

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0393.01 Jennifer Berman x3286

SENATE BILL 19-107

SENATE SPONSORSHIP

Donovan,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology
Local Government

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE INSTALLATION OF BROADBAND INTERNET SERVICE**
102 **INFRASTRUCTURE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill authorizes an electric utility or other electricity supplier to install and maintain above-ground broadband internet service infrastructure for internal use, for external use in providing broadband internet service, or for lease of any excess capacity to a broadband internet service provider (provider).

Section 1 also authorizes a provider to enter into a contract with a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

landowner to access an electric utility's existing easement on the landowner's private property if:

- ! The provider seeks to access the easement to construct or maintain infrastructure to be used in providing broadband internet service;
- ! The provider's access will not violate an exclusivity term in the electric utility's contract with the landowner; and
- ! The electric utility has previously determined that the provider's access would not likely interfere with the electric utility's construction, maintenance, or use of any infrastructure placed on the property.

A provider seeking access to an electric utility's existing easement on private property is required to seek written authorization from the electric utility, which authorization the electric utility shall not unreasonably withhold or delay.

An electric utility authorizing a provider's access to its existing easement on private property may seek reimbursement from the provider for actual and reasonable costs the electric utility incurs as a result of sharing the easement.

The public utilities commission may enforce the requirements set forth in the bill by directing the attorney general to commence an action or proceeding in district court seeking to stop or prevent the violations.

Sections 2 and 3 make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article
3 15 of title 40 as follows:

4 PART 6

5 ELECTRIC UTILITY EASEMENTS

6 **40-15-601. Definitions.** AS USED IN THIS PART 6, UNLESS THE
7 CONTEXT OTHERWISE REQUIRES:

8 (1) "ATTACHED FACILITY" MEANS A BROADBAND FACILITY, AS
9 DEFINED IN SECTION 38-5.5-102 (2), OR A BROADBAND NETWORK OR ANY
10 PORTION OF A BROADBAND NETWORK, IN EACH CASE LOCATED
11 SUBSTANTIALLY:

12 (a) ABOVEGROUND AND ATTACHED TO AN ELECTRIC UTILITY'S

1 ELECTRIC SERVICE INFRASTRUCTURE; OR
2 (b) UNDERGROUND IN AN ELECTRIC EASEMENT AND EXISTING
3 BEFORE THE DELIVERY OF NOTICE PURSUANT TO SECTION 40-15-602 (2).
4 (2) "BROADBAND AFFILIATE" MEANS A COMMERCIAL BROADBAND
5 SUPPLIER THAT IS A SEPARATE LEGAL ENTITY FROM ANY ELECTRIC UTILITY
6 BUT IS CONTROLLED BY, CONTROLS, OR IS UNDER COMMON CONTROL WITH
7 AN ELECTRIC UTILITY.
8 (3) "COMMERCIAL BROADBAND SERVICE" MEANS "BROADBAND
9 SERVICE", AS THAT TERM IS DEFINED IN SECTION 38-5.5-102 (1), OR
10 BROADBAND INTERNET SERVICE.
11 (4) (a) "COMMERCIAL BROADBAND SUPPLIER" MEANS:
12 (I) A PROVIDER OF BROADBAND INTERNET SERVICE OR AN
13 EXISTING BROADBAND PROVIDER, AS THAT TERM IS DEFINED IN SECTION
14 38-5.5-102 (3), OR A PERSON THAT INTENDS TO PROVIDE BROADBAND
15 INTERNET SERVICE OR BROADBAND SERVICE; OR
16 (II) A PERSON THAT DIRECTLY OR INDIRECTLY SELLS, LEASES, OR
17 OTHERWISE TRANSFERS ATTACHED FACILITIES OR A RIGHT TO INSTALL,
18 OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES FOR ANOTHER
19 PERSON'S PROVISION OF COMMERCIAL BROADBAND SERVICE OR A PERSON
20 THAT INTENDS TO SELL, LEASE, OR OTHERWISE TRANSFER ATTACHED
21 FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE
22 ATTACHED FACILITIES.
23 (b) "COMMERCIAL BROADBAND SUPPLIER" DOES NOT MEAN AN
24 ELECTRIC UTILITY.
25 (5) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED
26 EASEMENT, RIGHT-OF-WAY UNDER SECTION 38-4-103 OR OTHERWISE, OR
27 SIMILAR RIGHT IN OR TO REAL PROPERTY, NO MATTER HOW ACQUIRED.

1 HELD BY AN ELECTRIC UTILITY FOR THE SITING OF ELECTRIC SERVICE
2 INFRASTRUCTURE OR FOR THE PURPOSE OF DELIVERING ELECTRIC SERVICE,
3 REGARDLESS OF WHETHER:

4 (a) THE EASEMENT OR OTHER RIGHT IS EXCLUSIVELY FOR THE
5 PROVISION OF ELECTRIC SERVICE OR FOR USE IN CONNECTION WITH
6 COMMERCIAL BROADBAND SERVICE, TELECOMMUNICATION SERVICE, OR
7 ANOTHER PURPOSE; OR

8 (b) THE ELECTRIC UTILITY OR A COMMERCIAL BROADBAND
9 SUPPLIER USES THE EASEMENT OR OTHER RIGHT TO PROVIDE COMMERCIAL
10 BROADBAND SERVICE.

11 (6) "ELECTRIC UTILITY" MEANS A COOPERATIVE ELECTRIC
12 ASSOCIATION, AS DEFINED IN SECTION 40-9.5-102.

13 (7) "INTEREST HOLDER" MEANS A PROPERTY OWNER OR OTHER
14 PERSON WITH AN INTEREST IN THE REAL PROPERTY UPON WHICH AN
15 ELECTRIC EASEMENT IS LOCATED.

16 (8) "MEMORANDUM" MEANS A WRITTEN INSTRUMENT THAT
17 INCLUDES, AT A MINIMUM, THE NAME AND ADDRESS OF THE ELECTRIC
18 UTILITY, THE DATE ON WHICH THE NOTICE WAS MAILED, AND THE
19 INFORMATION REQUIRED TO BE INCLUDED IN A NOTICE UNDER SECTION
20 40-15-602 (2)(b)(III) AND (2)(b)(IV).

21 (9) "NOTICE" MEANS A WRITTEN LETTER SUBSTANTIALLY
22 COMPLYING WITH THE REQUIREMENTS SET FORTH IN SECTION 40-15-602
23 (2)(b), WHICH NOTICE SHALL BE DEEMED DELIVERED ON THE DATE
24 POSTMARKED OR OTHERWISE TIME STAMPED.

25 (10) "PERSON" HAS THE MEANING SET FORTH IN SECTION 40-1-102
26 (10).

27 (11) "PROPERTY OWNER" MEANS A PERSON WITH A RECORDED FEE

1 SIMPLE INTEREST IN REAL PROPERTY UPON WHICH AN ELECTRIC EASEMENT
2 IS LOCATED.

3 **40-15-602. Electric easements - commercial broadband service**
4 **- broadband affiliates - notice required. (1) WITH REGARD TO REAL**
5 **PROPERTY SUBJECT TO AN ELECTRIC EASEMENT, IF AN ELECTRIC UTILITY,**
6 **OR ANY COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE**
7 **ELECTRIC UTILITY TO ACT ON ITS BEHALF, COMPLIES WITH THE NOTICE AND**
8 **FILING REQUIREMENTS SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE**
9 **ELECTRIC UTILITY HOLDING THE ELECTRIC EASEMENT MAY, WITHOUT THE**
10 **CONSENT OF AN INTEREST HOLDER IN THE REAL PROPERTY SUBJECT TO THE**
11 **ELECTRIC EASEMENT, TAKE THE FOLLOWING ACTIONS TO THE EXTENT NOT**
12 **ALREADY PERMITTED BY THE ELECTRIC EASEMENT:**

13 **(a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL**
14 **BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL,**
15 **MAINTAIN, OR OWN AN ATTACHED FACILITY FOR EXTERNAL USE AND**
16 **OPERATION BY A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A**
17 **BROADBAND AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE;**
18 **AND**

19 **(b) LEASE OR OTHERWISE PROVIDE TO A COMMERCIAL BROADBAND**
20 **SUPPLIER, INCLUDING A BROADBAND AFFILIATE, ANY EXCESS CAPACITY OF**
21 **ATTACHED FACILITIES FOR PURPOSES OF PROVIDING COMMERCIAL**
22 **BROADBAND SERVICE.**

23 **(2) (a) AT LEAST THIRTY DAYS BEFORE FIRST EXERCISING ITS**
24 **RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS**
25 **SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN**
26 **ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED**
27 **COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH**

1 PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY
2 SUBJECT TO THE ELECTRIC EASEMENT AND MUST FILE A MEMORANDUM IN
3 THE OFFICE OF THE COUNTY CLERK AND RECORDER IN EACH COUNTY IN
4 WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS UNDER
5 SUBSECTION (1) OF THIS SECTION. IF, WITHIN ONE YEAR AFTER DELIVERY
6 OF NOTICE PURSUANT TO THIS SUBSECTION (2), AN ELECTRIC UTILITY HAS
7 NOT COMMENCED ENGAGING IN ANY OF THE ACTIONS SET FORTH IN
8 SUBSECTION (1) OF THIS SECTION, INCLUDING THE COMMENCEMENT OF
9 CONSTRUCTING A NEW INSTALLATION, THE ELECTRIC UTILITY OR
10 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST REDELIVER
11 NOTICE PURSUANT TO THIS SUBSECTION (2) BEFORE EXERCISING ITS RIGHTS
12 UNDER SUBSECTION (1) OF THIS SECTION. IF AN ELECTRIC UTILITY OR ITS
13 DESIGNATED COMMERCIAL BROADBAND SUPPLIER FAILS TO DELIVER
14 SUFFICIENT NOTICE IN ACCORDANCE WITH THIS SUBSECTION (2), IT MAY
15 ONLY COMMENCE EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS
16 SECTION UPON SUBSEQUENT DELIVERY OF SUFFICIENT NOTICE, AT WHICH
17 TIME THE ONE-YEAR PERIOD WILL COMMENCE.

18 (b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION
19 (2) MUST:

20 (I) BE SENT BY FIRST-CLASS MAIL FROM OR ON BEHALF OF THE
21 ELECTRIC UTILITY TO THE INTEREST HOLDER AT THE LAST KNOWN
22 ADDRESS BASED ON THE ELECTRIC UTILITY'S RECORDS OR THE ADDRESS
23 LISTED FOR THE PROPERTY IN THE RECORDS OF THE OFFICE OF THE COUNTY
24 CLERK AND RECORDER;

25 (II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND
26 NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED
27 BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC

1 UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF
2 CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;

3 (III) INCLUDE THE PROPERTY ADDRESS AND APPROXIMATE
4 LOCATION OF THE ELECTRIC EASEMENT, WHICH NEED NOT INCLUDE A
5 LEGAL DESCRIPTION, LAND TITLE SURVEY, PLAT, OR OTHER DESIGNATION
6 OF THE EXACT BOUNDARIES OF THE ELECTRIC EASEMENT;

7 (IV) INCLUDE:

8 (A) A CITATION TO THIS PART 6; AND

9 (B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION
10 WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING
11 RIGHTS UNDER ONE OR MORE OF SUBSECTION (1)(a) OR (1)(b) OF THIS
12 SECTION;

13 (V) GIVE AN ESTIMATED TIME FOR THE START OF INSTALLATION OR
14 CONSTRUCTION WITH REGARD TO ANY NEW INSTALLATION OR
15 CONSTRUCTION THAT WILL OCCUR IN CONNECTION WITH THE EXERCISE OF
16 RIGHTS UNDER SUBSECTION (1) OF THIS SECTION;

17 (VI) INCLUDE A STATEMENT REGARDING THE RIGHT AND
18 OBLIGATION OF THE ELECTRIC UTILITY, OR ITS DESIGNATED COMMERCIAL
19 BROADBAND SUPPLIER, TO RECORD A MEMORANDUM; AND

20 (VII) INCLUDE A STATEMENT REGARDING THE STATUTE OF
21 LIMITATIONS FOR THE INTEREST HOLDER TO FILE A CLAIM WITH RESPECT
22 TO THE ELECTRIC UTILITY'S EXERCISE OF RIGHTS.

23 (3) UPON EXERCISE OF THE RIGHTS SET FORTH IN SUBSECTION (1)
24 OF THIS SECTION, THE RIGHTS RUN WITH THE LAND AND ARE ASSIGNABLE
25 BY THE ELECTRIC UTILITY.

26 (4) AN ELECTRIC UTILITY SHALL NOT DIRECTLY PROVIDE RETAIL
27 COMMERCIAL BROADBAND SERVICE BUT MAY CAUSE OR ALLOW A

1 BROADBAND AFFILIATE TO OFFER RETAIL COMMERCIAL BROADBAND
2 SERVICE. AS LONG AS AN ELECTRIC UTILITY MAINTAINS ITS EXCLUSIVE
3 RIGHT TO PROVIDE ELECTRIC SERVICE TO CUSTOMERS WITHIN ITS
4 EXCLUSIVE SERVICE TERRITORY, BOTH THE ELECTRIC UTILITY THAT HAS
5 A BROADBAND AFFILIATE AND THE BROADBAND AFFILIATE SHALL:

6 (a) MAINTAIN OR CAUSE TO BE MAINTAINED AN ACCOUNTING
7 SYSTEM FOR THE BROADBAND AFFILIATE SEPARATE FROM THE ELECTRIC
8 UTILITY'S ACCOUNTING SYSTEM, USING GENERALLY ACCEPTED
9 ACCOUNTING PRINCIPLES OR ANOTHER REASONABLE AND CUSTOMARY
10 ALLOCATION METHOD;

11 (b) CAUSE A FINANCIAL AUDIT TO BE PERFORMED BY AN
12 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT, WITHIN TWO YEARS AFTER
13 COMMENCEMENT OF COMMERCIAL OPERATION OF RETAIL COMMERCIAL
14 BROADBAND SERVICE AND AT LEAST ONCE EVERY TWO YEARS
15 THEREAFTER, WITH RESPECT TO THE BROADBAND AFFILIATE'S PROVISION
16 OF COMMERCIAL BROADBAND SERVICE, INCLUDING AN AUDIT OF THE
17 ALLOCATION OF COSTS FOR PROPERTY AND SERVICES THAT ARE USED IN
18 BOTH THE PROVISION OF COMMERCIAL BROADBAND SERVICE AND THE
19 ELECTRIC UTILITY'S PROVISION OF ELECTRIC SERVICE; AND

20 (c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS
21 EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE
22 TERRITORY TO DIRECTLY OR INDIRECTLY CROSS-SUBSIDIZE THE
23 BROADBAND AFFILIATE OR ITS PROVISION OF COMMERCIAL BROADBAND
24 SERVICE, WHETHER BY DISCRIMINATORY OR BELOW FAIR MARKET VALUE
25 PRICING; PAYMENT OF CAPITAL OR OPERATING COSTS PROPERLY CHARGED
26 TO THE BROADBAND AFFILIATE UNDER APPLICABLE ACCOUNTING RULES;
27 USE OF ANY REVENUE FROM OR SUBSIDY FOR THE PROVISION OF ELECTRIC

1 SERVICE TO SUPPORT COMMERCIAL BROADBAND SERVICE, EXCEPT IN
2 CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF ELECTRICITY; OR
3 OTHERWISE.

4 (II) NOTHING IN THIS SUBSECTION (4)(c) PROHIBITS AN ELECTRIC
5 UTILITY FROM:

6 (A) ENTERING INTO A TRANSACTION WITH A BROADBAND
7 AFFILIATE ON TERMS AND CONDITIONS SUBSTANTIALLY SIMILAR TO THOSE
8 THAT WOULD BE AGREED TO BETWEEN TWO SIMILARLY SITUATED PARTIES
9 IN AN ARM'S LENGTH COMMERCIAL TRANSACTION; OR

10 (B) PROVIDING REDUCED-COST COMMERCIAL BROADBAND SERVICE
11 TO LOW-INCOME RETAIL CUSTOMERS.

12 (5) THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC
13 EASEMENT APPLY TO AN ELECTRIC UTILITY'S USES OF THE ELECTRIC
14 EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT TO THE
15 EXTENT THAT THOSE TERMS AND CONDITIONS PROHIBIT OR HAVE THE
16 EFFECT OF PROHIBITING OR MATERIALLY IMPAIRING THE ELECTRIC
17 UTILITY'S EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION.
18 A PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE
19 CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A
20 PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES.

21 (6) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO
22 COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY
23 ACTION OR EXERCISE ANY RIGHT UNDER AN ELECTRIC EASEMENT THAT IS
24 ALREADY PERMITTED BY THE TERMS OF THE ELECTRIC EASEMENT.

25 **40-15-603. Statute of limitations - damages - limitations on**
26 **damages. (1) (a) NO CLAIM OR CAUSE OF ACTION AGAINST AN ELECTRIC**
27 **UTILITY OR A COMMERCIAL BROADBAND SUPPLIER CONCERNING THE**

1 ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF
2 RIGHTS UNDER THIS PART 6 OR ANY ACTIONS THAT THE ELECTRIC UTILITY
3 OR COMMERCIAL BROADBAND SUPPLIER TAKES BEFORE THE EFFECTIVE
4 DATE OF THIS SECTION THAT, IF TAKEN AFTER THE EFFECTIVE DATE OF THIS
5 SECTION, WOULD BE AUTHORIZED UNDER SECTION 40-15-602 (1) MAY BE
6 BROUGHT BY OR ON BEHALF OF AN INTEREST HOLDER MORE THAN TWO
7 YEARS AFTER THE LATEST OF:

- 8 (I) THE EFFECTIVE DATE OF THIS SECTION;
- 9 (II) THE DATE OF DELIVERY OF NOTICE PURSUANT TO SECTION
10 40-15-602 (2); OR
- 11 (III) THE DATE OF RECORDING OF A MEMORANDUM PURSUANT TO
12 SECTION 40-15-602 (2).

13 (b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY TO A
14 CLAIM OR CAUSE OF ACTION BASED SOLELY ON DAMAGE TO PROPERTY OR
15 BREACH OF THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC
16 EASEMENT AS THE TERMS AND CONDITIONS APPLY IN ACCORDANCE WITH
17 SECTION 40-15-602 (5).

18 (c) NOTHING IN THIS SECTION 40-15-603 EXTENDS THE STATUTORY
19 LIMITATION PERIOD APPLICABLE TO A CLAIM OR REVIVES AN EXPIRED
20 CLAIM.

21 (2) A CLAIM OR CAUSE OF ACTION SHALL NOT BE BROUGHT BY OR
22 ON BEHALF OF AN INTEREST HOLDER AGAINST A COMMERCIAL BROADBAND
23 SUPPLIER FOR ACTIONS THAT THE COMMERCIAL BROADBAND SUPPLIER HAS
24 TAKEN UNDER SECTION 40-15-602 (2) AN ELECTRIC UTILITY.

25 (3) IF AN INTEREST HOLDER BRINGS A TRESPASS CLAIM, INVERSE
26 CONDEMNATION CLAIM, OR ANY OTHER CLAIM OR CAUSE OF ACTION FOR
27 AN ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE

1 OF RIGHTS OR PERFORMANCE OF ACTIONS DESCRIBED IN SUBSECTION (1)
2 OF THIS SECTION, THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF
3 ACTION:

4 (a) THE MEASURE OF DAMAGES FOR ALL SUCH CLAIMS, TAKEN
5 TOGETHER, IS THE FAIR MARKET VALUE OF THE REDUCTION IN VALUE OF
6 THE INTEREST HOLDER'S INTEREST IN THE REAL PROPERTY, AS
7 CONTEMPLATED BY SECTION 38-1-121 (1). IN DETERMINING OR PROVIDING
8 THE FAIR MARKET VALUE UNDER THIS SUBSECTION (3)(a):

9 (I) THE FOLLOWING SHALL NOT BE USED AND ARE NOT ADMISSIBLE
10 AS EVIDENCE IN ANY PROCEEDING:

11 (A) PROFITS, FEES, OR REVENUE DERIVED FROM THE ATTACHED
12 FACILITIES; OR

13 (B) THE RENTAL VALUE OF THE REAL PROPERTY INTEREST OR THE
14 ELECTRIC EASEMENT, INCLUDING THE RENTAL VALUE OF ANY ATTACHED
15 FACILITIES OR AN ASSEMBLED BROADBAND CORRIDOR; AND

16 (II) CONSIDERATION MUST BE GIVEN TO ANY INCREASE IN VALUE
17 TO THE REAL PROPERTY INTEREST RESULTING FROM THE AVAILABILITY OF
18 COMMERCIAL BROADBAND SERVICE TO THE REAL PROPERTY UNDERLYING
19 THE REAL PROPERTY INTEREST THAT ARISES FROM THE INSTALLATION OF
20 ATTACHED FACILITIES.

21 (b) THE INTEREST HOLDER MUST MAKE REASONABLE
22 ACCOMMODATIONS FOR THE ELECTRIC UTILITY OR COMMERCIAL
23 BROADBAND SUPPLIER TO PERFORM AN APPRAISAL OR INSPECTION OF THE
24 REAL PROPERTY WITHIN NINETY DAYS FOLLOWING ANY WRITTEN REQUEST
25 FOR AN APPRAISAL OR INSPECTION. IF AN INTEREST HOLDER FAILS TO MAKE
26 SUCH ACCOMMODATIONS, THE ELECTRIC UTILITY OR COMMERCIAL
27 BROADBAND SUPPLIER HAS NO FURTHER LIABILITY TO THE INTEREST

1 HOLDER.

2 (c) ANY DAMAGES FOR THE EXERCISE OF RIGHTS OR ACTIONS SET
3 FORTH IN SUBSECTION (1) OF THIS SECTION:

4 (I) EXCEPT AS PROVIDED IN SUBSECTION (3)(c)(III) OF THIS
5 SECTION, ARE LIMITED TO THOSE DAMAGES THAT EXISTED AT THE TIME
6 THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FIRST
7 EXERCISED THE RIGHTS OR PERFORMED THE ACTIONS:

8 (II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR
9 ACCUMULATE; AND

10 (III) MAY INCLUDE ADDITIONAL DAMAGES FOR ANY PHYSICAL
11 DAMAGE TO PROPERTY OR BREACH OF THE TERMS AND CONDITIONS OF A
12 WRITTEN ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY
13 AFTER GIVING EFFECT TO SECTION 40-15-602 (5).

14 (d) (I) EXCEPT FOR AN ELECTRIC UTILITY'S OR COMMERCIAL
15 BROADBAND SUPPLIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR
16 IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF A WRITTEN
17 ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY IN
18 ACCORDANCE WITH SECTION 40-15-602 (5), AN INTEREST HOLDER IS NOT
19 ENTITLED TO REIMBURSEMENT FROM AN ELECTRIC UTILITY OR
20 COMMERCIAL BROADBAND SUPPLIER FOR THE COST OF ANY APPRAISAL,
21 ATTORNEY FEES, OR AWARD FOR SPECIAL, CONSEQUENTIAL, INDIRECT, OR
22 PUNITIVE DAMAGES.

23 (II) FOR PURPOSES OF THIS SUBSECTION (3)(d), ANY ACTION OR
24 FAILURE TO ACT BY AN ELECTRIC UTILITY OR COMMERCIAL BROADBAND
25 SUPPLIER IN FURTHERANCE OF THE ELECTRIC UTILITY'S OR COMMERCIAL
26 BROADBAND SUPPLIER'S EXERCISE OF RIGHTS SET FORTH IN SECTION
27 40-15-602 (1) SHALL NOT BE DEEMED GROSS NEGLIGENCE OR WILLFUL

1 MISCONDUCT.

2 (4) BY ACCEPTING A DAMAGE AWARD UNDER THIS SECTION OTHER
3 THAN A DAMAGE AWARD UNDER SUBSECTION (3)(c)(III) OF THIS SECTION,
4 AN INTEREST HOLDER SHALL BE DEEMED TO HAVE GRANTED AN
5 EASEMENT, EQUAL IN DURATION TO THE TERM OF THE ELECTRIC EASEMENT
6 AND SUBJECT TO SECTION 40-15-602 (5), TO THE EXTENT OF THE INTEREST
7 HOLDER'S RIGHTS IN THE REAL PROPERTY, FOR ALL OF THE USES OF THE
8 REAL PROPERTY AND ACTIONS SET FORTH IN SECTION 40-15-602 (1).

9 **40-15-604. Electric utility obligations.** (1) AN ELECTRIC UTILITY
10 THAT EXERCISES ANY RIGHTS UNDER SECTION 40-15-602 (1)(a) OR (1)(b)
11 FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE OR THAT HAS
12 A BROADBAND AFFILIATE SHALL NOT DISCRIMINATE AMONG COMMERCIAL
13 BROADBAND SUPPLIERS, INCLUDING BROADBAND AFFILIATES, IN OFFERING
14 OR GRANTING RIGHTS TO INSTALL OR ATTACH ANY ATTACHED FACILITIES
15 OR IN LEASING OR USING CAPACITY OF ANY ATTACHED FACILITIES.

16 (2) AN ELECTRIC UTILITY THAT HAS A BROADBAND AFFILIATE AND,
17 IF APPLICABLE, THE BROADBAND AFFILIATE SHALL:

18 (a) CHARGE RECURRING FEES NOT EXCEEDING ANY FEES IN
19 ACCORDANCE WITH RATES THAT APPLY TO ATTACHMENTS TO POLES
20 UNDER SECTION 224 (e) OF THE FEDERAL "COMMUNICATIONS ACT OF
21 1934", AS AMENDED, AND THE FCC'S REGULATIONS AND POLICIES
22 IMPLEMENTING THE FEDERAL ACT CONCERNING POLE ATTACHMENT RATES
23 THAT APPLY TO INVESTOR-OWNED UTILITIES, AS SET FORTH IN 47 CFR
24 1.1406, TO ALL COMMERCIAL BROADBAND SUPPLIERS FOR ATTACHMENTS
25 ON A POLE OR ELECTRIC SERVICE INFRASTRUCTURE THAT IS OWNED OR
26 CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE;
27 EXCEPT THAT, IF AN ELECTRIC UTILITY DEMONSTRATES WITH COMPETENT

1 EVIDENCE THAT IT CANNOT RECOVER ALL OF ITS INCREMENTAL CAPITAL
2 AND OPERATING COSTS OF PROVIDING THE POLE ATTACHMENT THROUGH
3 THE RATES AND ANY APPLICABLE ONE-TIME CHARGES, THE ELECTRIC
4 UTILITY MAY CHARGE A HIGHER RATE TO COMMERCIAL BROADBAND
5 SUPPLIERS ON A NONDISCRIMINATORY BASIS TO THE EXTENT REQUIRED TO
6 RECOVER THE INCREMENTAL COSTS;

7 (b) PROVIDE ALL COMMERCIAL BROADBAND SUPPLIERS ACCESS TO
8 ALL POLES OR ELECTRIC SERVICE INFRASTRUCTURE OWNED BY THE
9 ELECTRIC UTILITY OR BROADBAND AFFILIATE FOR THE PURPOSE OF
10 ATTACHING EQUIPMENT FOR THE PROVISION OF COMMERCIAL BROADBAND
11 SERVICE. ACCESS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION
12 (2)(b) MUST BE PROVIDED:

13 (I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS AND
14 IN A MANNER CONSISTENT WITH THE REGULATORY OBLIGATIONS SET
15 FORTH IN FCC REGULATIONS REGARDING INVESTOR-OWNED UTILITY POLE
16 OWNERS; AND

17 (II) UNDER TERMS AND CONDITIONS THAT ARE NO LESS
18 FAVORABLE THAN THE TERMS AND CONDITIONS OFFERED TO BROADBAND
19 AFFILIATES, INCLUDING TERMS AND CONDITIONS REGARDING APPLICATION
20 REQUIREMENTS, TECHNICAL REQUIREMENTS, ELECTRIC LINeworker
21 HEALTH AND SAFETY REQUIREMENTS, ADMINISTRATIVE FEES, TIMELINES,
22 AND MAKE-READY REQUIREMENTS; AND

23 (c) CHARGE FEES TO COMMERCIAL BROADBAND SUPPLIERS FOR
24 LEASE OR USE OF ATTACHED FACILITIES OWNED OR CONTROLLED BY THE
25 ELECTRIC UTILITY UNDER JUST, REASONABLE, AND NONDISCRIMINATORY
26 TERMS AND CONDITIONS, INCLUDING FEES THAT ARE EQUAL TO OR LESS
27 THAN THE FEES THAT THE ELECTRIC UTILITY CHARGES TO ITS BROADBAND

1 AFFILIATES.

2 (3) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
3 SECTION, NOTHING IN THIS SECTION REQUIRES AN ELECTRIC UTILITY TO
4 OFFER OR GRANT A RIGHT TO ACCESS OR USE AN ELECTRIC EASEMENT OR
5 TO USE ATTACHED FACILITIES OR ELECTRIC SERVICE INFRASTRUCTURE
6 OWNED OR CONTROLLED BY THE ELECTRIC UTILITY IN A MANNER THAT
7 WOULD MATERIALLY INTERFERE WITH THE ELECTRIC UTILITY'S
8 CONSTRUCTION, MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY
9 INFRASTRUCTURE FOR THE PROVISION OF ELECTRIC SERVICE.

10 (4)(a) AN ELECTRIC UTILITY WITH A BROADBAND AFFILIATE SHALL
11 NOT UNREASONABLY WITHHOLD AUTHORIZATION OR DELAY ITS DECISION
12 WHETHER TO PROVIDE AUTHORIZATION TO A COMMERCIAL BROADBAND
13 SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE ATTACHED
14 FACILITIES ON ELECTRIC SERVICE INFRASTRUCTURE OWNED OR
15 CONTROLLED BY THE ELECTRIC UTILITY. AN ELECTRIC UTILITY MAY ONLY
16 WITHHOLD AUTHORIZATION PURSUANT TO THIS SUBSECTION (4) IF THE
17 REASON FOR WITHHOLDING AUTHORIZATION IS THAT:

18 (I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED
19 FACILITIES; OR

20 (II) CONCERNS OF SAFETY OR RELIABILITY OR GENERALLY
21 APPLICABLE ENGINEERING PURPOSES WEIGH AGAINST GRANTING THE
22 AUTHORIZATION.

23 (b) AN ELECTRIC UTILITY THAT WITHHOLDS AUTHORIZATION
24 PURSUANT TO THIS SUBSECTION (4) SHALL PROMPTLY NOTIFY THE
25 COMMERCIAL BROADBAND SUPPLIER IN WRITING OF THE REASONS FOR
26 WITHHOLDING AUTHORIZATION.

27 (5) UPON REQUEST OF A COMMERCIAL BROADBAND SUPPLIER, AN

1 ELECTRIC UTILITY AND ANY BROADBAND AFFILIATE SUBJECT TO THIS
2 SECTION SHALL CAUSE AN OFFICER OF THE ELECTRIC UTILITY AND AN
3 OFFICER OF THE BROADBAND AFFILIATE TO CERTIFY THAT THE ELECTRIC
4 UTILITY AND THE BROADBAND AFFILIATE, RESPECTIVELY, ARE IN
5 COMPLIANCE WITH THIS SECTION AND SECTION 40-15-602 (4)(b). IF A
6 DISPUTE ARISES IN A COURT OF COMPETENT JURISDICTION BETWEEN AN
7 ELECTRIC UTILITY OR ITS BROADBAND AFFILIATE AND AN UNAFFILIATED
8 COMMERCIAL BROADBAND SUPPLIER:

9 (a) REGARDING MATTERS ADDRESSED IN THIS PART 6, THE PARTIES
10 TO THE DISPUTE HAVE STANDING TO FILE A CLAIM OR CAUSE OF ACTION IN
11 ANY COURT OF COMPETENT JURISDICTION IN THE STATE; AND

12 (b) THE FOLLOWING ARE DISCOVERABLE AND ADMISSIBLE AS
13 EVIDENCE IN COURT REGARDING THE ELECTRIC UTILITY'S AND ITS
14 BROADBAND AFFILIATE'S COMPLIANCE WITH THIS SECTION:

15 (I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO
16 THIS SUBSECTION (5):

17 (II) THE TERMS AND CONDITIONS APPLIED TO THE ELECTRIC
18 UTILITY'S OR BROADBAND AFFILIATE'S OFFER TO OR GRANT OF A RIGHT TO
19 THE UNAFFILIATED COMMERCIAL BROADBAND SUPPLIER TO INSTALL,
20 MAINTAIN, OWN, OPERATE, OR USE ATTACHED FACILITIES; AND

21 (III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO
22 SECTION 40-15-602 (4)(b).

23 (6) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE
24 CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER
25 47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS
26 PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS
27 SECTION.

- 1 (7) NOTHING IN THIS PART 6:
2 (a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;
3 (b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR
4 INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC.
5 224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE
6 ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR
7 (c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR
8 INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.

9 **SECTION 2.** In Colorado Revised Statutes, **amend 38-4-103** as
10 follows:

11 **38-4-103. Electric power companies.** (1) Any foreign or
12 domestic corporation organized or chartered for the purpose, among other
13 things, of conducting and maintaining electric power transmission lines
14 for providing power or light by means of electricity for hire shall have
15 HAS a right-of-way for the construction, operation, and maintenance of
16 such electric power transmission lines through any patented or unpatented
17 mine or mining claim or other land without the consent of the owner
18 thereof OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR
19 OTHER LAND, if such THE right-of-way is necessary for the purposes
20 proposed.

21 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
22 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
23 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40:

24 (a) INSTALL OR ALLOW THE INSTALLATION OF ANY ATTACHED
25 FACILITY, AS THAT TERM IS DEFINED IN SECTION 40-15-601 (1); AND

26 (b) EXERCISE ANY RIGHTS AVAILABLE TO THE ELECTRIC UTILITY
27 UNDER PART 6 OF ARTICLE 15 OF TITLE 40 IN CONNECTION WITH THE

1 INSTALLATION.

2 **SECTION 3.** In Colorado Revised Statutes, **amend 38-5-103** as
3 follows:

4 **38-5-103. Power of companies to contract.** (1) ~~Such AN~~ electric
5 light power, gas, or pipeline company or ~~such~~ A city or town shall have
6 power to MAY contract with any person or corporation, the owner of any
7 lands LAND or any franchise, easement, or interest therein ON THE LAND
8 over or under which the line of electric light wire power or pipeline is
9 proposed to be laid or created for the right-of-way for the construction,
10 maintenance, and operation of its electric light wires, pipes, poles,
11 regulator stations, substations, or other property and for the erection,
12 maintenance, occupation, and operation of offices at suitable distances for
13 the public accommodation.

14 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
15 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN
16 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW
17 THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL
18 BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION
19 40-15-601 (1) AND (3), RESPECTIVELY.

20 **SECTION 4. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2020 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.