of the information is expressly authorized by the service provider.

Under existing law, the Alabama Digital Expansion Division is required to use 70 percent of funds received by the Connect Alabama Fund to extend last-mile infrastructure in unserved areas.

This bill would allow for all funds received by the Connect Alabama Fund to be used to extend
last-mile infrastructure in unserved areas and for middle mile and line extension programs. This bill would also allow for the program funds to be modified annually by a recommendation from the Alabama Digital Expansion Division and approval by the Alabama Digital Expansion Authority.

A BILL TO BE ENTITLED
AN ACT Relating to the Connect Alabama Act of 2021; to amend Sections 41-23-271, 41-23-273, and 41-23-274, Code of Alabama 1975; and to specify the minimum service threshold; to authorize the Alabama Digital Expansion Division chief to enter nondisclosure agreements; and to revise the expenditure of the Connect Alabama Fund and allow for annual revision of the program funds.
BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
Section 1. Sections 41-23-271, 41-23-273, and 41-23-274, Code of Alabama 1975, are amended to read as follows:
"§41-23-271.
"For the purposes of this article, the following terms shall have the following meanings:
"(1) ADECA. The Alabama Department of Economic and Community Affairs.

"(2) AUTHORITY. The Alabama Digital Expansion Authority.

"(3) CONNECT ALABAMA FUND. A fund created within the State Treasury to be administered by the Alabama Digital Expansion Finance Corporation, with funds distributed by the corporation to ADECA for use by the division for the implementation and administration of the statewide connectivity plan.

"(4) CORPORATION. The Alabama Digital Expansion Finance Corporation.

"(5) DIVISION. The Alabama Digital Expansion Division of ADECA.

"(6) END USER. A residential, business, institutional, or government entity that uses broadband services for its own purposes and does not resell the broadband services to other entities.

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

"(8) MINIMUM SERVICE THRESHOLD. A connection to the Internet that provides capacity for transmission at a minimum speed per customer necessary to meet the definition of advanced telecommunications capability for fixed broadband services as set by the Federal Communications Commission of at
least 100 megabits (100 Mbps) per second downstream and at
least 20 megabits (20 Mbps) per second upstream.

"(9) PROVIDER-SPECIFIC INFORMATION. Any information
given to ADECA or its agents by a broadband service provider
that identifies the provider's location-specific service
availability details, construction plans, or business
operations details that are not otherwise readily
ascertainable by proper means through third parties without
substantial effort.

"(9) (10) RURAL AREA. Any area within this state not
included within the boundaries of any incorporated city or
town having a population of more than 25,000 inhabitants,
according to the last federal census.

"(10) (11) UNSERVED AREA. Any area that is
determined by the division to not have at least one provider
of terrestrial broadband service that offers a connection to
the Internet that meets or exceeds the minimum service
threshold.

"§41-23-273.

"(a) The Alabama Digital Expansion Division is
created as a division of ADECA. The division shall be run by a
division chief, who shall be appointed by the Director of
ADECA, with the approval of the Governor, from a list of three
nominees submitted by the authority. The division chief shall
report to, and be under the direct supervision of, the
Director of ADECA. The division chief shall carry out the
functions and duties of the division. The division chief shall
be knowledgeable in matters relating to broadband and shall have no financial interest in any broadband or related business or enterprise which would conflict or be inconsistent with his or her duties as division chief. The division chief shall be employed in the exempt service.

"(b) The division chief shall have the power and authority necessary to carry out the functions and duties of the division. All functions and duties of the division shall be exercised by the division chief or through such employees or other individuals the division chief may designate. In the performance and exercise of such powers, authorities, functions, and duties, the division chief and other employees of the division shall be subject to all legal requirements, restrictions, limitations, conditions, and penalties, whether civil or criminal. These powers, authorities, functions, and duties include, but are not limited to, the following:

"(1) Exercise duties as the chief executive of the division and exercise, consistent with this article and other applicable laws, all the powers, authority, and duties vested by this article and any other applicable ADECA policies and regulations or laws providing for the operation of the division.

"(2) Employ, with the approval of the Director of ADECA, all individuals necessary for the efficient operation of the division, including professional, technical, clerical, and other staff, including attorneys, special counsel, and
consultants as are necessary to accomplish the objectives of this article.

"(3) Enter into nondisclosure agreements to protect proprietary information. All provider-specific information provided under a nondisclosure agreement shall be presumed confidential and proprietary and shall not be considered a public record. Provider-specific information shall not be released to any person other than to the submitting broadband services provider and to appropriate ADECA staff, agents, or contractors without the express written consent of the submitting broadband services provider. Provider-specific information shall only be used for broadband mapping, policy development, grant eligibility purposes, and furthering the broadband goals of the state.

"(c) Upon approval by the Director of ADECA, the division chief may establish technical and other advisory committees to advise the division with respect to specific objectives.

"§41-23-274.

"The division, in collaboration with the authority, shall have all of the following powers and duties:

"(1) To promote the expansion and availability of high-speed broadband networks, services, and technologies throughout the state, including, but not limited to, rural areas, underserved areas, and unserved areas of the state.

"(2) To develop and begin executing a statewide connectivity plan, as approved by the authority, to facilitate
the expansion and availability of high-speed broadband
networks, services, and technologies throughout the state,
including a timeline for implementation of the plan. The
Director of ADECA shall submit the proposed plan to the
authority for approval on or before July 1, 2022. The plan
must consider the need for broadband expansion in rural areas,
underserved areas, and unserved areas, as well as any other
obstacles to broadband adoption. It shall include
recommendations for funding, and plans for implementation of
the following objectives, including but not limited to:

"a. Evaluation of the state's existing long-haul and
middle mile network.

"b. Projects for the development and expansion of a
secure, reliable, robust, multi-purpose, and high-quality
long-haul and middle mile fiber network throughout the state.
Projects shall be implemented in the most cost effective and
efficient manner for the state and should utilize existing,
available infrastructure where it is consistent with the plan
and meets the speeds, service quality, and other priorities
established by this article, the plan, or the authority.

"c. Projects for providing last-mile infrastructure
and lit services for specific applications and use cases that
are determined by the division to be a priority supported by
the network or portions of the network funded under the
statewide connectivity plan.

"d. Consideration of suggestions and recommendations
of the Alabama Supercomputer Authority.
"(3) To implement the authority-approved statewide connectivity plan and to enter into contracts and leases for purposes consistent with the priorities of the plan. In developing the statewide connectivity plan, the division may seek input from incumbent Internet service providers, other service providers, and other owners and operators of infrastructure involved in providing high-speed broadband service.

"(4) To establish and administer a broadband accessibility the Connect Alabama grant program programs, in collaboration with the authority, for the purpose of promoting the deployment and adoption of high-speed broadband Internet networks, services, and technologies throughout the state, including, but not limited to, rural areas, underserved areas, and unserved areas of the state consistent with the requirements of this article. For three years following May 17, 2021, 70 percent of the state funds received by the Connect Alabama Fund shall be expended by the division for the extension of last-mile infrastructure in unserved areas at minimum speeds as determined by the statewide connectivity plan, as well as the establishment and administration of a middle mile program and line extension program. ADECA may establish additional Connect Alabama grant programs in accordance with the goals of the statewide connectivity plan. The funding amounts for programs established under this article shall be evaluated for increase or decrease annually with recommendations from the division and approval by the
authority. After this time, all funds received for the statewide connectivity plan shall be expended according to the goals of the program and the statewide connectivity plan, as identified by the division, and subject to any applicable legal requirements. Federal and other funds received by ADECA or the Connect Alabama Fund shall be expended by the division in accordance with the statewide connectivity plan and any legal requirements applicable to those funds.

"(5) To adopt rules and policies, as approved by ADECA, within 90 days of establishing and receiving the initial funding for the statewide connectivity plan, to administer the program and to begin to accept applications for grants, including any rules necessary to meet the future needs of the grant program.

"(6) To develop strategies and support efforts to attract and leverage grant funds, federal resources, and private investment in furtherance of this article.

"(7) To accept and receive funds, gifts, grants, property, labor, or other monetary or in-kind contributions of any type or from any source, including, but not limited to, federal and state grants, appropriations, loans, and loan guarantees.

"(8) To administer the distribution of funds, grants, loans, loan guarantees, or other funds and resources received by the division and to ensure that grant funds
awarded under this article are used for the purposes specified
in this article.

"(9) To promote and encourage private investments
and applications for available grants.

"(10) To perform any other actions necessary or
convenient for the implementation and administration of this
article and in compliance with state and federal law."

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