

## CHAPTER 489

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**GOVERNMENT - STATE**


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**HOUSE BILL 21-1109**

BY REPRESENTATIVE(S) Titone and Soper, Bacon, Burnett, Bird, Cutter, Esgar, Exum, Gray, Herod, Hooton, Jackson, Jodeh, McCormick, McLachlan, Michaelson Jenet, Mullica, Ortiz, Valdez A., Valdez D., Young, Garnett, Gonzales-Gutierrez, Kennedy, Lontine, Lynch, McCluskie, Ricks, Snyder;  
also SENATOR(S) Bridges and Coram.

**AN ACT**

**CONCERNING THE BROADBAND DEPLOYMENT BOARD, AND, IN CONNECTION THEREWITH, MOVING THE BOARD FROM THE DEPARTMENT OF REGULATORY AGENCIES TO THE OFFICE OF INFORMATION TECHNOLOGY, MODIFYING THE COMPOSITION OF THE BOARD, REQUIRING THE BOARD TO DEVELOP A REQUEST FOR PROPOSAL PROCESS FOR DEPLOYING BROADBAND INTO CRITICALLY UNSERVED AREAS IN THE STATE, REQUIRING THE BOARD TO GIVE ADDITIONAL CONSIDERATION TO PROPOSED PROJECTS THAT WOULD INCLUDE DISCOUNTED SERVICE FOR LOW-INCOME HOUSEHOLDS, AND MAKING AN APPROPRIATION.**

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

**SECTION 1.** In Colorado Revised Statutes, 24-34-104, **amend** (25)(a)(VI) as follows:

**24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal.** (25) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2024:

(VI) The functions of the broadband deployment board created in section ~~40-15-509.5~~ 24-37.5-119;

**SECTION 2.** In Colorado Revised Statutes, **add with amended and relocated provisions** 24-37.5-119 as follows:

**24-37.5-119. [Formerly 40-15-509.5] Broadband service - report - broadband deployment board - broadband administrative fund - creation - rules - legislative declaration - definitions - repeal.** (1) **Short title.** ~~This section shall be known and may be cited as~~ THE SHORT TITLE OF THIS SECTION IS the "Connect

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

Colorado to Enhance Economic Development, Telehealth, Education, and Safety Act".

(2) The general assembly hereby finds, determines, and declares that to promote the state policy of providing universal access to broadband service, as set forth in section 40-15-502 (4), it may be necessary to provide financial assistance through additional support mechanisms if competition for local exchange services fails to deliver broadband service throughout the state. "Advanced service" includes "broadband service" for purposes of this section only.

(3) The commission may allocate the ~~Colorado~~ high cost support mechanism established under section 40-15-208 and referred to in this section as the "HCSM", for the deployment of broadband service in unserved areas of the state pursuant to this section and section 40-15-208 only. The commission may fund the deployment of broadband service in unserved areas of the state through use of the HCSM surcharge and surcharge rate in effect on January 1, 2018. Pursuant to subsection (4) of this section and consistent with sections 40-15-207 and 40-15-208, the commission shall determine funds available for broadband deployment and the administration of the board as prescribed in section 40-15-208 or from the HCSM money that it determines is no longer required by the HCSM to support universal basic service, AS THAT TERM IS DEFINED IN SECTION 40-15-102 (3), through an effective competition determination. ~~The AN HCSM THIRD-PARTY CONTRACTOR SHALL MAINTAIN AND HOLD THE money available for broadband deployment shall be maintained by the HCSM third-party contractor and held~~ in a separate account from money used for basic voice service. Money held for broadband deployment shall not be disbursed for basic voice service, and money held for basic voice service shall not be disbursed for broadband deployment. The commission shall only disburse money for broadband deployment grants from the HCSM as directed by the board. Nothing in this section increases any surcharge rate charged to help fund the HCSM.

(4) ~~(a)~~ There is hereby created in the state treasury the broadband administrative fund, referred to in this section as the "fund". The fund consists of all money allocated from the HCSM for the administration of the board and all money that the general assembly may appropriate to the fund. The money in the fund is subject to annual appropriation by the general assembly for the purposes set forth in this section. All interest earned from the investment of money in the fund is credited to the fund. All money not expended at the end of ~~the ANY STATE~~ fiscal year remains in the fund and does not revert to the general fund or any other fund.

~~(b) Repealed.~~

(5) (a) There is hereby created in the ~~department of regulatory agencies~~ OFFICE the broadband deployment board, referred to in this section as the "board". The board is an independent board created to implement and administer the deployment of broadband service in unserved areas. The ~~department of regulatory agencies~~ OFFICE shall staff the board. The board has the powers and duties specified in this section.

(b) (I) (A) The board consists of sixteen members, fifteen of whom are voting members. The members of the board shall be selected on the basis of their

knowledge of and interest in broadband service and shall serve for four-year terms. A member of the board shall not serve more than two consecutive full four-year terms.

(B) THIS SUBSECTION (5)(b)(I) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

(II) (A) COMMENCING ON SEPTEMBER 1, 2021, THE BOARD CONSISTS OF ELEVEN VOTING MEMBERS. THE MEMBERS OF THE BOARD SHALL BE SELECTED ON THE BASIS OF THEIR KNOWLEDGE OF AND INTEREST IN BROADBAND SERVICE AND SHALL SERVE FOR FOUR-YEAR TERMS. A MEMBER OF THE BOARD SHALL NOT SERVE MORE THAN TWO CONSECUTIVE FULL FOUR-YEAR TERMS; EXCEPT THAT THE LIMIT ON TERMS OF OFFICE DOES NOT APPLY TO THE BOARD MEMBER REPRESENTING THE OFFICE.

(B) AN APPOINTING AUTHORITY MAY APPOINT A BOARD MEMBER SEATED ON THE BOARD ON AUGUST 31, 2021, TO CONTINUE SERVING ON THE BOARD ON AND AFTER SEPTEMBER 1, 2021, FOR THE REMAINDER OF THE BOARD MEMBER'S EXISTING TERM AS OF AUGUST 31, 2021, IF THE BOARD MEMBER MEETS THE BOARD MEMBERSHIP CRITERIA SET FORTH IN SUBSECTION (7)(d) OF THIS SECTION AND THE BOARD MEMBER'S CONTINUED MEMBERSHIP ON THE BOARD DOES NOT ENLARGE THE MEMBERSHIP OF THE BOARD AUTHORIZED UNDER SUBSECTION (5)(b)(II)(A) OF THIS SECTION. IF OTHERWISE ELIGIBLE FOR REAPPOINTMENT, THE BOARD MEMBER MAY BE APPOINTED FOR AN ADDITIONAL TERM AFTER SEPTEMBER 1, 2021. THIS SUBSECTION (5)(b)(II)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

(c) (6) (a) No more than eight voting members of any one major political party may serve on the board at the same time. Members of the board are entitled to seventy-five dollars per diem for attendance at official meetings plus actual and necessary expenses incurred in the conduct of official business. Members of the board shall be appointed as follows:

(I) At least one member from the commission; one member from the Colorado office of economic development and international trade in the office of the governor; one member from the department of local affairs, created in section 24-1-125, C.R.S.; and one member from the office, ~~of information technology, created in section 24-37.5-103, C.R.S.;~~ as appointed by the governor. The governor shall select three of these four appointees to serve as voting members of the board.

(II) Three voting members representing local entities:

(A) One of whom is a county commissioner, as appointed by the president of the senate in consultation with Colorado Counties, Inc.;

(B) One of whom is a mayor or city councilperson, as appointed by the speaker of the house of representatives in consultation with the Colorado Municipal League; and

(C) One of whom is any other representative of a local entity and who has a background in broadband service and expertise in rural economic development, education, or telemedicine, as appointed by the minority leader of the senate;

(III) Seven voting members representing the broadband industry:

(A) One of whom represents a wireless provider, as appointed by the minority leader of the house of representatives;

(B) One of whom represents a wireline provider, as appointed by the minority leader of the senate;

(C) One of whom represents a broadband satellite provider, as appointed by the governor;

(D) One of whom represents a cable provider, as appointed by the president of the senate;

(E) One of whom represents a rural local exchange carrier, as appointed by the governor;

(F) One of whom represents a competitive local exchange carrier, as appointed by the speaker of the house of representatives; and

(G) One of whom represents a cable provider serving rural areas, as appointed by the president of the senate; and

(IV) Two voting members of the public:

(A) One of whom resides in an unserved area of the western slope of the state, as appointed by the speaker of the house of representatives; and

(B) One of whom resides in an unserved area of the eastern slope of the state, as appointed by the minority leader of the house of representatives.

~~(C) (Deleted by amendment, L. 2018.)~~

(b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

~~(7)~~ (a) The board shall meet as often as necessary to carry out its duties as defined in this section.

~~(e)~~ (b) The term of any member of the board who misses more than two consecutive regular board meetings without good cause shall be terminated, and his or her THE MEMBER'S successor shall be appointed in the manner provided for appointments under this section.

~~(f)~~ (c) (I) If a board member has a conflict of interest with respect to any matter addressed by the board, including a financial interest in the matter, the member shall recuse himself or herself from any discussion or decisions on the matter.

(II) (A) A board member appointed pursuant to subsection ~~(5)(c)(I), (5)(c)(II), or (5)(c)(IV)~~ (6)(a)(I), (6)(a)(II), OR (6)(a)(IV) of this section is not deemed to have a conflict of interest merely by virtue of residing in or representing an unserved area or an area that is the subject of an application before the board.

(B) A board member appointed pursuant to subsection ~~(5)(c)(III)~~ (6)(a)(III) of

this section is deemed to have a conflict of interest with respect to an application filed by an entity that the board member represents; however, if such application is filed, the board member may still participate in discussions about other applications before the board, but shall not vote on those other applications.

(III) THIS SUBSECTION (7)(c) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2021.

(d) COMMENCING ON SEPTEMBER 1, 2021, AT LEAST THREE MEMBERS OF THE BOARD MUST BE AFFILIATED WITH ONE OF THE TWO MAJOR POLITICAL PARTIES AND AT LEAST THREE MEMBERS MUST BE AFFILIATED WITH THE OTHER MAJOR POLITICAL PARTY, WITH EACH MEMBER HAVING BEEN REGISTERED WITH THEIR POLITICAL PARTY FOR AT LEAST ONE YEAR. AT LEAST THREE MEMBERS OF THE BOARD MUST BE UNAFFILIATED WITH EITHER OF THE MAJOR POLITICAL PARTIES, HAVING BEEN UNAFFILIATED FOR AT LEAST ONE YEAR. MEMBERS OF THE BOARD ARE ENTITLED TO SEVENTY-FIVE DOLLARS PER DIEM FOR ATTENDANCE AT OFFICIAL MEETINGS PLUS ACTUAL AND NECESSARY EXPENSES INCURRED IN THE CONDUCT OF OFFICIAL BUSINESS. MEMBERS OF THE BOARD SHALL BE APPOINTED AS FOLLOWS:

(I) ONE VOTING MEMBER FROM THE OFFICE, APPOINTED BY THE GOVERNOR;

(II) THREE VOTING MEMBERS REPRESENTING LOCAL ENTITIES:

(A) ONE OF WHOM IS A COUNTY COMMISSIONER FROM THE EASTERN PLAINS OF THE STATE, APPOINTED BY THE PRESIDENT OF THE SENATE;

(B) ONE OF WHOM IS A COUNTY COMMISSIONER FROM THE WESTERN SLOPE OF THE STATE, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES; AND

(C) ONE OF WHOM REPRESENTS A RURAL CITY OR TOWN AS A MAYOR OR CITY COUNCILPERSON, AS APPOINTED BY THE GOVERNOR. AS USED IN THIS SUBSECTION (7)(d)(II)(C), "RURAL" HAS THE MEANING SET FORTH IN SECTION 24-32-3603 (3)(a).

(III) FIVE VOTING MEMBERS REPRESENTING THE BROADBAND INDUSTRY:

(A) ONE OF WHOM REPRESENTS A WIRELESS PROVIDER, APPOINTED BY THE PRESIDENT OF THE SENATE;

(B) ONE OF WHOM REPRESENTS A WIRELINE PROVIDER, APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(C) ONE OF WHOM REPRESENTS A BROADBAND SATELLITE PROVIDER, APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES;

(D) ONE OF WHOM REPRESENTS A CABLE PROVIDER, APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND

(E) ONE OF WHOM REPRESENTS A RURAL WIRELINE PROVIDER, APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND

(IV) TWO VOTING MEMBERS OF THE PUBLIC:

(A) ONE OF WHOM RESIDES IN AN UNSERVED AREA OF THE WESTERN SLOPE OF THE STATE, APPOINTED BY THE GOVERNOR; AND

(B) ONE OF WHOM RESIDES IN AN UNSERVED AREA OF THE EASTERN PLAINS OF THE STATE, APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

(e) COMMENCING ON SEPTEMBER 1, 2021:

(I) IF A BOARD MEMBER HAS A CONFLICT OF INTEREST WITH RESPECT TO ANY MATTER ADDRESSED BY THE BOARD, INCLUDING A FINANCIAL INTEREST IN THE MATTER, THE MEMBER SHALL RECUSE HIMSELF OR HERSELF FROM ANY DISCUSSION OR DECISIONS ON THE MATTER;

(II) A BOARD MEMBER APPOINTED PURSUANT TO SUBSECTION (7)(d)(I), (7)(d)(II), OR (7)(d)(IV) OF THIS SECTION IS NOT DEEMED TO HAVE A CONFLICT OF INTEREST MERELY BY VIRTUE OF RESIDING IN OR REPRESENTING AN UNSERVED AREA, A CRITICALLY UNSERVED AREA, OR AN AREA THAT IS THE SUBJECT OF AN APPLICATION BEFORE THE BOARD; AND

(III) A BOARD MEMBER APPOINTED PURSUANT TO SUBSECTION (7)(d)(III) OF THIS SECTION IS DEEMED TO HAVE A CONFLICT OF INTEREST WITH RESPECT TO AN APPLICATION FILED BY AN ENTITY THAT THE BOARD MEMBER REPRESENTS; HOWEVER, IF SUCH APPLICATION IS FILED, THE BOARD MEMBER MAY STILL PARTICIPATE IN DISCUSSIONS ABOUT OTHER APPLICATIONS BEFORE THE BOARD BUT SHALL NOT VOTE ON THOSE OTHER APPLICATIONS.

~~(g)~~ (f) In the event of a tie vote of the board, the application, appeal, proposition, or other matter being voted upon fails.

(g) COMMENCING ON SEPTEMBER 1, 2021, SIX MEMBERS OF THE BOARD CONSTITUTE A QUORUM.

~~(6) Repealed.~~

~~(7)~~ (8) The board shall provide notice to and requests for proposals from incumbent providers, incumbent broadband providers, and local entities about the board's purpose to deploy broadband service in unserved areas. The board shall ensure that both the manner and amount of notice provided under this subsection ~~(7)~~ (8) are adequate and equitable for all potentially eligible applicants.

~~(8)~~ (9) The board shall direct the commission to transfer money, in a manner consistent with this section, from the HCSM account DEDICATED for broadband deployment established in the HCSM PURSUANT TO SUBSECTION (3) OF THIS SECTION to approved grant applicants. The board shall develop criteria for awarding money for new projects to deploy broadband in unserved areas, including:

(a) (I) Developing a project application process that places the burden on an eligible applicant to demonstrate that its proposed project meets the project eligibility criteria established in this subsection ~~(8)~~ (9), including a requirement that the proposal concern a new project, and not a project already in progress, and a

requirement to prove that the area to be served by the proposed project is an unserved area.

(II) To prove that the area to be served is an unserved area, the applicant:

(A) Must submit a map and a list of household addresses demonstrating the insufficient availability of broadband service in the area to the board; the board of county commissioners, city council, or other local entity with authority over the area to be served; and all incumbent providers or incumbent broadband providers that provide broadband internet service or broadband service in the area proposed to be served in the application; and

(B) May submit to the board EITHER the written certification of a local entity as described in subsection ~~(8)(a)(III)~~ (9)(a)(III) of this section OR A STATISTICALLY REPRESENTATIVE NUMBER OF SPEED TESTS PERFORMED IN ACCORDANCE WITH SUBSECTION (9)(a)(VII) OF THIS SECTION.

(III) As additional evidence of the insufficient availability of broadband service in the area that an applicant proposes to serve, the applicant may request from a local entity with jurisdiction over the area proposed to be served a written certification that the area is an unserved area. The local entity shall not provide written certification until after the local entity has:

(A) Provided public notice, including notification to any incumbent provider, if any, and held a hearing on the issue; and

(B) Collected, solicited, and reviewed any quantitative data that it deems appropriate regarding the availability of broadband service in the area that the applicant proposes to serve. A local entity must collect, solicit, and review quantitative data in accordance with rules adopted by the ~~executive director of the department of regulatory agencies~~ CHIEF INFORMATION OFFICER, in consultation with the ~~office of information technology created in section 24-37.5-103~~ and the board, regarding standards concerning quantitative data.

(IV) The board shall establish a notice and comment period of at least sixty days within which any interested party, including a local entity with jurisdiction over the area proposed to be served, whether or not the entity provided a written certification as described in subsection ~~(8)(a)(III)~~ (9)(a)(III) of this section, may review and comment on the application.

(V) (A) THE BOARD SHALL DEVELOP A REQUEST FOR PROPOSAL PROCESS UNDER WHICH, FOR EACH CALENDAR YEAR, THE BOARD RESERVES UP TO SIXTY PERCENT OF THE HCSM MONEY ALLOCATED FOR BROADBAND DEPLOYMENT TO AWARD GRANTS TO PROPOSED PROJECTS THAT SERVE CRITICALLY UNSERVED AREAS IDENTIFIED BY THE OFFICE, INCLUDING ANY CRITICALLY UNSERVED AREAS WITHIN THE BOUNDARIES OF AN INDIAN RESERVATION LOCATED WITHIN THE STATE.

(B) AT THE END OF EACH CALENDAR YEAR, ANY OF THE RESERVED MONEY NOT AWARDED THROUGH THE REQUEST FOR PROPOSAL PROCESS REMAINS AVAILABLE FOR DISTRIBUTION THROUGH THE EXISTING GRANT APPLICATION PROCESS.

(C) ALL APPLICATION AND APPEAL PROCESSES AND CRITERIA SET FORTH IN THIS SUBSECTION (9) APPLY TO THE REQUEST FOR PROPOSAL PROCESS; EXCEPT THAT THE REQUIREMENT TO PROVE THAT AN AREA TO BE SERVED BY A PROPOSED PROJECT IS AN UNSERVED AREA AS SET FORTH IN SUBSECTION (9)(a)(I) OF THIS SECTION DOES NOT APPLY AND SUBSECTIONS (9)(a)(II), (9)(a)(III), (9)(b), AND (9)(d) OF THIS SECTION DO NOT APPLY. SUBSECTION (9)(e)(II) OF THIS SECTION ONLY APPLIES TO THE REQUEST FOR PROPOSAL PROCESS IN THE LIMITED MANNER INDICATED IN THAT SUBSECTION.

(D) THE BOARD, IN IMPLEMENTING THE REQUEST FOR PROPOSAL PROCESS, NEED NOT COMPLY WITH THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE 24.

(E) THIS SUBSECTION (9)(a)(V) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

(VI) (A) ON OR BEFORE NOVEMBER 1, 2021, THE OFFICE SHALL DEVELOP AND SUBMIT TO THE BOARD ONE OR MORE MAPS IDENTIFYING THE CRITICALLY UNSERVED AREAS IN THE STATE. THE BOARD SHALL UTILIZE THE MAPS SUBMITTED WHEN REVIEWING ANY APPLICATION OR APPEAL PURSUANT TO THIS SECTION.

(B) WITH REGARD TO THE REQUEST FOR PROPOSAL PROCESS SET FORTH IN SUBSECTION (9)(a)(V) OF THIS SECTION, BASED ON THE MAPS SUBMITTED, THE BOARD SHALL CHOOSE CRITICALLY UNSERVED AREAS FOR WHICH THE BOARD SHALL SOLICIT PROPOSED PROJECT BIDS TO SERVE THOSE AREAS. IN CHOOSING THE CRITICALLY UNSERVED AREAS FOR WHICH THE BOARD WILL SOLICIT PROPOSED PROJECT BIDS, THE BOARD SHALL STRIVE TO ENSURE GEOGRAPHIC DIVERSITY AMONG THE AREAS CHOSEN. THIS SUBSECTION (9)(a)(VI)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

(VII) IF AN APPLICANT FILING AN APPLICATION OR AN APPELLANT FILING AN APPEAL PURSUANT TO SUBSECTION (9)(k)(III) OF THIS SECTION SUBMITS, AS PART OF THE APPLICATION OR APPEAL, A SPEED TEST PERFORMED ON AN INCUMBENT PROVIDER'S NETWORK, THE SPEED TEST SHALL BE PERFORMED IN ACCORDANCE WITH INDUSTRY-STANDARD SPEED-TEST PROTOCOLS AS IDENTIFIED BY THE FCC.

(b) Developing a methodology for determining whether a proposed project will serve unserved areas. The board's methodology must give substantial weight to a local entity's written certification on the issue of whether the area to be served is an unserved area.

(c) Denying funding for applications that overbuild areas receiving federal sources of high cost support or federal broadband grants for construction of a broadband network that will be completed within twenty-four months after the date that the applicant filed the application so as to maximize the total available state and federal support for rural broadband development. An incumbent broadband provider receiving federal funds must submit to the board an affidavit from a company officer that the build-out will be completed within the twenty-four-month period. Upon completion of the project, an incumbent broadband provider will provide documentation to the board that demonstrates that the unserved addresses meet the minimum download and upload speeds established in the FCC's definition of high-speed internet access or broadband. If the incumbent broadband provider fails



to meet the commitment made in the affidavit filed, the board may award a grant to another provider to provide service for the addresses that remain unserved.

~~(e.5)~~ (d) Denying funding for overbuilding of existing broadband networks in order to maximize the total available support for financing rural broadband development;

~~(d)~~ (e) Ensuring that a proposed project includes:

(I) Access to measurable speeds of at least ten megabits per second downstream and one megabit per second upstream or measurable speeds at least equal to the FCC's definition of high-speed internet access or broadband, whichever is faster;

(II) (A) EXCEPT AS PROVIDED IN SUBSECTION (9)(e)(II)(B) OF THIS SECTION, independent funding secured for at least twenty-five percent of the total cost of the proposed project. ~~and~~

(B) THE BOARD MAY AUTHORIZE A PROPOSED PROJECT AWARDED GRANT MONEY PURSUANT TO SUBSECTION (9)(a)(V) OF THIS SECTION TO SECURE A LESSER AMOUNT OF INDEPENDENT FUNDING IF THE PROPOSED PROJECT MEETS THE CRITERIA SET FORTH IN THIS SUBSECTION (9) AND THE AMOUNT OF INDEPENDENT FUNDING SECURED IS THE HIGHEST AMOUNT OF INDEPENDENT FUNDING PROPOSED AMONG MULTIPLE PROPOSALS TO SERVE THE AREA TO BE SERVED BY THE PROPOSED PROJECT. THIS SUBSECTION (9)(e)(II)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

(III) A requirement to utilize any award granted from the ~~fund~~ HCSM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION for infrastructure purposes only and not for operations;

~~(e)~~ (f) Providing additional consideration for proposed projects that ~~include~~ INCLUDES at least some of the following factors:

(I) Proposed projects that provide service to residential and business addresses that lack broadband internet service at measurable speeds of at least ten megabits per second downstream and one megabit per second upstream;

(II) Proposed projects that are endorsed by local entities interested in obtaining broadband internet service in unserved areas of the state;

(III) Proposed projects that have speeds of at least ten megabits per second downstream and one megabit per second upstream or measurable speeds at least equal to the FCC's definition of high-speed internet access or broadband, whichever is faster;

(IV) Proposed projects for which the applicant has an established record of operation in the area of the grant application; ~~and~~

(V) Proposed projects providing last-mile broadband service, which is defined as the portion of broadband service that delivers an internet connection to an end user; ~~that lacks access to broadband service at measurable speeds greater than~~

~~fifty-six kilobits per second~~; AND

(VI) PROPOSED PROJECTS THAT PROVIDE DISCOUNTED BROADBAND SERVICE TO LOW-INCOME HOUSEHOLDS;

~~(f)~~ (g) Providing an assessment of the following factors:

(I) Whether the proposed project will provide services via a licensed or unlicensed means of transmission;

(II) The cost-effectiveness of the proposed project's proposed method for expanding broadband internet service into unserved areas; and

(III) The reliability of the network providing broadband services;

~~(g)~~ (h) (I) With regard to an applicant that has submitted a proposed project to the board, affording each incumbent provider in the area that is not providing access to a broadband network in the unserved area a right of first refusal regarding the implementation of a project in the unserved area.

(II) If an incumbent provider proposes a project for the area, the incumbent provider commits to providing access to a broadband network:

(A) Within one year after the applicant's submission of a proposed project;

(B) At demonstrated downstream and upstream speeds equal to or faster than the speeds indicated in the applicant's proposed project; and

(C) At a cost per household in the area to be served that is equal to or less than the cost per household indicated in the applicant's proposed project.

~~(h)~~ (i) Ensuring that broadband service grant awards are not provided in areas other than unserved areas;

~~(i)~~ (j) In the case of a franchise agreement, ensuring that broadband service grant awards are not provided in areas with a population density large enough to require service under an existing franchise agreement;

~~(j)~~ (k) Establishing a grant award process that:

(I) Allows an applicant to apply for grants on multiple projects in a given year if the applicant makes a separate application for each project. The board may approve more than one of the applicant's projects within a single year.

(II) Ensures the geographically equitable distribution of grant awards;

(III) Provides for an appeals process for any party aggrieved by an award or denial of grant money, whether exercising a right of first refusal, having filed any comments regarding the initial grant application, or both. If a provider of broadband service or a broadband network that alleges funding provided pursuant to this section will overbuild the provider's broadband network, the provider is an

aggrieved party with standing to appeal under this subsection ~~(8)(j)(III)~~ (9)(k)(III).

(IV) Requires the board to consider appeals alleging that the application area is no longer unserved because federal support improves a broadband network for service locations that are adjacent to the area receiving the federal award and are within the application area;

~~(\*)~~ (I) Establishing reporting and accountability requirements for a project receiving financial support from the ~~fund~~ HCSM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION, including contractual requirements that:

(I) The applicant secure a performance bond for the project, as appropriate;

(II) The applicant demonstrate an ability to provide broadband service at a reasonable cost per household in the area to be served by the proposed project;

(III) The applicant demonstrate an ability to complete the proposed project within a reasonable time, not to exceed two years, unless delayed by a government entity; ~~and~~

(IV) Prohibit an applicant from using grant award ~~moneys~~ MONEY to offer, provide, or sell broadband services in an area not meeting the definition of unserved area;

(V) THE APPLICANT, ON AN ANNUAL BASIS UNTIL THE GRANT MONEY HAS BEEN FULLY EXPENDED, REPORT TO THE BOARD ON THE FOLLOWING:

(A) THE NUMBER OF HOMES AND BUSINESSES THAT THE APPLICANT'S GRANT-SUPPORTED BROADBAND NETWORK SERVES;

(B) THE NUMBER OF ADDITIONAL HOMES AND BUSINESSES THAT THE APPLICANT EXPECTS TO SERVE THROUGH THE GRANT-SUPPORTED BROADBAND NETWORK WITHIN THE FOLLOWING YEAR; AND

(C) THE SPEED TIERS, ADVERTISED RATES, AND SERVICES THAT THE APPLICANT OFFERS TO CUSTOMERS THROUGH THE GRANT-SUPPORTED BROADBAND NETWORK, INCLUDING SPEED TIERS, RATES, AND OTHER SERVICES THAT THE APPLICANT OFFERS TO LOW-INCOME HOUSEHOLDS; AND

(VI) THE APPLICANT, AFTER THE GRANT MONEY HAS BEEN FULLY EXPENDED, PROVIDE THIRD-PARTY PERFORMANCE-TESTING CERTIFICATION, BASED ON FCC-APPROVED PERFORMANCE-TESTING PROTOCOLS, THAT THE PROJECT MEETS THE ORIGINAL DESIGN OF, AND PROVIDES THE MEASURABLE SPEEDS, RATES, AND SERVICES SET FORTH IN, THE APPLICATION;

(m)(I) COMMENCING IN THE GRANT FUNDING CYCLE THAT BEGINS IMMEDIATELY AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (9)(m), REQUIRING AN APPLICANT, OR AN APPELLANT FILING AN APPEAL PURSUANT TO SUBSECTION (9)(k)(III) OF THIS SECTION, TO SUBMIT, IN THE FORM AND MANNER DETERMINED BY THE OFFICE OR, IF THE FCC ADOPTS REGULATIONS REQUIRING THE SUBMISSION OF GRANULAR

COVERAGE DATA, IN THE FORM AND MANNER REQUIRED BY THE FCC, GRANULAR COVERAGE DATA TO THE OFFICE. IF THE FCC ADOPTS SUCH REGULATIONS, THE OFFICE SHALL NOT IMPOSE ANY GRANULAR COVERAGE DATA SUBMISSION REQUIREMENTS THAT ARE MORE ONEROUS OR LESS STRINGENT THAN THE REQUIREMENTS SET FORTH IN THE FCC'S REGULATIONS. UPON REQUEST OF THE BOARD, THE OFFICE SHALL INFORM THE BOARD IF AN APPLICANT HAS SUBMITTED THE GRANULAR COVERAGE DATA IN ACCORDANCE WITH THIS SUBSECTION (9)(m).

(II) GRANULAR COVERAGE DATA SUBMITTED PURSUANT TO THIS SUBSECTION (9)(m) IS NOT A PUBLIC RECORD AS DEFINED IN, AND IS NOT SUBJECT TO PUBLIC DISCLOSURE UNDER, THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF THIS TITLE 24.

(III) AS USED IN THIS SUBSECTION (9)(m), "GRANULAR COVERAGE DATA" MEANS MAPPING DATA PRESENTED IN THE FORM OF A COVERAGE POLYGON OR LOCATION COORDINATES THAT REFLECTS:

(A) THE MAXIMUM DOWNLOAD AND UPLOAD SPEEDS AVAILABLE IN EACH AREA;

(B) THE TECHNOLOGY USED TO PROVIDE THE SERVICE; AND

(C) A DIFFERENTIATION AMONG RESIDENTIAL-ONLY, BUSINESS-ONLY, AND RESIDENTIAL-AND-BUSINESS BROADBAND SERVICES.

~~(8.3)~~ (10) (a) The board shall periodically review the website of the federal trade commission and the FCC to determine whether either of those federal agencies has issued a final order or entered into a settlement or consent decree regarding any:

(I) Applicant seeking broadband deployment grant money from the board; or

(II) Internet service provider, as defined in section 40-15-209 (4)(b), to which the board has awarded broadband deployment grant money.

(b) The board shall review any order or decree described in subsection ~~(8.3)(a)~~ (10)(a) of this section to determine whether the internet service provider that is the subject of the order or decree has engaged in conduct prohibited by section 40-15-209 (1)(a) to (1)(d). The board shall deny the application of any applicant subject to such a federal order or decree and shall inform the commission pursuant to section 40-15-209 (2)(a) about any internet service provider awarded broadband deployment grant money that is subject to such an order or decree.

~~(8.5)~~ (11) (a) The board shall deny an application that contains an area that does not meet the definition of unserved area and shall grant an appeal to an incumbent broadband provider that demonstrates, by a preponderance of the evidence, that an area covered by an application does not meet the definition of unserved area.

(b) If all other application requirements remain met, an application may be amended at any time to remove from the application coverage of an area that does not meet the criteria established pursuant to this section. Alternatively, the board may award a partial grant for an area that does meet the criteria.

~~(9)~~ (12) (a) The board shall report annually to the transportation and ~~energy~~ LOCAL GOVERNMENT committee and the business affairs and labor committee in the house of representatives and to the ~~agriculture, natural resources,~~ TRANSPORTATION and energy committee and business, labor, and technology committee in the senate, or their successor committees, on the projects supported by money from the HCSM account dedicated to broadband deployment PURSUANT TO SUBSECTION (3) OF THIS SECTION in a given year, including information on:

- (I) The number of projects;
- (II) The location of each project;
- (III) The amount of funding received for each project; and
- (IV) A description of each project.

(b) Notwithstanding section 24-1-136 (11), ~~C.R.S.~~, the report required under this subsection ~~(9)~~ (12) continues indefinitely.

~~(10)~~ (13) Local entities are encouraged to cooperate with respect to timelines and permit fees concerning projects in their geographic area.

~~(10.5)~~ (14) (a) The board may apply for OR OTHERWISE RECEIVE federal funding of broadband deployment projects and programs. IF THE BOARD RECEIVES ANY FEDERAL FUNDING, THE BOARD SHALL UTILIZE THE REQUEST FOR PROPOSAL PROCESS ESTABLISHED UNDER, OR SUBSTANTIALLY SIMILAR TO THE PROCESS ESTABLISHED UNDER, SUBSECTION (9)(a)(V) OF THIS SECTION TO DISTRIBUTE THE FEDERAL FUNDS AS SOON AS PRACTICABLE, SO LONG AS SUCH PROCESS COMPLIES WITH FEDERAL REQUIREMENTS FOR USE OF THE FUNDS AND THE FUNDS ARE USED FOR CRITICALLY UNSERVED AREAS.

(b) The HCSM third-party contractor shall maintain any federal money awarded for broadband deployment in a separate account of the HCSM that is dedicated to allocating federal broadband deployment money. The commission is authorized to disburse any money from the account as directed by the board.

~~(b) (i) Following the model of New York's petition for expedited waiver, the board shall immediately petition the FCC for a waiver from the auction rules that prohibit a state entity from applying for connect America fund phase II auction money to allow the board itself to allocate auction money for broadband deployment projects approved by the board.~~

~~(ii) After submitting the petition to the FCC, the board may:~~

~~(A) File any additional documentation that the FCC requires of the board in considering the board's petition; and~~

~~(B) Coordinate with the FCC to develop any conditions that the FCC might require to grant the petition.~~

~~(iii) If the FCC grants the board's petition and awards the board auction money:~~

~~(A) The HCSM third-party contractor shall maintain any federal money awarded from the auction in the separate account of the HCSM described in subsection (10.5)(a) of this section; and~~

~~(B) The commission is authorized to disburse the federal money in that account for broadband deployment grants as directed by the board.~~

~~(IV) The board may coordinate with the FCC to comply with any conditions established by the FCC in granting the petition. If any such FCC conditions impose project eligibility, application process, award criteria, or other requirements that are distinct from the requirements set forth in this section or established by the board pursuant to this section, the commission may, by rule and in consultation with the board, establish requirements that comply with the FCC's conditions, except that any requirements established by the commission by rule pursuant to this subsection (10.5)(b) must apply only to broadband deployment projects that are eligible to receive auction money.~~

~~(c) As used in this subsection (10.5):~~

~~(I) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to 54.316, which rules concern the implementation of the connect America fund phase II auction.~~

~~(II) "Connect America fund phase II auction" or "auction" refers to a ten-year auction of federal money through which the FCC will allocate money, by means of a competitive bidding process, to telecommunications providers who commit to providing voice and broadband service in high-cost areas of the nation in accordance with the FCC's auction rules.~~

~~(III) "New York's petition for expedited waiver" refers to a petition that the state of New York filed with the FCC seeking a waiver from the FCC's auction rules with regard to the rules' limitation prohibiting state entities from applying for federal money through the auction. The FCC granted the waiver request on January 26, 2017, thus authorizing the state of New York to directly receive and allocate auction money to broadband projects within the state.~~

~~(10.6) (a) (I) Following the model of New York's petition for expedited waiver, the board, on or before January 1, 2019, shall petition the FCC for a waiver from the FCC's rules concerning the remote areas fund to seek FCC authorization for the board to itself allocate remote areas fund money for broadband deployment projects in Colorado.~~

~~(II) After submitting the petition to the FCC, the board may:~~

~~(A) File any additional documentation that the FCC requires of the board in considering the board's petition; and~~

~~(B) Coordinate with the FCC to develop any conditions that the FCC might require to grant the petition.~~

~~(b) If the FCC denies the board's petition, the board shall not file a new petition or otherwise subsequently apply for money from the remote areas fund.~~

(c) If the FCC grants the board's petition:

(I) The HCSM third-party contractor shall maintain any federal money awarded through the remote areas fund in a separate account of the HCSM that is dedicated to allocating the federal money in compliance with any conditions established by the FCC in granting the petition;

(II) The commission is authorized to disburse the federal money in that account for broadband deployment grants as authorized by the board and in compliance with any conditions established by the FCC in granting the petition; and

(III) The board is authorized to coordinate with the FCC to comply with any conditions established by the FCC in granting the petition. If any such FCC conditions impose project eligibility, application process, award criteria, or other requirements that are distinct from the requirements set forth in this section or established by the board pursuant to this section, the commission may, by rule and in consultation with the board, establish requirements that comply with the FCC's conditions; except that any requirements established by the commission by rule pursuant to this subsection (10.6) must apply only to broadband deployment projects that are eligible to receive the federal remote areas fund money.

(d) As used in this subsection (10.6):

(I) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to 54.316, which rules concern the implementation of the connect America fund phase II auction.

(II) "Connect America fund" refers to the federal universal service high-cost program that allows eligible telecommunications providers to recover some of their costs from the federal government for providing voice and broadband service in high-cost areas.

(III) "Connect America phase II auction" refers to a ten-year auction of federal money through which the FCC will allocate money through a competitive bidding process to telecommunications providers who commit to providing voice and broadband service in high-cost areas of the nation in accordance with the FCC's auction rules.

(IV) "New York's petition for expedited waiver" refers to a petition that the state of New York filed with the FCC seeking a waiver from the FCC's auction rules, which waiver the FCC granted on January 26, 2017.

(V) "Remote areas fund" refers to a fund created by the FCC as part of its connect America fund to facilitate broadband deployment in extremely high-cost areas of the nation.

(10.7) (15) The board shall make every effort to ensure that a project funded pursuant to this section does not overbuild any project supported or approved by the department of local affairs.

(10.9) (16) As used in this section:

(a) "BROADBAND" OR "BROADBAND SERVICE" HAS THE MEANING SET FORTH IN SECTION 40-15-102 (3.3).

(b) "BROADBAND INTERNET SERVICE" HAS THE MEANING SET FORTH IN SECTION 40-15-102 (3.5).

(c) "BROADBAND NETWORK" HAS THE MEANING SET FORTH IN SECTION 40-15-102 (3.7).

(d) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION CREATED IN SECTION 40-2-101.

(e) "COMPETITIVE LOCAL EXCHANGE CARRIER" MEANS A LOCAL EXCHANGE PROVIDER THAT IS NOT THE INCUMBENT LOCAL EXCHANGE CARRIER IN AN IDENTIFIED EXCHANGE AREA.

(f) "CRITICALLY UNSERVED", WHEN USED TO DESCRIBE A HOUSEHOLD OR AREA, MEANS A HOUSEHOLD OR AREA THAT LACKS ACCESS TO AT LEAST ONE NONSATELLITE PROVIDER OF BROADBAND SERVICE DELIVERED AT MEASURABLE SPEEDS OF EITHER AT LEAST TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM OR AT MEASURABLE SPEEDS AT LEAST EQUAL TO ONE-HALF OF THE MINIMUM MEASURABLE SPEEDS THAT QUALIFY AS BROADBAND UNDER THE FCC DEFINITION AND ROUNDED UP TO THE NEAREST WHOLE NUMBER, WHICHEVER IS FASTER.

(g) [Formerly 40-15-102 (6.7)] "Eligible applicant" means an applicant seeking grant funding for a proposed broadband project under THIS section ~~40-15-509.5~~ with a sufficient business track record to indicate that the applicant's operations will be sustainable after receiving infrastructure support under THIS section. ~~40-15-509.5~~. The term is limited to for-profit entities; except that a nonprofit telephone cooperative, including its affiliates and subsidiaries, or a nonprofit rural electric association that existed on May 10, 2014, qualifies as an "eligible applicant". The term is not limited to a current recipient of high cost support mechanism funds.

(h) "FCC" MEANS THE FEDERAL COMMUNICATIONS COMMISSION.

(i) "HIGH COST SUPPORT MECHANISM" OR "HCSM" MEANS THE SUPPORT MECHANISM CREATED PURSUANT TO SECTION 40-15-208.

(a) (j) "Incumbent broadband provider" means a provider that offers broadband internet service over a broadband network in an area covered by an application filed pursuant to this section.

(k) "INCUMBENT PROVIDER" HAS THE MEANING SET FORTH IN SECTION 40-15-102 (9.5).

(l) [Formerly 40-15-102 (10.5)] "Infrastructure" means the facilities or equipment used in the deployment of broadband service.

(m) [Formerly 40-15-102 (17.5)] (l) "Local entity" means elected members of a county or municipal government OR THE ELECTED MEMBERS OF A METROPOLITAN



DISTRICT THAT LIES WHOLLY WITHIN THE UNINCORPORATED PART OF A COUNTY.

(II) ~~For purposes of~~ AS USED IN this subsection ~~(17.5);~~ (16)(m):

(A) "METROPOLITAN DISTRICT" HAS THE MEANING SET FORTH IN SECTION 32-1-103 (10).

(B) "Municipal government" means a home rule or statutory city, town, or city and county or a territorial charter city.

~~(b)~~ (n) "Overbuild" or "overbuilding" means providing a broadband network to a household or households that:

(I) At the time of application, either have access to a broadband network or have received federal sources of high cost support or federal broadband grants to provide access to a broadband network; and

(II) Account for twenty percent or more of the total household or households to be served by a proposed wireless project.

(o) "UNSERVED AREA" HAS THE MEANING SET FORTH IN SECTION 40-15-102 (32).

~~(H)~~ (17) This section is repealed, effective September 1, 2024. Before ~~its~~ THE repeal, the powers, duties, and functions of the board regarding the deployment of broadband services into unserved areas are scheduled for review in accordance with section 24-34-104.

**SECTION 3.** In Colorado Revised Statutes, 24-72-202, **add** (6)(b)(XV) as follows:

**24-72-202. Definitions.** As used in this part 2, unless the context otherwise requires:

(6) (b) "Public records" does not include:

(XV) GRANULAR COVERAGE DATA, AS DEFINED IN AND SUBMITTED TO THE OFFICE OF INFORMATION TECHNOLOGY PURSUANT TO SECTION 24-37.5-119 (9)(m).

**SECTION 4.** In Colorado Revised Statutes, 40-15-102, **repeal** (6.5) as follows:

**40-15-102. Definitions.** As used in this article 15, unless the context otherwise requires:

~~(6.5) "Distributed equitably" means that distribution by the commission of high cost support mechanism funding to eligible providers shall be accomplished using regulatory principles that are neutral in their effect, that do not favor one class of providers over another, and that do not cause any eligible telecommunications provider to experience a reduction in its high cost support mechanism support revenue requirement based upon commission rules that are not applicable to other telecommunications providers.~~

**SECTION 5.** In Colorado Revised Statutes, 6-26-101, **amend** (1) as follows:

**6-26-101. Complaints to federal trade commission - attorney general to provide guidance.** (1) The attorney general or the attorney general's designee, in collaboration with the broadband deployment board created in section ~~40-15-509.5~~ ~~(5)~~ 24-37.5-119, shall develop written guidance for consumers seeking to file a complaint with the federal trade commission to allege that an internet service provider, as defined in section 40-15-209 (4)(b), has engaged in any practice that violates federal law regarding interference with the open internet.

**SECTION 6.** In Colorado Revised Statutes, 40-15-208, **amend** (2)(a)(I)(B) as follows:

**40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation - rules - report - repeal.** (2) (a) (I) The commission is hereby authorized to establish a mechanism for the support of universal service, also referred to in this section as the "high cost support mechanism", which must operate in accordance with rules adopted by the commission. The primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to:

(B) Provide access to broadband service in unserved areas pursuant to this section and section ~~40-15-509.5~~ 24-37.5-119 only.

**SECTION 7.** In Colorado Revised Statutes, 40-15-209, **amend** (1) introductory portion, (2)(a), and (2)(c) as follows:

**40-15-209. Net neutrality conditions for internet service providers to receive high cost support mechanism money - definitions.** (1) Except as provided in subsection (3) of this section, an internet service provider that is otherwise eligible to receive money through a grant from the broadband deployment board pursuant to section ~~40-15-509.5~~ 24-37.5-119 or through any state fund established to help finance broadband deployment is not eligible to receive that money if the internet service provider:

(2) (a) If the commission learns from the broadband deployment board that a federal agency has issued a final order or entered into a settlement or consent decree regarding, or a court of competent jurisdiction has issued a final judgment against, an internet service provider and that the board has determined from the order, decree, or judgment that the internet service provider has engaged in conduct specified in subsection (1) of this section, the commission shall issue a written order to the internet service provider requiring the internet service provider to fully refund any money that the internet service provider received in the twenty-four months preceding the board's determination from the high cost support mechanism pursuant to a grant awarded by the broadband deployment board under section ~~40-15-509.5~~ 24-37.5-119.

(c) The third-party contractor that maintains the high cost support mechanism shall allocate any money refunded to the high cost support mechanism pursuant to this subsection (2) to the high cost support mechanism account dedicated to broadband deployment, which account is described in section ~~40-15-509.5~~ ~~(3)~~

24-37.5-119 (3).

**SECTION 8.** In Colorado Revised Statutes, 40-15-502, **amend** (5)(a) as follows:

**40-15-502. Expressions of state policy. (5) Universal service support mechanisms.** (a) In order to accomplish the goals of universal basic service, universal access to advanced service under section ~~40-15-509.5~~ 24-37.5-119, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of basic service and advanced service in high-cost areas. The commission shall fund these support mechanisms equitably and on a nondiscriminatory, competitively neutral basis through assessments, which may include a rate element, on all telecommunications providers in Colorado. A provider's eligibility to receive support for basic service under the support mechanisms is conditioned upon the provider's offering basic service throughout an entire support area.

**SECTION 9. Repeal of provisions being relocated in this act.** In Colorado Revised Statutes, **repeal** 40-15-102 (6.7), (10.5), and (17.5) and 40-15-509.5.

**SECTION 10. Transfer of appropriation.** (1) For the 2021-22 state fiscal year, \$202,504 of the appropriation made in the annual general appropriation act for the state fiscal year from the broadband administrative fund created in section 24-37.5-119 (4), C.R.S., to the department of regulatory agencies for broadband deployment board administration is transferred to the office of the governor for use by the office of information technology. It is assumed that the office of the governor will require all of the FT related to the department of regulatory agencies' appropriation. The office of the governor may use this appropriation to implement this act.

**SECTION 11. Applicability.** This act applies to applications filed on or after the effective date of this act.

**SECTION 12. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 7, 2021