

1 SB253  
2 185065-2  
3 By Senators Scofield, Livingston, Reed, Albritton, Stutts,  
4 Holtzclaw, Shelnuttt, Williams, Allen, Ward, Whatley, Beasley,  
5 Smith, Glover, Holley, Singleton, Blackwell, Smitherman and  
6 Waggoner  
7 RFD: Transportation and Energy  
8 First Read: 28-FEB-17

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend the Alabama Renewal Act by adding Section  
12 40-18-415.1 to the Code of Alabama 1975, to provide for new,  
13 qualified broadband network facilities and a nonrefundable,  
14 transferable credit against income tax liability imposed by  
15 state law; to provide an exemption from ad valorem taxation  
16 under state law and from sales and use tax levied, assessed,  
17 or payable under state law; to limit the term of the ad  
18 valorem tax exemptions and to cap the income tax credits; to  
19 provide for the carry forward of certain earned but unused  
20 credits; to provide methods for claiming the exemptions or  
21 credits; and to amend Act 2016-102, 2016 Regular Session, now  
22 appearing as Section 40-18-416, Code of Alabama 1975, to  
23 provide for the repeal of its provisions under certain  
24 conditions.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1                   Section 1. This act shall be known and may be cited  
2 as the Alabama Rural Broadband Amendment to the Alabama  
3 Renewal Act.

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

10                   Section 3. Section 40-18-415.1 is added to Chapter  
11 18, Article 19, Title 40, Code of Alabama 1975, to read as  
12 follows:

13                   §40-18-415.1.

14                   (a) For the purposes of this section, the following  
15 words have the following meanings:

16                   (1) 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 directly or indirectly to transmit  
21 broadband signals capable of speeds at least 10 megabits per  
22 second of download speed and one megabit per second of upload  
23 speed to end user locations in rural areas purchased,  
24 constructed, or installed for use in Alabama after December  
25 31, 2016.

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

4                   (b) Notwithstanding any other provision of this  
5 chapter, and subject to the limitations of this section, for  
6 all tax years beginning after December 31, 2016, any entity  
7 operating qualified broadband network facilities for the  
8 direct provision by the entity of broadband services to  
9 Alabama consumers shall be allowed the following tax credits  
10 or exemptions:

11                   (1) A nonrefundable, transferable credit against  
12 state income tax liability imposed under this chapter, equal  
13 to 10 percent of the new investment by the entity in qualified  
14 broadband network facilities. For purposes of this section, an  
15 entity's new investment shall include, but not be limited to,  
16 a. All funds expended for the purchase, construction, or  
17 installation of qualified broadband network facilities through  
18 grants, borrowings, gifts, contributions, capital liquidity,  
19 investments obtained from third party investors or otherwise;  
20 and b. The present value of the minimum lease payments under  
21 all real or personal property leases.

22                   (2) An exemption from the state portion of ad  
23 valorem taxation under Chapter 21 of this chapter, and any  
24 other applicable provision of this title for any qualified  
25 broadband network facilities for a period of 10 years from the  
26 date the facilities are placed into service.

1           (3) An exemption for any qualified broadband network  
2 facilities from all sales and use tax levied, assessed, or  
3 payable under Chapter 23 of this title; provided there shall  
4 be no exemption of local sales and use taxes except as  
5 provided in subdivision (4).

6           (4) An exemption from the county or municipal  
7 portion of ad valorem taxation under Chapter 21 of this title  
8 and any county or municipal sales and use taxes shall be  
9 submitted to the local governing body and shall be effective  
10 unless disapproved by resolution of the respective local  
11 governing body within 60 days of the date a written request  
12 for an exemption is received by the local governing body.

13           (5) The tax credits and exemptions set forth in  
14 subdivisions (1), (2), and (4) shall only be applied for by  
15 the entity operating the qualified broadband network  
16 facilities, its parent company, or its majority-owned  
17 subsidiary, hereinafter referred to as the "operator".  
18 Contractors, vendors, and similar service providers who help  
19 build, develop, and install the qualified broadband network  
20 facility shall not have the right to apply for the tax credits  
21 or exemptions; provided, however, that an operator may obtain  
22 a refund of any sales or use taxes remitted, paid, or  
23 otherwise reimbursed by the operator to a service provider for  
24 qualified broadband network facilities and ultimately remitted  
25 by the service provider to state and local government, in the  
26 same manner and to the same extent as if the taxes had been  
27 paid directly by the operator.

1 (c) (1) Prior to claiming a credit or exemption under  
2 this section, an operator shall submit to the Department of  
3 Agriculture and Industries information adequate to prove that  
4 the entity is entitled to a credit or exemption provided by  
5 this section for prior or future periods.

6 (2) An operator seeking recognition of a credit or  
7 exemption provided by this section, following its investment  
8 in qualified broadband network facilities, shall submit the  
9 required information to the Department of Agriculture and  
10 Industries within 12 months of completion of the project or  
11 phase of the project covered by the submission.

12 (3) Following any necessary examination, the  
13 Department of Agriculture and Industries may issue a  
14 certification and deliver that certification to the Department  
15 of Revenue and any local governing body that has granted an  
16 exemption pursuant to subdivision (4) of subsection (b), along  
17 with sending a copy of the certification to the operator  
18 seeking the exemption or credit.

19 (4) Upon receiving this certification from the  
20 Department of Agriculture and Industries, the Department of  
21 Revenue and other state taxing authorities shall allow and  
22 recognize the tax credit and any exemptions provided in this  
23 section.

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

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

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

16 (f) The Department of Agriculture and Industries and  
17 the Department of Revenue shall develop forms and rules  
18 consistent with this section, which may not delay the  
19 effectiveness of the credits or exemptions authorized by this  
20 section.

21 (g) (1) The nonrefundable, transferable income tax  
22 credit provided by this section, together with any credits  
23 carried forward in any one taxable year, may not exceed the  
24 lesser of the amount of income tax due under the Code of  
25 Alabama 1975, after allowance for all other credits permitted  
26 by Article 19 of this chapter, or one of the following: (1)  
27 Seven hundred fifty thousand dollars (\$750,000) per taxpayer

1 if the qualified broadband network facility is capable of  
2 transmitting broadband signals at speeds of at least 10  
3 megabits per second of download speed and one megabit per  
4 second of upload speed. (2) One million four hundred thousand  
5 dollars (\$1,400,000) per taxpayer if the qualified broadband  
6 network facility is capable of transmitting broadband signals  
7 at speeds of at least 25 megabits per second of download speed  
8 and three megabits per second of upload speed.

9 (2) The total income tax credits granted in any tax  
10 year may not exceed twenty million dollars (\$20,000,000).

11 Of this amount, eighteen million dollars  
12 (\$18,000,000) shall be designated for projects in rural areas  
13 and two million dollars (\$2,000,000) shall be designated for  
14 projects in areas which do not have broadband speeds of at  
15 least 10 megabits down/one megabit up.

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

20 (i)(1) Any income tax credit granted pursuant to  
21 this section to an operator that is a partnership or limited  
22 liability company shall be passed through to the partners,  
23 members, or owners, including any not-for-profit private  
24 entity that is a partner, member, or owner, respectively, on a  
25 pro rata basis or pursuant to an executed agreement among the  
26 partners, members, 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, or owner and the completed tax credit  
7 certificate may be provided to the Department of Revenue to  
8 transfer all or any portion of the tax credits passed through  
9 to the partner, member, or owner in accordance with this  
10 subsection.

11 (j) (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 service, 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 a credit is transferred, only the  
21 transferee may utilize the credit and the credit cannot be  
22 transferred again.

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

26 (k) (1) The Department of Revenue shall adopt a  
27 transfer statement form to be filed by the operator with the

1 Department of Revenue prior to the proposed transfer of any  
2 credit issued under this chapter.

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

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

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

13 (1) A completed transfer statement form.

14 (2) A copy of the certification issued by the  
15 Department of Agriculture and Industries documenting the  
16 amount of tax credits which the operator intends to transfer.

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

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

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

16 Section 4. Act 2016-102, 2016 Regular Session now  
17 appearing as Section 40-18-416, Code of Alabama 1975, is  
18 amended to read as follows:

19 "§40-18-416.

20 "(a) This All provisions of this article, except for  
21 Section 40-18-415.1, shall be repealed following the close of  
22 fiscal year 2020, but the repeal shall not cause a reduction  
23 or suspension of any credits awarded for fiscal year 2020 or  
24 for prior years during which the Growing Alabama Credit was in  
25 effect.

26 "(b) Section 40-18-415.1 shall be repealed following  
27 the close of fiscal year 2022, but the repeal shall not cause

1 a reduction, suspension, or early termination of any credits  
2 or exemptions authorized under the section resulting from  
3 investment occurring in fiscal year 2022 or prior years during  
4 which the laws creating those credits or exemptions were in  
5 effect, including, without limitation, the carry forward of  
6 income tax credits pursuant to subsection (h) of Section  
7 40-18-415.1."

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

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Senate

Read for the first time and referred to the Senate  
committee on Transportation and Energy..... 28-FEB-17

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 09-MAR-17

Read for the third time and passed as amended .... 11-APR-17

Yeas 31  
Nays 1

Patrick Harris,  
Secretary.