

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 529 – SB 1215

March 7, 2017

**SUMMARY OF ORIGINAL BILL:** Requires the Department of Economic and Community Development (ECD) to establish and administer the Broadband Accessibility Grant Program (BAGP). Establishes the Tennessee Broadband Accessibility Fund (TBAF). Authorizes ECD to retain up to five percent of moneys within the TBAF for administration of the BAGP. Authorizes Electric Cooperatives to provide broadband. Requires Cooperatives provided broadband service be subject to regulation by the Tennessee Regulatory Authority (TRA). Creates a franchise and excise (F&E) tax credit, capped at \$5,000,000 in any given calendar year, to be applied to certain equipment purchased by such taxpayers and utilized in counties classified as a Tier 3 or Tier 4 Enhancement County.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue - \$5,000,000/FY18-19  
\$5,000,000/FY19-20  
\$5,000,000/FY20-21

Increase State Expenditures - \$10,291,600/FY17-18  
\$10,275,700/FY18-19  
\$10,275,700/FY19-20

Other Fiscal Impact – Of the \$10,000,000 grant funding in increased state expenditures above, \$500,000 will go to ECD and \$9,500,000 will go for broadband grants in FY17-18, FY18-19, and FY19-20.

Due to multiple unknown variables, the precise impact to state government revenue from additional F&E taxes paid by electric cooperatives cannot reasonably be determined. Any increase in local government expenditures is considered permissive.

Other secondary economic impacts may occur as a result of this bill. Due to multiple unknown factors, fiscal impacts directly attributable to such secondary economic impacts cannot be quantified with reasonable certainty.

A non-recurring appropriation of \$10,000,000, a recurring appropriation of \$300,000, and a non-recurring decrease in revenue of \$5,000,000 is included in the Governor's Recommended Budget Document for FY17-18 (page A-38).

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**IMPACT TO COMMERCE OF ORIGINAL BILL:**

Increase Business Revenue – Less than \$9,500,000/FY17-18  
Less than \$9,500,000/FY18-19  
Less than \$9,500,000/FY19-20

Decrease Business Expenditures – Less than \$5,000,000/FY18-19  
Less than \$5,000,000/FY19-20  
Less than \$5,000,000/FY20-21

Jobs Impact – Passage of this bill is expected to lead to job creation the extent of which is unknown.

**SUMMARY OF AMENDMENT (004656):** Deletes and rewrites the bill such that the substantive changes require the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to update the report *Broadband Internet Deployment, Availability, and Adoption in Tennessee* by January 15, 2021, and authorizes electric cooperatives to provide cable or video service in addition to providing broadband.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Revenue – Exceeds \$500/Tennessee Regulatory Authority**

**Decrease State Revenue - \$5,000,000/FY18-19  
\$5,000,000/FY19-20  
\$5,000,000/FY20-21**

**Increase State Expenditures - \$10,291,600/FY17-18  
\$10,275,700/FY18-19  
\$10,275,700/FY19-20**

**Other Fiscal Impact – Of the \$10,000,000 grant funding in increased state expenditures above, \$500,000 will go to ECD and \$9,500,000 will go for broadband grants in FY17-18, FY18-19, and FY19-20.**

**Due to multiple unknown variables, the precise impact to state government revenue from additional F&E taxes paid by electric cooperatives cannot reasonably be determined. Any increase in local government expenditures is considered permissive.**

**Other secondary economic impacts may occur as a result of this bill. Due to multiple unknown factors, fiscal impacts directly attributable to such secondary economic impacts cannot be quantified with reasonable certainty.**

**A non-recurring appropriation of \$10,000,000, a recurring appropriation of \$300,000, and a non-recurring decrease in revenue of \$5,000,000 is included in the Governor's Recommended Budget Document for FY17-18 (page A-38).**

Assumptions related to BAGP administration:

- The Governor's proposed budget for FY17-18, on page A-38, provides for a one-time \$10,000,000 appropriation to ECD, within Business Development Services, for use within the TBAF.
- The BAGP and TBAF are subject to appropriation; however the administration has publically stated this program will be funded at a rate of \$10,000,000 also in FY18-19, and FY19-20. Therefore, it is assumed that additional non-recurring appropriations of \$10,000,000 will be included in each FY18-19 and FY19-20.
- Funds for the TBAF will be appropriated from the General Fund.
- ECD will require two positions to administer the BAGP; funding for such positions will begin in FY17-18 and be funded each fiscal year through FY19-20.
- The increase in state expenditures for salaries, benefits, other job related expenses is \$275,669 [(\$100,000 Director salary + \$23,500 benefits) + (\$75,000 Grant Manager salary + \$19,369 benefits) + \$57,800 job related expenses] and will be incurred in each FY17-18, FY18-19, and FY19-20.
- The one-time increase in state expenditures for supplies and equipment is estimated to be \$15,900.

Assumptions related to BAGP awards:

- ECD will retain \$500,000 (\$10,000,000 x 5%), for administration of the grant program. The remaining funds, or \$9,500,000, will be available for grants to be awarded through the BAGP.
- ECD will be responsible for establishing criteria and policies regarding grants awarded through the BAGP; however some criteria are established within the proposed language.
- Grants awarded through the BAGP will be awarded to local governments, local government entities, corporations, limited liability companies, partnerships, cooperatives, or other business entities that provide broadband service; however, entities which have not previously received state or federal funds to encourage broadband deployment will be given priority.
- The proposed amendatory language authorizes the electric cooperatives within Tennessee to provide broadband service and establishes their eligibility to receive grant funds from the BAGP.
- It is unknown how many grants will be awarded through the BAGP, the extent of funding for each grant awarded, if any such grant funds will be awarded to local government entities, the extent of any grant funds awarded to local government entities, the level of any investment to be made in addition to any grant funds received by local government entities, and if any electric cooperatives will invest in broadband infrastructure without receiving grant funds as a direct result of the authorization

provided for in this bill; therefore, a fiscal impact to local government cannot reasonably be determined, but any increase in local government expenditures would be considered permissive.

Assumptions related to the Tennessee Regulatory Authority (TRA):

- According to the TRA, electric cooperatives opting to provide broadband services would be required to obtain a certificate of convenience and necessity (CCN) issued by the TRA, at a fee of \$25 per CCN.
- The proposed amendatory language will also authorize electric cooperatives to provide cable and video services after obtaining a certificate of franchise authority (CFA).
- Pursuant to Tenn. Code Ann. § 7-59-305(b), when applying for a state issued CFA, applicants are charged a fee which is assessed based on the population of the area where service will be provided.
- Such applications are issued by the TRA with fees assessed ranging from \$500 to \$15,000.
- Pursuant to Tenn. Code Ann. § 7-59-305(f), certificate holders are assessed an annual fee based on the number of cable or video subscribers served. The aggregate fee is capped at \$107,000 annually, which has been met every year since the law's enactment in 2008.
- Based on information provided by the TRA, when the number of certified providers increases, annual fees owed by existing certificate providers are reduced for the following year; as a result, TRA will not receive any new revenue from the annual fee as such new franchise certificates are issued as a result of the proposed amendatory language.
- While it is unknown how many electric cooperatives will elect to obtain a CFA, if they will opt to obtain a CFA in conjunction with a CCN, and the extent of the application fee assessed on any electric cooperative for applying for a CFA, it is reasonably assumed at least one electric cooperative will apply for a CFA and a CCN as a direct result of the authority provided by the amendatory language.
- It is reasonably estimated the proposed amendatory language will result in a recurring increase in state revenue exceeding \$525.
- Any increase in revenue from the issuance of additional CCNs or CFAs would not revert to the General Fund but would remain within the TRA as a self-funded agency.
- TRA will not require any additional staff or resources for issuances of CCNs or CFAs.

Assumptions related to F&E Tax Credits:

- The proposed language creates an F&E tax credit to be claimed by F&E taxpayers after purchase of certain broadband infrastructure equipment which will be utilized in Tier 3 or Tier 4 Enhancement Counties as defined pursuant to Tenn. Code Ann. § 67-4-2109(a).
- Pursuant to Tenn. Code Ann. § 67-4-2007(a) and § 67-4-2105(a), nonprofit businesses are not responsible for paying F&E taxes, except for earnings and net worth which is

garnered outside of the original scope of business for which nonprofit status was originally granted.

- Any private company currently paying F&E taxes and purchasing such broadband infrastructure equipment to be used in certain counties will be eligible to receive the F&E tax credit created by this language; however it is assumed that any electric cooperative opting to provide broadband service, as authorized in this language, will now be responsible for paying F&E taxes and as such, are eligible to receive the tax credit on certain purchases and any F&E taxes paid by the electric cooperative will be greater than the tax credit available.
- The maximum authorized amount of F&E tax credits totaling \$5,000,000 will be claimed by and awarded to taxpayers to offset F&E taxpayer's liability for a period of three years.
- Applications for F&E tax credits will be due October 15, 2018; therefore, the first year impacted as a result of F&E tax credits will FY18-19. In addition, \$5,000,000 of tax credits will be awarded in each FY18-19, FY19-20, and FY20-21.
- Due to multiple unknown variables, such as how many electric cooperatives will seek to provide broadband service, the amount of any additional revenue received from payment of F&E taxes by such electric cooperatives, if such cooperatives will apply for the tax credit, and the extent of any credit received; a precise impact to state government revenue and the extent of any increase in local government expenditures for payment of F&E taxes cannot be reasonably calculated. Any increase in local government expenditures is considered permissive.

Assumptions related to the total impact:

- According to TACIR, updating the report on broadband can be accomplished with existing staff and resources.
- In FY17-18, there will be a total increase to state expenditures of \$10,291,586 (\$10,000,000 appropriation to TBAF + \$275,686 in salary and benefits for two ECD positions + \$15,900 one-time equipment costs) from the General Fund.
- In each FY18-19 and FY19-20, there will be a total increase to state expenditures of \$10,275,686 (\$10,000,000 appropriation to TBAF + \$275,686 salary and benefits) from the General Fund.
- In each FY18-19, FY19-20, and FY20-21, there will be a decrease in state revenue of \$5,000,000 relative to F&E tax credits.
- Any increase to state revenue for new F&E taxes paid by any electric cooperatives cannot reasonably be determined due to multiple unknown variables. Any increase to local government expenditures cannot reasonably be determined but are considered permissive.
- There could be subsequent impacts on state and local government revenue and expenditures as a result of secondary economic impacts prompted by the passage of this bill. Due to multiple unknown factors, the fiscal impacts attributable to such secondary impacts cannot be quantified with reasonable certainty.

## **IMPACT TO COMMERCE WITH PROPOSED AMENDMENT:**

**Increase Business Revenue – Less than \$9,500,000/FY17-18**  
**Less than \$9,500,000/FY18-19**  
**Less than \$9,500,000/FY19-20**

**Decrease Business Expenditures – Less than \$5,000,000/FY18-19**  
**Less than \$5,000,000/FY19-20**  
**Less than \$5,000,000/FY20-21**

**Other Fiscal Impact – Passage of this bill is expected to lead to job creation and an impact on business revenue and expenditures as a result of electric cooperatives providing cable, video, and broadband services; however the extent is unknown.**

Assumptions for the bill as amended:

- Any grants not awarded to local government entities will be awarded to certain private businesses; thus resulting in an increase in business revenue. However any increase to business revenue cannot reasonably be determined due to multiple unknown variables such as how many private businesses will apply to receive a grant through the TBAF, how many businesses will be awarded a grant, and the extent of any awards that will be made available to private businesses. However, the increase to business revenue is estimated as less than \$9,500,000 in each FY17-18, FY18-19, and FY19-20.
- Due to multiple unknown variables, such as how many public or private entities will apply to receive a tax credit and the extent of the number of recipients of the tax credit, a precise reduction in F&E taxes paid by private business cannot be reasonably determined. However, any tax credit received will occur in FY18-19, FY19-20, and FY20-21 and is estimated to be less than \$5,000,000 each year.
- The proposed amendatory legislation is estimated to result in a direct increase in the number of jobs in the state. However, any increase in jobs cannot reasonably be determined due to multiple unknown variables such as the size of any broadband infrastructure expansion project, how many additional jobs will be needed to fulfill the project, if any jobs required will be full-time, or if any jobs needed will be fulfilled with expansion of the hours of current employees of public or private businesses.
- Authorizing electric cooperatives to provide cable, video, and broadband service will result in a change to business revenues for private companies currently providing such services; however, it is unknown how many electric cooperatives will opt to provide such service, which such services will be available to customers, the extent of customers with a new option in such service providers, and the extent of any impact to rate changes by private businesses for services as a direct result of the competition provided by electric cooperatives.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

Handwritten signature of Krista M. Lee in black ink.

Krista M. Lee, Executive Director

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