

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

SYNOPSIS: Under existing law, the Alabama Department of Economic and Community Affairs administers a broadband accessibility grant program to award grants to non-governmental entities that provide broadband services.

This bill would increase the minimum service threshold for high-speed broadband services from 25 to 100 megabits per second of download speed and from three to 100 megabits per second of upload speed.

This bill would allow governmental entities to participate in the grant program and would require an entity to have contributed its statewide broadband service availability information to the Alabama broadband mapping program over the past year to qualify for a grant.

This bill would also require any federal or other funds expended by ADECA's grant program to be distributed according to the statewide connectivity plan.

1 Under existing law, grants awarded by ADECA
2 for unserved areas may not exceed the lesser of 35
3 percent of the project costs or \$1,500,000.

4 This bill would increase the amount
5 authorized to be awarded by providing that grants
6 awarded in unserved areas may not exceed the lesser
7 of 80 percent of the project costs or \$5,000,000.

8 This bill would provide additional criteria
9 for the preference of awarding of grants to
10 organizations incorporated, headquartered, or with
11 a principal place of business in Alabama and to
12 projects that include services that offer certain
13 programs.

14 This bill would revise the window for
15 applying for a grant and would provide exceptions
16 to this timeframe.

17 This bill would remove the requirement for
18 ADECA to publish grant applications online and
19 allow persons to object to the eligibility of the
20 project.

21 This bill would also provide for a one-year
22 extension of the requirement that a funded project
23 be completed within two years in certain
24 circumstances.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

2
3 Relating to the Alabama Broadband Accessibility Act;
4 to amend Sections 41-23-211, 41-23-212, 41-23-213, and
5 41-23-214, Code of Alabama 1975; to increase the minimum
6 threshold speeds for broadband service grants; to include
7 references to the Alabama broadband mapping program and
8 state-wide connectivity plan; to revise criteria and
9 eligibility for the awarding of grants; to revise the window
10 for grant applications; to revise the grant application
11 procedures; and to allow for a project extension in certain
12 circumstances.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

17 "§41-23-211.

18 "The Legislature finds that the availability of
19 high-speed broadband services, with the preference of speeds
20 of ~~25~~ 100 megabits per second of download speed and ~~three~~ 100
21 megabits per second of upload speed or greater, in unserved
22 rural Alabama is important for economic development,
23 education, health care, and emergency services in Alabama, and
24 that grants and other incentives set forth in this article
25 will further those objectives by encouraging new investment in
26 broadband infrastructure.

27 "§41-23-212.

1 "For the purposes of this article, the following
2 words have the following meanings:

3 "(1) ADECA. The Alabama Department of Economic and
4 Community Affairs.

5 "(2) END USER. A residential, business,
6 institutional, or government entity that uses broadband
7 services for its own purposes and does not resell such
8 broadband services to other entities. An Internet service
9 provider (ISP) and mobile wireless service provider are not an
10 end user for the purposes of Sections 41-23-212, 41-23-213,
11 and 41-23-214.

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

15 "(4) MINIMUM SERVICE THRESHOLD. A connection to the
16 Internet that provides capacity for transmission at an average
17 speed per customer of at least ~~25 megabits (25 Mbps)~~ 100
18 megabits (100 Mbps) per second downstream and at least ~~three~~
19 100 megabits (3 100 Mbps) per second upstream.

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

24 "(6) UNSERVED AREA. Any rural area in which there is
25 not at least one provider of terrestrial broadband service
26 that is either: (1) offering a connection to the Internet
27 meeting the minimum service threshold; or (2) ~~is~~ required;

1 under the terms of ~~the Federal Universal Service Fund or other~~
2 ~~federal or state grant,~~ another state or federal grant to
3 provide a connection to the Internet at speeds meeting the
4 minimum service threshold ~~by March 28, 2023~~ within the same or
5 similar timeframe of projects of similar complexity or scale
6 awarded during each grant cycle.

7 "§41-23-213.

8 "(a) The Director of ADECA may establish and
9 administer the broadband accessibility grant program for the
10 purpose of promoting the deployment and adoption of broadband
11 Internet access services to unserved areas. ~~By June 26, 2018,~~
12 ~~the~~ The director shall adopt rules and policies to administer
13 the program and begin to accept applications for grants, and
14 shall adopt such rules as may be necessary to meet the future
15 needs of the grant program.

16 "(b) The program shall be administered pursuant to
17 policies developed by ADECA in compliance with this article.
18 The policies shall provide for the awarding of grants to
19 ~~non-governmental~~ entities that are cooperatives, corporations,
20 limited liability companies, partnerships, or other private
21 business entities, or units of government that provide
22 broadband services. An entity is not eligible for a grant
23 under this article unless the entity has submitted, within the
24 one-year period preceding the awarding of the grant, the
25 entity's broadband service availability information to
26 Alabama's broadband mapping program. Nothing in this article

1 shall expand the authority under state law of any entity to
2 provide broadband service.

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

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

26 "a. ~~Thirty-five~~ Eighty percent of the project costs.

1 "b. ~~One~~ Five million ~~five hundred thousand~~ dollars
2 ~~(\$1,500,000)~~ (\$5,000,000) for projects that will be capable of
3 transmitting broadband signals at or above ~~the minimum service~~
4 ~~threshold~~ 100 megabits per second of download speed and 100
5 megabits per second of upload speed.

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

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

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

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

18 "b. Serve locations with demonstrated community
19 support, including, but not limited to, documented support
20 from local government.

21 "c. Demonstrate the operator's technical and
22 managerial capabilities to complete the project within ~~two~~
23 ~~years of the grant~~ the required timeframe.

24 "d. Demonstrate the applicants' necessary financial
25 resources.

26 "e. Are most cost effective and technically
27 efficient in that they propose to serve the highest number of

1 unserved homes, businesses, and community anchor points for
2 the least grant fund cost and best level of service,
3 emphasizing projects including the highest broadband speeds.

4 "f. Provide material broadband enhancement to
5 hospitals, clinics, and other medical facilities located in
6 rural areas.

7 "g. Support local libraries in this state for the
8 purpose of assisting the libraries in offering digital
9 literacy training pursuant to state library and archive
10 guidelines.

11 "h. Provide support for the deployment of
12 infrastructure to be owned and operated exclusively by
13 organizations incorporated, headquartered, or with a principal
14 place of business in Alabama.

15 "i. Commit to improving the adoption rate of
16 broadband services by offering programs to households that
17 meet guidelines established by ADECA or the funding source,
18 including, but not limited to, special service rates,
19 Internet-enabled devices that meet the needs of the user, and
20 digital skills training.

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

26 "(6) In order to promote the deployment of grant
27 funds in an inclusive manner that is consistent with the

1 racial, gender, geographic, urban, rural, and economic
2 diversity of the state, ADECA may give additional
3 consideration to an applicant that provides documentation that
4 it has been certified by the ADECA Office of Minority Business
5 Enterprise or otherwise as a Disadvantaged Business
6 Enterprise. For projects funded under ~~Sections 41-23-212,~~
7 ~~41-23-213, and 41-23-214~~ this article, ADECA shall encourage
8 grant applicants to use vendors and subcontractors that have
9 been certified by the Office of Minority Business Enterprise
10 or that are Disadvantaged Business Enterprises. ADECA shall
11 include in its report to the Alabama Rural Broadband Oversight
12 Committee a list of entities certified by the Office of
13 Minority Business Enterprise and Disadvantaged Business
14 Enterprises that have been awarded grants since the prior
15 report.

16 "(e) For each ~~fiscal~~ year in which grant funds are
17 available, ADECA shall accept applications within a
18 60-to-90-day grant window that it shall establish. However,
19 when necessary to meet the requirements of other funding
20 sources, a grant window of 30 days may be established by
21 ADECA. ADECA shall review each application for eligibility as
22 determined by the state map. Any applicant submitting a
23 project that includes served areas as documented by the state
24 map shall be given an opportunity to revise the application to
25 eliminate ineligible portions or rescind the application.
26 Applications for eligible projects ~~will~~ shall be evaluated
27 according to a scoring system developed by ADECA that

1 incorporates the priorities listed in this section, with grant
2 awards published ~~within 90 days after expiration of the filing~~
3 ~~window~~ as soon as possible, but no more than 60 days after
4 expiration of the filing window. ~~Grant applications shall be~~
5 ~~published by ADECA on the Internet at the end of the filing~~
6 ~~window, and existing service providers shall have 30 business~~
7 ~~days from the date of publication to file objections to the~~
8 ~~eligibility of a proposed project. ADECA shall address any~~
9 ~~objections within 30 days of submission and shall make any~~
10 ~~appropriate changes to grant awards based on a finding of~~
11 ~~ineligibility resulting from such protest. Subject to such~~
12 ~~protest procedure, grants~~ Grants issued by ADECA shall be
13 conditioned upon compliance with the terms of the grant but
14 shall not otherwise be revocable. Providers' grants shall be
15 paid within 30 days upon ADECA receiving written certification
16 of the completion of the project and evidence of compliance
17 with the terms of the grant as prescribed by ADECA.

18 "(f) Grants shall be conditioned on project
19 completion within two years of awarding of the grant.
20 Applicants who demonstrate project complexity may request more
21 than two years to complete the project. Recipients who
22 demonstrate that the project is progressing may request an
23 extension for up to one year for project delays beyond the
24 recipient's control. If a recipient fails to complete a
25 project within the two-year deadline, or within the extended
26 deadline ~~due to reasons other than delay caused by a~~

1 ~~government entity~~, ADECA may revoke the grant in its entirety
2 and rededicate the funds to a new recipient.

3 "(g) ADECA shall condition the release of any grant
4 funds awarded under this chapter on ~~both of~~ all of the
5 following:

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

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

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

20 "(1) Projects to serve unserved areas in which the
21 grant applicant is either or both: a. an existing or future
22 service provider which has or will receive support through
23 federal universal service funding programs designed
24 specifically to encourage broadband deployment in an area
25 without broadband access; or b. an ~~existing or future service~~
26 provider entity that currently provides services which has or
27 will receive other forms of federal or state financial support

1 or assistance, such as a grant or loan from the United States
2 Department of Agriculture; provided, however, that any award
3 of state funds under this section, when combined with other
4 forms of state or federal support or assistance dedicated to
5 the project, other than interest-bearing loans, may not exceed
6 ~~60~~ 90 percent of the total project costs. Nothing in this
7 section shall prohibit a grant applicant who has not
8 previously received any federal or state funds, grants, or
9 loans for broadband deployment from applying for and receiving
10 grant funds under this section.

11 "(2) Middle mile projects, where the applicant
12 demonstrates that the project will connect other service
13 providers eligible for grants under this section with
14 broadband infrastructure further upstream in order to enable
15 the providers to offer broadband service to end users;
16 provided that eligible projects under this subdivision may
17 include projects in an unserved area or a rural area that does
18 not meet the definition of an unserved area but otherwise
19 meets the requirements of this section, for which the grant
20 applicant demonstrates, by specific evidence, the need for
21 greater broadband speeds, access, capacity, resiliency, or
22 service which is not being offered by an existing service
23 provider.

24 "(3) Projects to provide broadband service to a
25 specific hospital, health care facility, public school, public
26 safety, or economic development site in a rural area that does
27 not meet the definition of an unserved area but otherwise

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

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

9 "(i) Nothing in this section shall affect the
10 approval and continued funding of grants awarded prior to May
11 30, 2019.

12 "§41-23-214.

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

25 "(b) The oversight committee shall reflect the
26 racial, gender, geographic, urban/rural, and economic
27 diversity of the state.

1 "(c) For any year in which grants are distributed
2 under the program, ADECA shall produce a report on the status
3 of grants under the program to the oversight committee,
4 including progress toward increased access to and adoption of
5 broadband services. The report shall be provided at the
6 oversight committee's first meeting of the year and be
7 published on ADECA's website. ADECA shall provide a copy of
8 the report to the Governor, the Alabama Senate President Pro
9 Tempore, the Alabama Senate Minority Leader, the Speaker of
10 the Alabama House of Representatives, and the Alabama House of
11 Representatives Minority Leader. By March 28, 2019, ADECA
12 shall produce a report on the availability of broadband within
13 the state."

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