

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Business, Labor, & Technology.

HB21-1109 be amended as follows:

1 Amend reengrossed bill, strike everything below the enacting clause and
2 substitute:

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

5 **24-34-104. General assembly review of regulatory agencies**
6 **and functions for repeal, continuation, or reestablishment - legislative**
7 **declaration - repeal.** (25)(a) The following agencies, functions, or both,
8 are scheduled for repeal on September 1, 2024:

9 (VI) The functions of the broadband deployment board created in
10 section ~~40-15-509.5~~ 24-37.5-118;

11 **SECTION 2.** In Colorado Revised Statutes, **add with amended**
12 **and relocated provisions** 24-37.5-118 as follows:

13 **24-37.5-118. [Formerly 40-15-509.5] Broadband service -**
14 **report - broadband deployment board - broadband administrative**
15 **fund - creation - rules - legislative declaration - definitions - repeal.**

16 (1) **Short title.** This section shall be known and may be cited as THE
17 SHORT TITLE OF THIS SECTION IS the "Connect Colorado to Enhance
18 Economic Development, Telehealth, Education, and Safety Act".

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

26 (3) The commission may allocate the ~~Colorado~~ high cost support
27 mechanism ~~established under section 40-15-208 and referred to in this~~
28 ~~section as the "HCSM",~~ for the deployment of broadband service in
29 unserved areas of the state pursuant to this section and section 40-15-208
30 only. The commission may fund the deployment of broadband service in
31 unserved areas of the state through use of the HCSM surcharge and
32 surcharge rate in effect on January 1, 2018. Pursuant to subsection (4) of
33 this section and consistent with sections 40-15-207 and 40-15-208, the
34 commission shall determine funds available for broadband deployment
35 and the administration of the board as prescribed in section 40-15-208 or
36 from the HCSM money that it determines is no longer required by the
37 HCSM to support universal basic service, AS THAT TERM IS DEFINED IN
38 SECTION 40-15-102 (3), through an effective competition determination.
39 **The AN HCSM THIRD-PARTY CONTRACTOR SHALL MAINTAIN AND HOLD**

1 THE money available for broadband deployment shall be maintained by
2 the HCSM third-party contractor and held in a separate account from
3 money used for basic voice service. Money held for broadband
4 deployment shall not be disbursed for basic voice service, and money held
5 for basic voice service shall not be disbursed for broadband deployment.
6 The commission shall only disburse money for broadband deployment
7 grants from the HCSM as directed by the board. Nothing in this section
8 increases any surcharge rate charged to help fund the HCSM.

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

18 (b) ~~Repeated~~.

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

25 (b) (I) (A) The board consists of sixteen members, fifteen of
26 whom are voting members. The members of the board shall be selected
27 on the basis of their knowledge of and interest in broadband service and
28 shall serve for four-year terms. A member of the board shall not serve
29 more than two consecutive full four-year terms.

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

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

39 (B) AN APPOINTING AUTHORITY MAY APPOINT A BOARD MEMBER
40 SEATED ON THE BOARD ON AUGUST 31, 2021, TO CONTINUE SERVING ON
41 THE BOARD ON AND AFTER SEPTEMBER 1, 2021, FOR THE REMAINDER OF
42 THE BOARD MEMBER'S EXISTING TERM AS OF AUGUST 31, 2021, IF THE
43 BOARD MEMBER MEETS THE BOARD MEMBERSHIP CRITERIA SET FORTH IN

1 SUBSECTION (7)(d) OF THIS SECTION AND THE BOARD MEMBER'S
2 CONTINUED MEMBERSHIP ON THE BOARD DOES NOT ENLARGE THE
3 MEMBERSHIP OF THE BOARD AUTHORIZED UNDER SUBSECTION
4 (5)(b)(II)(A) OF THIS SECTION. IF OTHERWISE ELIGIBLE FOR
5 REAPPOINTMENT, THE BOARD MEMBER MAY BE APPOINTED FOR AN
6 ADDITIONAL TERM AFTER SEPTEMBER 1, 2021. THIS SUBSECTION
7 (5)(b)(II)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.

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

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

21 (II) Three voting members representing local entities:

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

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

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

31 (III) Seven voting members representing the broadband industry:

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

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

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

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

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

42 (F) One of whom represents a competitive local exchange carrier,
43 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.)

11 (b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE SEPTEMBER 1,
12 2021.

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

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

19 (f) (c) (I) If a board member has a conflict of interest with respect
20 to any matter addressed by the board, including a financial interest in the
21 matter, the member shall recuse himself or herself from any discussion or
22 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.

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

1 GOVERNOR;

2 (II) THREE VOTING MEMBERS REPRESENTING LOCAL ENTITIES:

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

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

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

13 (III) FIVE VOTING MEMBERS REPRESENTING THE BROADBAND
14 INDUSTRY:

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

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

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

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

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

26 (IV) TWO VOTING MEMBERS OF THE PUBLIC:

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

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

32 (e) COMMENCING ON SEPTEMBER 1, 2021:

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

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

43 (III) A BOARD MEMBER APPOINTED PURSUANT TO SUBSECTION

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

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

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

11 (6) ~~Repeated~~:

12 (7) (8) The board shall provide notice to and requests for
13 proposals from incumbent providers, incumbent broadband providers, and
14 local entities about the board's purpose to deploy broadband service in
15 unserved areas. The board shall ensure that both the manner and amount
16 of notice provided under this subsection (7) (8) are adequate and
17 equitable for all potentially eligible applicants.

18 (8) (9) The board shall direct the commission to transfer money,
19 in a manner consistent with this section, from the HCSM account
20 DEDICATED for broadband deployment ~~established in the HCSM~~
21 PURSUANT TO SUBSECTION (3) OF THIS SECTION to approved grant
22 applicants. The board shall develop criteria for awarding money for new
23 projects to deploy broadband in unserved areas, including:

24 (a) (I) Developing a project application process that places the
25 burden on an eligible applicant to demonstrate that its proposed project
26 meets the project eligibility criteria established in this subsection (8) (9),
27 including a requirement that the proposal concern a new project, and not
28 a project already in progress, and a requirement to prove that the area to
29 be served by the proposed project is an unserved area.

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

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

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

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

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

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

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

43 (D) THE BOARD, IN IMPLEMENTING THE REQUEST FOR PROPOSAL

1 PROCESS, NEED NOT COMPLY WITH THE "PROCUREMENT CODE", ARTICLES
2 101 TO 112 OF THIS TITLE 24.

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

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

10 (B) WITH REGARD TO THE REQUEST FOR PROPOSAL PROCESS SET
11 FORTH IN SUBSECTION (9)(a)(V) OF THIS SECTION, BASED ON THE MAPS
12 SUBMITTED, THE BOARD SHALL CHOOSE CRITICALLY UNSERVED AREAS FOR
13 WHICH THE BOARD SHALL SOLICIT PROPOSED PROJECT BIDS TO SERVE
14 THOSE AREAS. IN CHOOSING THE CRITICALLY UNSERVED AREAS FOR WHICH
15 THE BOARD WILL SOLICIT PROPOSED PROJECT BIDS, THE BOARD SHALL
16 STRIVE TO ENSURE GEOGRAPHIC DIVERSITY AMONG THE AREAS CHOSEN.
17 THIS SUBSECTION (9)(a)(VI)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1,
18 2024.

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

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

29 (c) Denying funding for applications that overbuild areas
30 receiving federal sources of high cost support or federal broadband grants
31 for construction of a broadband network that will be completed within
32 twenty-four months after the date that the applicant filed the application
33 so as to maximize the total available state and federal support for rural
34 broadband development. An incumbent broadband provider receiving
35 federal funds must submit to the board an affidavit from a company
36 officer that the build-out will be completed within the twenty-four-month
37 period. Upon completion of the project, an incumbent broadband provider
38 will provide documentation to the board that demonstrates that the
39 unserved addresses meet the minimum download and upload speeds
40 established in the FCC's definition of high-speed internet access or
41 broadband. If the incumbent broadband provider fails to meet the
42 commitment made in the affidavit filed, the board may award a grant to
43 another provider to provide service for the addresses that remain

1 unserved.

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

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

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

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

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

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

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

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

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

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

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

39 (V) Proposed projects providing last-mile broadband service,
40 which is defined as the portion of broadband service that delivers an
41 internet connection to an end user; ~~that lacks access to broadband service~~
42 ~~at measurable speeds greater than fifty-six kilobits per second;~~ AND

43 (VI) PROPOSED PROJECTS THAT PROVIDE DISCOUNTED BROADBAND

1 SERVICE TO LOW-INCOME HOUSEHOLDS;

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

3 (I) Whether the proposed project will provide services via a

4 licensed or unlicensed means of transmission;

5 (II) The cost-effectiveness of the proposed project's proposed

6 method for expanding broadband internet service into unserved areas; and

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

8 (g) (h) (I) With regard to an applicant that has submitted a

9 proposed project to the board, affording each incumbent provider in the

10 area that is not providing access to a broadband network in the unserved

11 area a right of first refusal regarding the implementation of a project in

12 the unserved area.

13 (II) If an incumbent provider proposes a project for the area, the

14 incumbent provider commits to providing access to a broadband network:

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

16 project;

17 (B) At demonstrated downstream and upstream speeds equal to or

18 faster than the speeds indicated in the applicant's proposed project; and

19 (C) At a cost per household in the area to be served that is equal

20 to or less than the cost per household indicated in the applicant's proposed

21 project.

22 (f) (i) Ensuring that broadband service grant awards are not

23 provided in areas other than unserved areas;

24 (f) (j) In the case of a franchise agreement, ensuring that

25 broadband service grant awards are not provided in areas with a

26 population density large enough to require service under an existing

27 franchise agreement;

28 (f) (k) Establishing a grant award process that:

29 (I) Allows an applicant to apply for grants on multiple projects in

30 a given year if the applicant makes a separate application for each project.

31 The board may approve more than one of the applicant's projects within

32 a single year.

33 (II) Ensures the geographically equitable distribution of grant

34 awards;

35 (III) Provides for an appeals process for any party aggrieved by an

36 award or denial of grant money, whether exercising a right of first refusal,

37 having filed any comments regarding the initial grant application, or both.

38 If a provider of broadband service or a broadband network that alleges

39 funding provided pursuant to this section will overbuild the provider's

40 broadband network, the provider is an aggrieved party with standing to

41 appeal under this subsection (8)(j)(III) (9)(k)(III).

42 (IV) Requires the board to consider appeals alleging that the

43 application area is no longer unserved because federal support improves

1 a broadband network for service locations that are adjacent to the area
2 receiving the federal award and are within the application area;

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

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

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

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

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

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

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

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

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

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

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

1 COVERAGE DATA TO THE OFFICE. IF THE FCC ADOPTS SUCH REGULATIONS,
2 THE OFFICE SHALL NOT IMPOSE ANY GRANULAR COVERAGE DATA
3 SUBMISSION REQUIREMENTS THAT ARE MORE ONEROUS THAN THE
4 REQUIREMENTS SET FORTH IN THE FCC'S REGULATIONS. UPON REQUEST
5 OF THE BOARD, THE OFFICE SHALL INFORM THE BOARD IF AN APPLICANT
6 HAS SUBMITTED THE GRANULAR COVERAGE DATA IN ACCORDANCE WITH
7 THIS SUBSECTION (9)(m).

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

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

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

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

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

20 (8.3)(10) (a) The board shall periodically review the websites of
21 the federal trade commission and the FCC to determine whether either of
22 those federal agencies has issued a final order or entered into a settlement
23 or consent decree regarding any:

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

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

29 (b) The board shall review any order or decree described in
30 subsection (8.3)(a) (10)(a) of this section to determine whether the
31 internet service provider that is the subject of the order or decree has
32 engaged in conduct prohibited by section 40-15-209 (1)(a) to (1)(d). The
33 board shall deny the application of any applicant subject to such a federal
34 order or decree and shall inform the commission pursuant to section
35 40-15-209 (2)(a) about any internet service provider awarded broadband
36 deployment grant money that is subject to such an order or decree.

37 (8.5)(11) (a) The board shall deny an application that contains an
38 area that does not meet the definition of unserved area and shall grant an
39 appeal to an incumbent broadband provider that demonstrates, by a
40 preponderance of the evidence, that an area covered by an application
41 does not meet the definition of unserved area.

42 (b) If all other application requirements remain met, an
43 application may be amended at any time to remove from the application

1 coverage of an area that does not meet the criteria established pursuant to
2 this section. Alternatively, the board may award a partial grant for an area
3 that does meet the criteria.

4 (9) (12) (a) The board shall report annually to the transportation
5 and ~~energy~~ LOCAL GOVERNMENT committee and the business affairs and
6 labor committee in the house of representatives and to the ~~agriculture~~,
7 ~~natural resources~~, TRANSPORTATION and energy committee and business,
8 labor, and technology committee in the senate, or their successor
9 committees, on the projects supported by money from the HCSM account
10 dedicated to broadband deployment PURSUANT TO SUBSECTION (3) OF THIS
11 SECTION in a given year, including information on:

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

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

18 (10) (13) Local entities are encouraged to cooperate with respect
19 to timelines and permit fees concerning projects in their geographic area.

20 (10.5) (14) (a) The board may apply for OR OTHERWISE RECEIVE
21 federal funding of broadband deployment projects and programs. IF THE
22 BOARD RECEIVES ANY FEDERAL FUNDING, THE BOARD SHALL UTILIZE THE
23 REQUEST FOR PROPOSAL PROCESS ESTABLISHED UNDER, OR
24 SUBSTANTIALLY SIMILAR TO THE PROCESS ESTABLISHED UNDER,
25 SUBSECTION (9)(a)(V) OF THIS SECTION TO DISTRIBUTE THE FEDERAL
26 FUNDS AS SOON AS PRACTICABLE, SO LONG AS SUCH PROCESS COMPLIES
27 WITH FEDERAL REQUIREMENTS FOR USE OF THE FUNDS.

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

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

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

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

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

43 (III) ~~If the FCC grants the board's petition and awards the board~~

1 auction money:

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

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

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

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

18 (I) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to
19 54.316, which rules concern the implementation of the connect America
20 fund phase II auction.

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

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

34 (10.6) (a) (I) Following the model of New York's petition for
35 expedited waiver, the board, on or before January 1, 2019, shall petition
36 the FCC for a waiver from the FCC's rules concerning the remote areas
37 fund to seek FCC authorization for the board to itself allocate remote
38 areas fund money for broadband deployment projects in Colorado.

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

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

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

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

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

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

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

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

25 (f) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to
26 54.316, which rules concern the implementation of the connect America
27 fund phase II auction.

(H) "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.

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

37 (IV) "New York's petition for expedited waiver" refers to a
38 petition that the state of New York filed with the FCC seeking a waiver
39 from the FCC's auction rules, which waiver the FCC granted on January
40 26, 2017.

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

1 (10.7) (15) The board shall make every effort to ensure that a
2 project funded pursuant to this section does not overbuild any project
3 supported or approved by the department of local affairs.

4 (10.9) (16) As used in this section:

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

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

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

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

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

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

32 (g) "FCC" MEANS THE FEDERAL COMMUNICATIONS COMMISSION.

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

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

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

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

42 (l) [Formerly 40-15-102 (17.5)] (I) "Local entity" means elected
43 members of a county or municipal government OR THE ELECTED MEMBERS

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

3 (II) For purposes of AS USED IN this subsection (17.5), (16)(l):

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

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

8 (b) (m) "Overbuild" or "overbuilding" means providing a
9 broadband network to a household or households that:

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

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

15 (n) "UNSERVED AREA" HAS THE MEANING SET FORTH IN SECTION
16 40-15-102 (32).

17 (11) (17) This section is repealed, effective September 1, 2024.
18 Before its THE repeal, the powers, duties, and functions of the board
19 regarding the deployment of broadband services into unserved areas are
20 scheduled for review in accordance with section 24-34-104.

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

23 **24-72-202. Definitions.** As used in this part 2, unless the context
24 otherwise requires:

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

26 (XV) GRANULAR COVERAGE DATA, AS DEFINED IN AND SUBMITTED
27 TO THE OFFICE OF INFORMATION TECHNOLOGY PURSUANT TO SECTION
28 24-37.5-118 (9)(m).

29 **SECTION 4.** In Colorado Revised Statutes, 40-15-102, **repeal**
30 (5.5) and (6.5) as follows:

31 **40-15-102. Definitions.** As used in this article 15, unless the
32 context otherwise requires:

33 (5.5) "Competitive local exchange carrier" or "CLEC" means a
34 local exchange provider that is not the incumbent local exchange carrier
35 in an identified exchange area.

36 (6.5) "Distributed equitably" means that distribution by the
37 commission of high cost support mechanism funding to eligible providers
38 shall be accomplished using regulatory principles that are neutral in their
39 effect, that do not favor one class of providers over another, and that do
40 not cause any eligible telecommunications provider to experience a
41 reduction in its high cost support mechanism support revenue requirement
42 based upon commission rules that are not applicable to other
43 telecommunications providers.

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

3 **6-26-101. Complaints to federal trade commission - attorney**
4 **general to provide guidance.** (1) The attorney general or the attorney
5 general's designee, in collaboration with the broadband deployment board
6 created in section ~~40-15-509.5 (5)~~ 24-37.5-118, shall develop written
7 guidance for consumers seeking to file a complaint with the federal trade
8 commission to allege that an internet service provider, as defined in
9 section 40-15-209 (4)(b), has engaged in any practice that violates federal
10 law regarding interference with the open internet.

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

13 **40-15-208. High cost support mechanism - Colorado high cost**
14 **administration fund - creation - purpose - operation - rules - report**
15 **- repeal.** (2) (a) (I) The commission is hereby authorized to establish a
16 mechanism for the support of universal service, also referred to in this
17 section as the "high cost support mechanism", which must operate in
18 accordance with rules adopted by the commission. The primary purpose
19 of the high cost support mechanism is to provide financial assistance as
20 a support mechanism to:

21 (B) Provide access to broadband service in unserved areas
22 pursuant to this section and section ~~40-15-509.5~~ 24-37.5-118 only.

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

25 **40-15-209. Net neutrality conditions for internet service**
26 **providers to receive high cost support mechanism money -**
27 **definitions.** (1) Except as provided in subsection (3) of this section, an
28 internet service provider that is otherwise eligible to receive money
29 through a grant from the broadband deployment board pursuant to section
30 ~~40-15-509.5~~ 24-37.5-118 or through any state fund established to help
31 finance broadband deployment is not eligible to receive that money if the
32 internet service provider:

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

1 broadband deployment board under section ~~40-15-509.5~~ 24-37.5-118.
2 (c) The third-party contractor that maintains the high cost support
3 mechanism shall allocate any money refunded to the high cost support
4 mechanism pursuant to this subsection (2) to the high cost support
5 mechanism account dedicated to broadband deployment, which account
6 is described in section ~~40-15-509.5~~ (3) 24-37.5-118 (3).

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

9 **40-15-502. Expressions of state policy.** (5) **Universal service**
10 **support mechanisms.** (a) In order to accomplish the goals of universal
11 basic service, universal access to advanced service under section
12 ~~40-15-509.5~~ 24-37.5-118, and any revision of the definition of basic
13 service under subsection (2) of this section, the commission shall create
14 a system of support mechanisms to assist in the provision of basic service
15 and advanced service in high-cost areas. The commission shall fund these
16 support mechanisms equitably and on a nondiscriminatory, competitively
17 neutral basis through assessments, which may include a rate element, on
18 all telecommunications providers in Colorado. A provider's eligibility to
19 receive support for basic service under the support mechanisms is
20 conditioned upon the provider's offering basic service throughout an
21 entire support area.

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

25 **SECTION 10. Applicability.** This act applies to applications
26 filed on or after the effective date of this act.

27 **SECTION 11. Safety clause.** The general assembly hereby finds,
28 determines, and declares that this act is necessary for the immediate
29 preservation of the public peace, health, or safety.".

30 Page 1, line 102, after "**THEREWITH**," insert "**MOVING THE BOARD FROM**
31 **THE DEPARTMENT OF REGULATORY AGENCIES TO THE OFFICE OF**
32 **INFORMATION TECHNOLOGY**,".

*** * * * *