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3 HOUSE URBAN AND RURAL DEVELOPMENT COMMITTEE SUBSTITUTE FOR
4 HB400

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9 SYNOPSIS: This bill would authorize the placement,
10 construction, installation, operation, and use of
11 broadband and other advanced communication
12 capabilities and related facilities within electric
13 easements by electric providers.

14 This bill would authorize electric providers
15 to engage in, and to permit electric providers to
16 authorize others to engage in, operating broadband
17 systems or providing broadband services through
18 advanced communications capabilities within
19 electric easements.

20 This bill would grant the right to electric
21 providers to condemn easements and rights-of-way
22 for advanced communications capabilities.

23 This bill would also permit consents through
24 service agreements, licenses, leases, and
25 membership agreements to place, construct, install,
26 operate, and use advanced communication
27 capabilities within an electric easement.

1
2 A BILL
3 TO BE ENTITLED
4 AN ACT
5

6 Relating to broadband services; to authorize the
7 placement, construction, installation, operation, and use of
8 broadband and other advanced communication capabilities and
9 related facilities within electric easements by electric
10 providers; to authorize electric providers to engage in, and
11 to permit electric providers to authorize others to engage in,
12 operating broadband systems or providing broadband services
13 through advanced communications capabilities within electric
14 easements; to grant the right to electric providers to condemn
15 easements and rights-of-way for advanced communications
16 capabilities; and to permit consents through service
17 agreements, licenses, leases, and membership agreements to
18 place, construct, install, operate, and use advanced
19 communication capabilities within an electric easement.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Chapter 16 is added to Title 37 of the
22 Code of Alabama 1975, to read as follows:

23 §37-16-1.

24 This chapter shall be known and may be cited as the
25 Broadband Using Electric Easements Accessibility Act.

26 §37-16-2.

1 (a) The Legislature finds and declares the
2 following:

3 (1) More advanced communication capabilities,
4 broadband facilities, and services are needed in many rural
5 and underserved areas of the state.

6 (2) Electric providers in those rural and
7 underserved areas are capable of providing infrastructure for
8 such advanced communications capabilities and providing,
9 directly or indirectly, broadband facilities or services.

10 (3) The investment in and development of advanced
11 communications capabilities for providing broadband facilities
12 and services are necessary to better serve the public in those
13 rural and underserved areas.

14 (4) The continued lack of advanced communication
15 capabilities, broadband facilities, and services in rural and
16 underserved areas deprives citizens residing in these areas
17 from access to opportunities such that the state needs to take
18 action to correct and eliminate such discrepancies.

19 (5) It is the public policy of this state to
20 encourage and facilitate the development and investment in
21 advanced communications capabilities and broadband facilities
22 and services in those rural and underserved areas in the
23 state, as such development is vital and necessary to induce,
24 create, and promote industrial and economic development in
25 these rural and underserved areas of this state, to create job
26 opportunities in these areas, to enhance health care, and to
27 enhance educational advancement in those areas.

1 (6) Authorizing advanced communications capabilities
2 to be installed by electric providers within existing
3 easements and other rights-of-way furthers the public policy
4 of the state.

5 (7) It is the intent of this chapter to authorize
6 electric providers to engage in arrangements, contracts, and
7 other collaborative activities with public or private persons
8 to facilitate the investment in or development of advanced
9 communications capabilities and broadband services and
10 broadband systems in this state. It is also the intent of the
11 chapter for such authorization to apply regardless of whether
12 competition is displaced, stifled, or interrupted in the
13 development or provision of broadband services and broadband
14 systems.

15 (8) The furtherance of the goals and purposes of
16 this chapter advance the public interest in this state to a
17 greater extent than would the application of federal and state
18 antitrust laws to the arrangements, contracts, and activities
19 authorized under this chapter.

20 (9) The limited grant of authorization to electric
21 providers in this chapter is reasonably related to the
22 proposed legislative objective of providing advanced
23 communications capabilities, broadband facilities, and
24 services in rural and underserved areas.

25 (b) Except as provided in subsection (a), nothing
26 contained in this chapter is intended to exempt, except, or
27 exclude providers that engage in the provision of broadband

1 facilities or services through advanced communications
2 capabilities from complying with any provisions of federal law
3 which may at any time apply to the electric providers or their
4 broadband facilities or services.

5 §37-16-3.

6 As used in this chapter, the following terms shall
7 have the following meanings:

8 (1) ADVANCED COMMUNICATIONS CAPABILITIES. The
9 communications capabilities defined from time to time as
10 advanced telecommunications capabilities by the Federal
11 Communications Commission (FCC) through regulations, statutes,
12 or other written guidance or orders. The term also includes
13 broadband systems and broadband services.

14 (2) BROADBAND AFFILIATE. A person that is at least
15 10 percent owned by an electric provider, controlled by way of
16 ownership interests therein, directly or indirectly, by the
17 electric provider, or under common control with the electric
18 provider, and which is formed to provide, among other
19 services, utility support services or nonutility support
20 services.

21 (3) BROADBAND OPERATOR. A person that owns or
22 operates a broadband system within an electric easement,
23 including the electric provider if the electric provider is
24 operating the broadband system and including a person that
25 provides broadband services on a wholesale basis to another
26 broadband operator or broadband service provider.

1 (4) BROADBAND SERVICE PROVIDER. A person that
2 provides broadband services on a retail basis to end-use
3 customers.

4 (5) BROADBAND SERVICES. The provision of
5 connectivity to a high-speed, high-capacity transmission
6 medium or to a technology supporting, in the
7 provider-to-consumer (downstream) direction, a speed, in
8 technical terms ("bandwidth"), with minimum download speeds of
9 25 megabits per second and minimum upload speeds of 25
10 megabits per second for either of the following:

11 a. To provide access to the Internet.

12 b. To provide computer processing, information
13 sharing, information storage, information content, or protocol
14 conversion, including any service application or information
15 service over the electric delivery system of an electric
16 provider, and includes any advanced communications
17 capabilities that enable users to originate, send, and receive
18 high-quality voice, data, graphics, video programming, and
19 video communications using any technology including a
20 broadband system.

21 (6) BROADBAND SYSTEM. Any of the following that may
22 be used to facilitate, directly or indirectly, the provision
23 or transmission of broadband services, whether utility support
24 services or nonutility support services, or both: Materials;
25 wires; cables, including fiber optic and copper cables,
26 whether such cables are dark or lit, and whether such cables
27 are in use or dormant; conduits; antennas; equipment;

1 fixtures; switching multiplexers; poles; routers; switches;
2 servers; appurtenances; facilities; and ancillary or auxiliary
3 equipment.

4 (7) COMMISSION. The Alabama Public Service
5 Commission.

6 (8) ELECTRIC DELIVERY SYSTEM. Any product, fixture,
7 equipment, or technology, or part thereof, necessary or useful
8 in supporting the generation, transmission, transformation, or
9 distribution or delivery of electricity, including, but not
10 limited to, generators, electric transmission facilities and
11 lines, distribution facilities and lines, wires, cables, fiber
12 optic cables, poles, transformers, antennas, anchors, guys,
13 grounding systems, communications systems, insulators,
14 conduits, and any other related or ancillary facilities or
15 materials used by an electric provider to generate, transmit,
16 transform, deliver, or distribute electric energy, as such
17 lines and facilities may exist from time to time and whether
18 such lines or facilities are aboveground or underground.

19 (9) ELECTRIC EASEMENT. Any recorded or unrecorded
20 easement or right-of-way in favor of an electric provider that
21 permits the siting and use of an electric delivery system on,
22 over, under, or across the land of a property owner,
23 regardless of whether the easement or right-of-way is for the
24 exclusive benefit of the electric provider or for use in
25 connection with the provision of other services, and
26 regardless of whether the electric provider provides the other
27 services. Electric easements include, but are not limited to,

1 easements obtained under a law of this state, or by any of the
2 following methods: Negotiation, condemnation, prescription,
3 grant, including, but not limited to, pursuant to a bylaw
4 provision, service agreement or membership agreement, rate
5 schedule, tariff, rule, regulation, practice, act,
6 requirement, or privilege.

7 (10) ELECTRIC PROVIDER. A utility, as defined under
8 Section 37-4-1, or a cooperative nonprofit, membership
9 organization formed, incorporated, or reincorporated under
10 Chapter 6 of Title 37, that produces, generates, transmits,
11 delivers, distributes, or furnishes electricity.

12 (11) NONUTILITY SUPPORT SERVICES. Broadband services
13 and related services that support services, uses, or purposes
14 other than utility support services.

15 (12) PERSON. An individual, trust, estate,
16 corporation, partnership, limited partnership, limited
17 liability partnership, or limited liability company having a
18 separate legal existence under state law.

19 (13) UTILITY SUPPORT SERVICES. Broadband services
20 and related services, uses, or purposes that support the
21 operational performance and service reliability of the
22 electric delivery system of an electric provider, including,
23 but not limited to, all of the following:

- 24 a. Automated meter reading.
- 25 b. Real-time or other system monitoring.
- 26 c. Remote service control.
- 27 d. Outage detection and restoration.

- 1 e. Predictive maintenance and diagnostics.
- 2 f. Monitoring and enhancement of power quality, load
- 3 control, voltage control, and flow.
- 4 g. Supervisory control and data acquisition.
- 5 h. Management and flow of electricity.
- 6 i. Internal communications.
- 7 j. Dispatch, start-up, ramping, shutdown,
- 8 curtailment, scheduling, or control of electric generation,
- 9 transmission, or distribution of resources or ancillary
- 10 services relating thereto, including, but not limited to,
- 11 generator imbalance, spinning and non-spinning reserves, and
- 12 reserve sharing.
- 13 k. All other uses supporting the reliability,
- 14 resilience, and security of the electric delivery system.

15 §37-16-4.

16 (a) To the extent not otherwise authorized by law,

17 and in addition to all other purposes, powers, and authority

18 currently granted to electric providers under the laws of this

19 state, an electric provider may do all of the following:

20 (1) Own, operate, maintain, construct, install, and

21 replace a broadband system on, over, under, or across the

22 electric provider's electric easements, whether used for or

23 supporting utility support services or used for or supporting

24 nonutility support services, whether on a wholesale or retail

25 basis.

26 (2) Allow a broadband affiliate or an unaffiliated

27 person to own, lease, manage, construct, superintend, install,

1 operate, maintain, and replace a broadband system on, over,
2 under, or across the electric provider's electric easements,
3 on such terms and conditions as specified by the electric
4 provider, whether used for or supporting utility support
5 services or used for or supporting wholesale or retail
6 nonutility support services, including the power and authority
7 to apportion the electric easement, to grant licenses, and to
8 grant other usage or operational rights to other broadband
9 operators for the broadband system located within the electric
10 easements.

11 (3) Provide broadband services, whether used for or
12 supporting utility support services or for wholesale or retail
13 nonutility support services.

14 (4) Allow a broadband affiliate or an unaffiliated
15 person to provide broadband services over or through a
16 broadband system within the electric easements of an electric
17 provider, on such terms and conditions as specified by the
18 electric provider, whether used for or supporting utility
19 support services or used for supporting wholesale or retail
20 nonutility support services.

21 (b) In furtherance of its authority under subsection
22 (a), an electric provider shall have the sole authority to
23 determine which broadband affiliate or unaffiliated person,
24 including a broadband operator or broadband service provider,
25 may have access to the broadband system within its electric
26 easements and on its electric delivery system and to determine
27 the terms and conditions on which the broadband affiliate or

1 unaffiliated person may access the broadband system,
2 including, without limitation, whether the access will be on
3 an exclusive or non-exclusive basis.

4 (c) This chapter does not require or obligate an
5 electric provider to install or implement a broadband system
6 or advanced communications capabilities, to provide broadband
7 services, or to allow others to install a broadband system or
8 facilities or use the electric provider's electric easements
9 and electric delivery system to provide broadband services.

10 (d) An electric provider may not require any person
11 to purchase broadband services from the electric provider, a
12 broadband affiliate, or unaffiliated broadband operator or
13 broadband service provider as a condition of receiving or
14 continuing to receive electric energy from the electric
15 provider.

16 §37-16-5.

17 In no event does this chapter authorize any electric
18 provider to provide retail electric service outside of its
19 electric service territory as determined under the applicable
20 provisions of Chapter 14 of this title. Nothing in this
21 chapter is intended to amend, repeal, enlarge, or otherwise
22 affect Chapter 14 of this title.

23 §37-16-6.

24 An electric provider may charge a broadband
25 affiliate or an unaffiliated person, including a broadband
26 operator or broadband service provider, for the costs of the
27 construction, installation, replacement, operation, use, and

1 maintenance of the broadband system or of those parts of its
2 electric delivery system that are used or may be reserved for
3 use by the broadband affiliate or unaffiliated broadband
4 operator or broadband service provider for the provision of
5 broadband services. No electric provider shall be required to
6 construct, install, replace, operate, or maintain a broadband
7 system or to provide broadband services. An electric provider,
8 broadband affiliate, or unaffiliated broadband operator or
9 broadband services provider may charge for broadband services
10 or any other uses of the broadband system, whether wholesale
11 or retail, at rates determined by the provider thereof.

12 §37-16-7.

13 (a) If the owner of real property subject to an
14 electric easement contends that the owner's property has been
15 taken, injured, or destroyed by the construction,
16 installation, use, or enlargement of broadband systems within
17 the electric easement on the owner's property and the electric
18 easement does not expressly provide for such, the owner may
19 file a civil action in the circuit court for the county in
20 which the property is located to recover damages as specified
21 by this section. All such actions must be brought within two
22 years after the later of: (1) The effective date of this
23 chapter; or (2) the date broadband systems are first
24 constructed or installed within the electric easement on the
25 owner's real property. Nothing in this chapter shall revive
26 any right or remedy which may have become barred by lapse of

1 time, or by any law of this state, prior to the effective date
2 of this act.

3 (b) (1) If the court determines that the
4 construction, installation, use, or enlargement of a broadband
5 system exceeds the scope of the rights granted by the electric
6 easement on the owner's real property, the measure of damages
7 shall be an amount equal to the difference, if any, between
8 the following:

9 a. The fair market value of the owner's real
10 property immediately before the construction or installation
11 of broadband systems within the electric easement on the
12 owner's real property.

13 b. The fair market value of the owner's real
14 property immediately after the construction or installation of
15 broadband systems within the electric easement on the owner's
16 real property and taking into account the incidental benefits
17 to the owner's property resulting from the availability of the
18 broadband services to the property.

19 (2) The damages, if any, shall be fixed and shall
20 not be deemed to continue, accumulate, or accrue. Payment of
21 the judgment in any such action shall vest in the electric
22 provider all property rights necessary to construct, use,
23 install, operate, replace, and maintain, from time to time,
24 the broadband systems within the electric easement on the
25 owner's real property and the electric easement shall be
26 thereafter permanently expanded to include the right to
27 construct, use, install, operate, replace, and maintain the

1 broadband system and broadband services. The judgment shall
2 have the same effect as a conveyance executed by the owner in
3 due form under applicable law and shall run with the land. A
4 certified copy of the judgment may be filed by the electric
5 provider, a broadband affiliate, or other broadband operator
6 in the land records of the county in which the subject
7 property is located, but is not required to make such
8 broadening of the electric easement effective.

9 (c) The civil action and measure of damages
10 authorized by this section shall be exclusive and the owner
11 may not assert any other theory, claim, or cause of action,
12 either at law or in equity, nor recover any other damages,
13 punitive damages, costs, attorney's fees, or equitable relief.
14 Evidence of past, current, or future revenues, profits, or any
15 other fees derived by an electric provider, broadband
16 affiliate, or other broadband operator from the construction,
17 installation, use, enlargement, or operation of a broadband
18 system within the electric easement on the owner's real
19 property is not admissible for any purpose in any civil action
20 under this section.

21 (d) An owner bringing an action under this section
22 may not bring an action on behalf of a class. The limitation
23 in this subsection is a substantive limitation and allowing an
24 owner to bring a class action or other representative action
25 for a violation of this chapter would abridge, enlarge, or
26 modify the substantive rights created by this section.

1 (e) An electric provider may acquire by condemnation
2 ways, rights-of-way, and easements, without limitation as to
3 width, on, over, under, or across the lands or easements of
4 others, to erect, construct, replace, use, install, operate,
5 and maintain advanced communications capabilities. Such
6 condemnation is to be conducted in accordance with the
7 procedures of Chapter 1A of Title 18, except as otherwise
8 provided in this chapter.

9 (f) An electric provider, broadband affiliate, or
10 unaffiliated broadband operator or broadband service provider
11 may receive such rights from an owner of real property by
12 service agreement or service regulation, membership agreement,
13 license agreement, or other agreement to serve the property
14 with advanced communications capabilities without granting an
15 easement or right-of-way. The grant or agreement may permit
16 the construction, installation, replacement, operation, use,
17 and maintenance of the advanced communications capabilities on
18 the property without the requirement of further consent of any
19 other tenant, concessionaire, or occupant of that property.
20 Any grant or agreement shall preclude the owner from any
21 action for relief under this section.

22 §37-16-8.

23 Nothing in this chapter shall interfere with the
24 commission's authority to regulate public utilities under this
25 title. Nothing in this chapter shall provide a basis for
26 creating or granting jurisdiction to the commission over any
27 electric providers or any broadband affiliate that are

1 otherwise exempt or are otherwise not subject to the
2 jurisdiction of the commission.

3 Section 2. The provisions of this act are severable.
4 If any part of this act is declared invalid or
5 unconstitutional, that declaration shall not affect the part
6 which remains.

7 Section 3. This act shall become effective on the
8 first day of the third month following its passage and
9 approval by the Governor, or its otherwise becoming law.