

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

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 19-0393.01 Jennifer Berman x3286

SENATE BILL 19-107

SENATE SPONSORSHIP

Donovan,

HOUSE SPONSORSHIP

Roberts,

Senate Committees

Business, Labor, & Technology
Local Government

House Committees

A BILL FOR AN ACT

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

Bill Summary

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

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

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

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

SENATE
Amended 2nd Reading
April 23, 2019

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

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

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

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

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

Sections 2 and 3 make conforming amendments.

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

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

4 **PART 6**

5 **ELECTRIC UTILITY EASEMENTS**

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

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

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

1 ELECTRIC SERVICE INFRASTRUCTURE; OR
2 (b) UNDERGROUND IN AN ELECTRIC EASEMENT AND EXISTING
3 BEFORE THE DELIVERY OF NOTICE PURSUANT TO SECTION 40-15-602 (2).
4 (2) "BROADBAND AFFILIATE" MEANS A COMMERCIAL BROADBAND
5 SUPPLIER THAT IS A SEPARATE LEGAL ENTITY FROM ANY ELECTRIC UTILITY
6 BUT IS CONTROLLED BY, CONTROLS, OR IS UNDER COMMON CONTROL WITH
7 AN ELECTRIC UTILITY.
8 (3) "COMMERCIAL BROADBAND SERVICE" MEANS "BROADBAND
9 SERVICE", AS THAT TERM IS DEFINED IN SECTION 38-5.5-102 (1), OR
10 BROADBAND INTERNET SERVICE.
11 (4) (a) "COMMERCIAL BROADBAND SUPPLIER" MEANS:
12 (I) A PROVIDER OF BROADBAND INTERNET SERVICE OR AN
13 EXISTING BROADBAND PROVIDER, AS THAT TERM IS DEFINED IN SECTION
14 38-5.5-102 (3), OR A PERSON THAT INTENDS TO PROVIDE BROADBAND
15 INTERNET SERVICE OR BROADBAND SERVICE; OR
16 (II) A PERSON THAT DIRECTLY OR INDIRECTLY SELLS, LEASES, OR
17 OTHERWISE TRANSFERS ATTACHED FACILITIES OR A RIGHT TO INSTALL,
18 OPERATE, MAINTAIN, OR USE ATTACHED FACILITIES FOR ANOTHER
19 PERSON'S PROVISION OF COMMERCIAL BROADBAND SERVICE OR A PERSON
20 THAT INTENDS TO SELL, LEASE, OR OTHERWISE TRANSFER ATTACHED
21 FACILITIES OR A RIGHT TO INSTALL, OPERATE, MAINTAIN, OR USE
22 ATTACHED FACILITIES.
23 (b) "COMMERCIAL BROADBAND SUPPLIER" DOES NOT INCLUDE AN
24 ELECTRIC UTILITY.
25 (5) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED
26 EASEMENT, RIGHT-OF-WAY UNDER SECTION 38-4-103 OR OTHERWISE, OR
27 SIMILAR RIGHT IN OR TO REAL PROPERTY, INCLUDING PRESCRIPTIVE

1 RIGHTS, NO MATTER HOW ACQUIRED, HELD BY AN ELECTRIC UTILITY FOR
2 THE SITING OF ELECTRIC SERVICE INFRASTRUCTURE OR FOR THE PURPOSE
3 OF DELIVERING ELECTRIC SERVICE, REGARDLESS OF WHETHER:

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

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

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

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

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

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

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

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

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

3 (12) "REQUEST FOR NOTICE" MEANS A WRITTEN INSTRUMENT
4 RECORDED BY AN INTEREST HOLDER IN COMPLIANCE WITH THE
5 REQUIREMENTS SET FORTH IN SECTION 40-15-602 (2)(c).

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

17 (a) INSTALL, MAINTAIN, OR OWN, OR PERMIT ANY COMMERCIAL
18 BROADBAND SUPPLIER, INCLUDING A BROADBAND AFFILIATE, TO INSTALL,
19 MAINTAIN, OR OWN AN ATTACHED FACILITY FOR EXTERNAL USE AND
20 OPERATION BY A COMMERCIAL BROADBAND SUPPLIER, INCLUDING A
21 BROADBAND AFFILIATE, IN PROVIDING COMMERCIAL BROADBAND SERVICE;
22 AND

23 (b) LEASE OR OTHERWISE PROVIDE TO A COMMERCIAL BROADBAND
24 SUPPLIER, INCLUDING A BROADBAND AFFILIATE, ANY EXCESS CAPACITY OF
25 ATTACHED FACILITIES FOR PURPOSES OF PROVIDING COMMERCIAL
26 BROADBAND SERVICE.

27 (2) (a) AT LEAST THIRTY DAYS BEFORE FIRST EXERCISING ITS

1 RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS
2 SECTION WITH RESPECT TO AN ELECTRIC EASEMENT OR PORTION OF AN
3 ELECTRIC EASEMENT, AN ELECTRIC UTILITY OR ITS DESIGNATED
4 COMMERCIAL BROADBAND SUPPLIER MUST SEND NOTICE TO EACH
5 PROPERTY OWNER THAT HOLDS AN INTEREST IN THE REAL PROPERTY
6 SUBJECT TO THE ELECTRIC EASEMENT AND ANY OTHER INTEREST HOLDER
7 THAT HAS RECORDED A REQUEST FOR NOTICE AND MUST RECORD A
8 MEMORANDUM IN THE OFFICE OF THE COUNTY CLERK AND RECORDER IN
9 EACH COUNTY IN WHICH THE ELECTRIC UTILITY IS EXERCISING ITS RIGHTS
10 UNDER SUBSECTION (1) OF THIS SECTION. AN ELECTRIC UTILITY OR ITS
11 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MUST COMPLY WITH
12 ANY NOTICE REQUIREMENTS CONTAINED IN A WRITTEN ELECTRIC
13 EASEMENT BEFORE ENTERING THE REAL PROPERTY SUBJECT TO THE
14 ELECTRIC EASEMENT OR COMMENCING ANY CONSTRUCTION OR
15 INSTALLATION IN CONNECTION WITH THE EXERCISE OF RIGHTS UNDER
16 SUBSECTION (1) OF THIS SECTION. AN ELECTRIC UTILITY OR ITS
17 DESIGNATED COMMERCIAL BROADBAND SUPPLIER MAY ONLY COMMENCE
18 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION UPON
19 DELIVERY OF SUFFICIENT NOTICE.

20 (b) A LETTER PROVIDING NOTICE PURSUANT TO THIS SUBSECTION
21 (2) MUST:

22 (I) BE SENT BY CERTIFIED MAIL FROM OR ON BEHALF OF THE
23 ELECTRIC UTILITY TO THE PROPERTY OWNER AND ANY INTEREST HOLDER
24 THAT HAS RECORDED A REQUEST FOR NOTICE AT EACH OF THE FOLLOWING,
25 AS APPLICABLE:

26 (A) THE LAST KNOWN ADDRESS FOR THE PROPERTY OWNER BASED
27 ON THE ELECTRIC UTILITY'S RECORDS;

1 (B) THE ADDRESS LISTED FOR THE PROPERTY OWNER IN THE
2 RECORDS OF THE OFFICE OF THE COUNTY ASSESSOR; AND

3 (C) THE ADDRESS SET FORTH IN A REQUEST FOR NOTICE;

4 (II) INCLUDE THE NAME, ADDRESS, TELEPHONE NUMBER, AND
5 NAMED POINT OF CONTACT FOR THE ELECTRIC UTILITY AND, IF DELIVERED
6 BY A COMMERCIAL BROADBAND SUPPLIER DESIGNATED BY THE ELECTRIC
7 UTILITY, THE NAME, ADDRESS, TELEPHONE NUMBER, AND NAMED POINT OF
8 CONTACT FOR THE DESIGNATED COMMERCIAL BROADBAND SUPPLIER;

9 (III) INCLUDE THE PROPERTY ADDRESS; THE RECORDED NUMBER,
10 IF ANY, OF THE ELECTRIC EASEMENT OR RECORDED MEMORANDUM OF THE
11 ELECTRIC EASEMENT; A GENERAL DESCRIPTION OF ANY EXISTING ELECTRIC
12 SERVICE INFRASTRUCTURE CURRENTLY LOCATED IN THE ELECTRIC
13 EASEMENT; AND THE APPROXIMATE LOCATION OF THE ELECTRIC
14 EASEMENT, WHICH NEED NOT INCLUDE A LEGAL DESCRIPTION, LAND TITLE
15 SURVEY, PLAT, OR OTHER DESIGNATION OF THE EXACT BOUNDARIES OF
16 THE ELECTRIC EASEMENT;

17 (IV) INCLUDE:

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

19 (B) A COPY OF THE LANGUAGE OF SUBSECTION (1) OF THIS SECTION
20 WITH AN INDICATION OF WHETHER THE ELECTRIC UTILITY IS EXERCISING
21 RIGHTS UNDER ONE OR BOTH OF SUBSECTION (1)(a) OR (1)(b) OF THIS
22 SECTION;

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

27 (VI) INCLUDE A STATEMENT REGARDING THE RIGHT AND

1 OBLIGATION OF THE ELECTRIC UTILITY, OR ITS DESIGNATED COMMERCIAL
2 BROADBAND SUPPLIER, TO RECORD A MEMORANDUM; AND

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

6 (c) AN INTEREST HOLDER THAT DESIRES TO OBTAIN NOTICE UNDER
7 THIS PART 6 AT A SPECIFIC ADDRESS MAY FILE IN THE OFFICE OF THE
8 COUNTY CLERK AND RECORDER FOR THE COUNTY IN WHICH THE REAL
9 PROPERTY IS SITUATED A REQUEST FOR NOTICE THAT IDENTIFIES THE
10 INTEREST HOLDER'S NAME AND ADDRESS, THE INSTRUMENT GRANTING THE
11 INTEREST HOLDER'S INTEREST IN THE PROPERTY, AND THE RECORDING
12 NUMBER OF THE INSTRUMENT OR A RECORDED MEMORANDUM OF THE
13 INSTRUMENT.

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

17 (4) THE TERMS AND CONDITIONS OF A WRITTEN ELECTRIC
18 EASEMENT APPLY TO AN ELECTRIC UTILITY'S USES OF THE ELECTRIC
19 EASEMENT SET FORTH IN SUBSECTION (1) OF THIS SECTION, EXCEPT THOSE
20 TERMS AND CONDITIONS THAT WOULD PROHIBIT THE ELECTRIC UTILITY'S
21 EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION. A
22 PROHIBITION ON ABOVEGROUND ELECTRIC SERVICE INFRASTRUCTURE
23 CONTAINED WITHIN A WRITTEN ELECTRIC EASEMENT CONSTITUTES A
24 PROHIBITION ON ABOVEGROUND ATTACHED FACILITIES. IN CONNECTION
25 WITH THE EXERCISE OF RIGHTS UNDER SUBSECTION (1) OF THIS SECTION,
26 AN ELECTRIC UTILITY OR ITS DESIGNATED COMMERCIAL BROADBAND
27 SUPPLIER MUST COMPLY WITH ANY NOTICE REQUIREMENTS CONTAINED IN

1 A WRITTEN ELECTRIC EASEMENT HELD BY THE ELECTRIC UTILITY RELATED
2 TO ENTERING THE REAL PROPERTY SUBJECT TO THE ELECTRIC EASEMENT
3 OR COMMENCING ANY CONSTRUCTION OR INSTALLATION ON THE REAL
4 PROPERTY.

5 (5) NOTHING IN THIS PART 6 REQUIRES AN ELECTRIC UTILITY TO
6 COMPLY WITH SUBSECTION (2) OF THIS SECTION IN ORDER TO TAKE ANY
7 ACTION OR EXERCISE ANY RIGHTS UNDER AN ELECTRIC EASEMENT THAT IS
8 ALREADY PERMITTED WITHIN THE SCOPE OF THE ELECTRIC EASEMENT.
9 UNLESS EXPRESSLY PROHIBITED BY THE TERMS OF AN ELECTRIC
10 EASEMENT, AN ELECTRIC EASEMENT WILL BE DEEMED TO ALLOW AN
11 ELECTRIC UTILITY TO INSTALL, MAINTAIN, OR OWN, OR PERMIT A THIRD
12 PARTY TO INSTALL, MAINTAIN, OR OWN FOR BENEFICIAL USE BY THE
13 ELECTRIC UTILITY, AN ATTACHED FACILITY IN THE ELECTRIC EASEMENT
14 FOR USE IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF
15 ELECTRICITY.

16 **40-15-603. Statute of limitations - damages - limitations on**
17 **damages. (1) (a) NO CLAIM OR CAUSE OF ACTION AGAINST AN ELECTRIC**
18 **UTILITY OR A COMMERCIAL BROADBAND SUPPLIER CONCERNING THE**
19 **ELECTRIC UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF**
20 **RIGHTS UNDER THIS PART 6 OR ANY ACTIONS THAT THE ELECTRIC UTILITY**
21 **OR COMMERCIAL BROADBAND SUPPLIER TAKES BEFORE THE EFFECTIVE**
22 **DATE OF THIS SECTION THAT, IF TAKEN AFTER THE EFFECTIVE DATE OF THIS**
23 **SECTION, WOULD BE AUTHORIZED UNDER SECTION 40-15-602 (1) MAY BE**
24 **BROUGHT BY OR ON BEHALF OF AN INTEREST HOLDER MORE THAN TWO**
25 **YEARS AFTER THE LATEST OF:**

- 26 **(I) THE EFFECTIVE DATE OF THIS SECTION;**
27 **(II) THE DATE OF DELIVERY OF NOTICE PURSUANT TO SECTION**

1 40-15-602 (2); OR
2 (III) THE DATE OF RECORDING OF A MEMORANDUM PURSUANT TO
3 SECTION 40-15-602 (2).
4 (b) SUBSECTION (1)(a) OF THIS SECTION DOES NOT APPLY TO A
5 CLAIM OR CAUSE OF ACTION BASED ON:
6 (I) PHYSICAL DAMAGE TO PROPERTY;
7 (II) INJURY TO NATURAL PERSONS; OR
8 (III) BREACH OF THE TERMS AND CONDITIONS OF A WRITTEN
9 ELECTRIC EASEMENT AS THE TERMS AND CONDITIONS APPLY IN
10 ACCORDANCE WITH SECTION 40-15-602 (4).
11 (c) NOTHING IN THIS SECTION 40-15-603 EXTENDS THE STATUTORY
12 LIMITATION PERIOD APPLICABLE TO A CLAIM OR REVIVES AN EXPIRED
13 CLAIM.
14 (2) A CLAIM OR CAUSE OF ACTION TO WHICH SUBSECTION (1)(a) OF
15 THIS SECTION APPLIES SHALL NOT BE BROUGHT BY OR ON BEHALF OF AN
16 INTEREST HOLDER AGAINST A COMMERCIAL BROADBAND SUPPLIER FOR
17 ACTIONS THAT THE COMMERCIAL BROADBAND SUPPLIER HAS TAKEN
18 UNDER SECTION 40-15-602 (2) ON BEHALF OF AN ELECTRIC UTILITY.
19 NOTHING IN THIS SUBSECTION (2) PROHIBITS AN ELECTRIC UTILITY AND A
20 COMMERCIAL BROADBAND SUPPLIER FROM CONTRACTING TO ALLOCATE
21 LIABILITY FOR ACTIONS TAKEN UNDER SECTION 40-15-602 (2).
22 (3) IF AN INTEREST HOLDER BRINGS A TRESPASS CLAIM, INVERSE
23 CONDEMNATION CLAIM, OR ANY OTHER CLAIM OR CAUSE OF ACTION TO
24 WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES FOR AN ELECTRIC
25 UTILITY'S OR COMMERCIAL BROADBAND SUPPLIER'S EXERCISE OF RIGHTS
26 OR PERFORMANCE OF ACTIONS DESCRIBED IN SECTION 40-15-602 (1)(a) OR
27 (1)(b), THE FOLLOWING APPLIES TO THE CLAIM OR CAUSE OF ACTION:

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

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

9 (A) PROFITS, FEES, OR REVENUE DERIVED FROM THE ATTACHED
10 FACILITIES; OR

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

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

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

1 APPRAISAL PERFORMED PURSUANT TO THIS SUBSECTION (3)(b).

2 (c) ANY DAMAGES FOR ANY CLAIMS OR CAUSES OF ACTION TO
3 WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES:

4 (I) ARE LIMITED TO THOSE DAMAGES THAT EXISTED AT THE TIME
5 THAT THE ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FIRST
6 EXERCISED THE RIGHTS OR PERFORMED THE ACTIONS; AND

7 (II) SHALL NOT BE DEEMED TO CONTINUE, ACCRUE, OR
8 ACCUMULATE.

9 (d) WITH REGARD TO A CLAIM OR CAUSE OF ACTION TO WHICH
10 SUBSECTION (1)(a) OF THIS SECTION APPLIES:

11 (I) EXCEPT FOR AN ELECTRIC UTILITY'S OR COMMERCIAL
12 BROADBAND SUPPLIER'S FAILURE TO COMPLY WITH SECTION 40-15-602 (2),
13 NEGLIGENCE, OR WILLFUL MISCONDUCT, OR IN ACCORDANCE WITH THE
14 TERMS AND CONDITIONS OF A WRITTEN ELECTRIC EASEMENT AS THE TERMS
15 AND CONDITIONS APPLY IN ACCORDANCE WITH SECTION 40-15-602 (4), AN
16 INTEREST HOLDER IS NOT ENTITLED TO REIMBURSEMENT FROM AN
17 ELECTRIC UTILITY OR COMMERCIAL BROADBAND SUPPLIER FOR THE COST
18 OF ANY APPRAISAL, ATTORNEY FEES, OR AWARD FOR SPECIAL,
19 CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES.

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

26 (4) BY ACCEPTING A DAMAGE AWARD FOR ANY CLAIM OR CAUSE
27 OF ACTION TO WHICH SUBSECTION (1)(a) OF THIS SECTION APPLIES, AN

1 INTEREST HOLDER SHALL BE DEEMED TO HAVE GRANTED AN INCREASE IN
2 THE SCOPE OF THE ELECTRIC EASEMENT, EQUAL IN DURATION TO THE TERM
3 OF THE ELECTRIC EASEMENT AND SUBJECT TO SECTION 40-15-602 (4), TO
4 THE EXTENT OF THE INTEREST HOLDER'S RIGHTS IN THE REAL PROPERTY,
5 FOR ALL OF THE USES OF THE REAL PROPERTY AND ACTIONS SET FORTH IN
6 SECTION 40-15-602 (1).

7 **40-15-604. Electric utility obligations. (1) AN ELECTRIC UTILITY**
8 **THAT EXERCISES ANY RIGHTS UNDER SECTION 40-15-602 (1)(a) OR (1)(b)**
9 **FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE SHALL:**

10 **(a) NOT DISCRIMINATE AMONG COMMERCIAL BROADBAND**
11 **SUPPLIERS, INCLUDING BROADBAND AFFILIATES, IN OFFERING OR**
12 **GRANTING RIGHTS TO INSTALL OR ATTACH ANY ATTACHED FACILITIES; OR**

13 **(b) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG**
14 **COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR**
15 **LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR**
16 **CONTROLLED BY THE ELECTRIC UTILITY, BUT ONLY TO THE EXTENT AN**
17 **ELECTRIC UTILITY CHOOSES, IN ITS SOLE DISCRETION, TO OFFER THE LEASE**
18 **OR USE TO A PARTICULAR COMMERCIAL BROADBAND SUPPLIER.**

19 **(2) AN ELECTRIC UTILITY THAT HAS A BROADBAND AFFILIATE AND,**
20 **IF APPLICABLE, THE BROADBAND AFFILIATE SHALL:**

21 **(a) CHARGE JUST AND REASONABLE ATTACHMENT FEES,**
22 **INCLUDING RECURRING FEES, THAT ARE RELATED TO THE COSTS**
23 **ASSOCIATED WITH SUCH ATTACHMENTS, SUCH AS A JUST AND REASONABLE**
24 **SHARE OF THE CARRYING COSTS OF THE PER POLE INVESTMENT, INCLUDING**
25 **ONGOING MAINTENANCE OF THE POLE BASED ON THE PORTION OF THE**
26 **USABLE SPACE ON THE POLE OCCUPIED BY THE ATTACHMENT;**

27 **(b) PROVIDE ALL COMMERCIAL BROADBAND SUPPLIERS ACCESS TO**

1 ALL POLES AND SIMILAR SUPPORT STRUCTURES OWNED BY THE ELECTRIC
2 UTILITY OR BROADBAND AFFILIATE FOR THE PURPOSE OF ATTACHING
3 EQUIPMENT FOR THE PROVISION OF COMMERCIAL BROADBAND SERVICE.
4 ACCESS PROVIDED IN ACCORDANCE WITH THIS SUBSECTION (2)(b) MUST
5 BE PROVIDED:

6 (I) ON A JUST, REASONABLE, AND NONDISCRIMINATORY BASIS; AND

7 (II) UNDER TERMS AND CONDITIONS THAT ARE NO LESS
8 FAVORABLE THAN THE TERMS AND CONDITIONS OFFERED TO BROADBAND
9 AFFILIATES, INCLUDING TERMS AND CONDITIONS REGARDING APPLICATION
10 REQUIREMENTS, TECHNICAL REQUIREMENTS, ELECTRIC LINEWORKER
11 HEALTH AND SAFETY REQUIREMENTS, ADMINISTRATIVE FEES, TIMELINES,
12 AND MAKE-READY REQUIREMENTS; AND

13 (c) CHARGE FEES THAT ARE NONDISCRIMINATORY AMONG
14 COMMERCIAL BROADBAND SUPPLIERS FOR A SUBSTANTIALLY SIMILAR
15 LEASE OR USE OF THE CAPACITY OF ATTACHED FACILITIES OWNED OR
16 CONTROLLED BY THE ELECTRIC UTILITY OR BROADBAND AFFILIATE AND
17 THAT ARE EQUAL TO OR LESS THAN THE FEES THAT THE ELECTRIC UTILITY
18 CHARGES TO ITS BROADBAND AFFILIATES, BUT ONLY TO THE EXTENT AN
19 ELECTRIC UTILITY OR BROADBAND AFFILIATE CHOOSES, IN ITS SOLE
20 DISCRETION, TO OFFER THE LEASE OR USE TO A PARTICULAR COMMERCIAL
21 BROADBAND SUPPLIER.

22 (3) SUBJECT TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
23 SECTION, NOTHING IN THIS SECTION REQUIRES AN ELECTRIC UTILITY TO
24 OFFER OR GRANT A RIGHT TO ACCESS OR USE AN ELECTRIC EASEMENT OR
25 TO USE ATTACHED FACILITIES OR ELECTRIC SERVICE INFRASTRUCTURE
26 OWNED OR CONTROLLED BY THE ELECTRIC UTILITY IN A MANNER THAT
27 WOULD MATERIALLY INTERFERE WITH THE ELECTRIC UTILITY'S

1 CONSTRUCTION, MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY
2 INFRASTRUCTURE FOR THE PROVISION OF ELECTRIC SERVICE.

3 (4)(a) AN ELECTRIC UTILITY WITH A BROADBAND AFFILIATE SHALL
4 NOT UNREASONABLY WITHHOLD AUTHORIZATION OR DELAY ITS DECISION
5 WHETHER TO PROVIDE AUTHORIZATION TO A COMMERCIAL BROADBAND
6 SUPPLIER TO INSTALL, MAINTAIN, OWN, OPERATE, OR USE THE
7 COMMERCIAL BROADBAND SUPPLIER'S ATTACHED FACILITIES ON ELECTRIC
8 SERVICE INFRASTRUCTURE OWNED OR CONTROLLED BY THE ELECTRIC
9 UTILITY. AN ELECTRIC UTILITY MAY ONLY WITHHOLD AUTHORIZATION
10 PURSUANT TO THIS SUBSECTION (4) IF THE REASON FOR WITHHOLDING
11 AUTHORIZATION IS THAT:

12 (I) THERE IS INSUFFICIENT CAPACITY FOR THE ATTACHED
13 FACILITIES; OR

14 (II) CONCERNS OF SAFETY OR RELIABILITY OR GENERALLY
15 APPLICABLE ENGINEERING PURPOSES WEIGH AGAINST GRANTING THE
16 AUTHORIZATION.

17 (b) AN ELECTRIC UTILITY THAT WITHHOLDS AUTHORIZATION
18 PURSUANT TO THIS SUBSECTION (4) SHALL PROMPTLY NOTIFY THE
19 COMMERCIAL BROADBAND SUPPLIER IN WRITING OF THE REASONS FOR
20 WITHHOLDING AUTHORIZATION.

21 (5) AN ELECTRIC UTILITY SHALL NOT DIRECTLY PROVIDE RETAIL
22 COMMERCIAL BROADBAND SERVICE BUT MAY CAUSE OR ALLOW A
23 BROADBAND AFFILIATE TO OFFER RETAIL COMMERCIAL BROADBAND
24 SERVICE. AS LONG AS AN ELECTRIC UTILITY MAINTAINS ITS EXCLUSIVE
25 RIGHT TO PROVIDE ELECTRIC SERVICE TO CUSTOMERS WITHIN ITS
26 EXCLUSIVE SERVICE TERRITORY, BOTH THE ELECTRIC UTILITY THAT HAS
27 A BROADBAND AFFILIATE AND THE BROADBAND AFFILIATE SHALL:

1 (a) MAINTAIN OR CAUSE TO BE MAINTAINED AN ACCOUNTING
2 SYSTEM FOR THE BROADBAND AFFILIATE SEPARATE FROM THE ELECTRIC
3 UTILITY'S ACCOUNTING SYSTEM, USING GENERALLY ACCEPTED
4 ACCOUNTING PRINCIPLES OR ANOTHER REASONABLE AND CUSTOMARY
5 ALLOCATION METHOD;

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

15 (c) (I) NOT CAUSE OR ALLOW THE ELECTRIC UTILITY TO USE ITS
16 EXCLUSIVE RIGHT TO PROVIDE ELECTRIC SERVICES WITHIN ITS EXCLUSIVE
17 TERRITORY TO CROSS-SUBSIDIZE THE BROADBAND AFFILIATE OR ITS
18 PROVISION OF COMMERCIAL BROADBAND SERVICE, WHETHER BY
19 DISCRIMINATORY OR BELOW FAIR MARKET VALUE PRICING; PAYMENT OF
20 CAPITAL OR OPERATING COSTS PROPERLY CHARGED TO THE BROADBAND
21 AFFILIATE UNDER APPLICABLE ACCOUNTING RULES; OR USE OF ANY
22 REVENUE FROM OR SUBSIDY FOR THE PROVISION OF ELECTRIC SERVICE TO
23 PROVIDE COMMERCIAL BROADBAND SERVICE BELOW MARKET VALUE,
24 EXCEPT IN CONNECTION WITH THE ELECTRIC UTILITY'S PROVISION OF
25 ELECTRICITY.

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

1 (A) ENTERING INTO A TRANSACTION WITH A BROADBAND
2 AFFILIATE ON TERMS AND CONDITIONS SUBSTANTIALLY SIMILAR TO THOSE
3 THAT WOULD BE AGREED TO BETWEEN TWO SIMILARLY SITUATED PARTIES
4 IN AN ARM'S LENGTH COMMERCIAL TRANSACTION;

5 (B) PROVIDING REDUCED-COST COMMERCIAL BROADBAND
6 SERVICE TO LOW-INCOME RETAIL CUSTOMERS; OR

7 (C) CONDUCTING AND FUNDING DUE DILIGENCE, OPERATIONAL
8 ANALYSIS, ENTITY SET-UP, AND ASSOCIATED NONCAPITAL EXPENDITURES
9 RELATING TO AND PRIOR TO THE ESTABLISHMENT OF A BROADBAND
10 AFFILIATE.

11 (6) UPON REQUEST OF A COMMERCIAL BROADBAND SUPPLIER, AN
12 ELECTRIC UTILITY AND ANY BROADBAND AFFILIATE SUBJECT TO THIS
13 SECTION SHALL CAUSE AN OFFICER OF THE ELECTRIC UTILITY AND AN
14 OFFICER OF THE BROADBAND AFFILIATE TO CERTIFY THAT THE ELECTRIC
15 UTILITY AND THE BROADBAND AFFILIATE, RESPECTIVELY, ARE IN
16 COMPLIANCE WITH THIS SECTION. IF A DISPUTE ARISES IN A COURT OF
17 COMPETENT JURISDICTION BETWEEN AN ELECTRIC UTILITY OR ITS
18 BROADBAND AFFILIATE AND AN UNAFFILIATED COMMERCIAL BROADBAND
19 SUPPLIER:

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

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

26 (I) ANY CERTIFICATION REQUESTED AND PRODUCED PURSUANT TO
27 THIS SUBSECTION (6):

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

5 (III) ANY AUDIT REQUIRED TO BE PERFORMED PURSUANT TO
6 SUBSECTION (5) OF THIS SECTION.

7 (7) NOTWITHSTANDING ANY PROVISION OF THIS PART 6 TO THE
8 CONTRARY, AN ELECTRIC UTILITY THAT IS SUBJECT TO REGULATION UNDER
9 47 U.S.C. SEC. 224, AS AMENDED, AND THE FCC REGULATIONS
10 PROMULGATED PURSUANT TO THAT FEDERAL LAW, IS NOT SUBJECT TO THIS
11 SECTION.

12 (8) NOTHING IN THIS PART 6:

13 (a) SUBJECTS AN ELECTRIC UTILITY TO REGULATION BY THE FCC;

14 (b) CONSTITUTES AN EXERCISE OF, OR AN OBLIGATION OR
15 INTENTION TO EXERCISE, THE RIGHT OF THE STATE UNDER 47 U.S.C. SEC.
16 224 (c) TO REGULATE THE RATES, TERMS, AND CONDITIONS FOR POLE
17 ATTACHMENTS, AS DEFINED IN 47 U.S.C. SEC. 224 (a)(4); OR

18 (c) CONSTITUTES A CERTIFICATION, OR AN OBLIGATION OR
19 INTENTION TO CERTIFY, TO THE FCC UNDER 47 U.S.C. SEC. 224.

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

22 **38-4-103. Electric power companies.** (1) Any foreign or
23 domestic corporation organized or chartered for the purpose, among other
24 things, of conducting and maintaining electric power transmission lines
25 for providing power or light by means of electricity for hire shall have
26 HAS a right-of-way for the construction, operation, and maintenance of
27 such electric power transmission lines through any patented or unpatented

1 mine or mining claim or other land without the consent of the owner
2 thereof OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR
3 OTHER LAND, if such THE right-of-way is necessary for the purposes
4 proposed.

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

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

10 (b) EXERCISE ANY RIGHTS AVAILABLE TO THE ELECTRIC UTILITY
11 UNDER PART 6 OF ARTICLE 15 OF TITLE 40 IN CONNECTION WITH THE
12 INSTALLATION.

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

15 **38-5-103. Power of companies to contract.** (1) **Such AN**
16 **electric, ~~light power,~~ gas, or pipeline company or ~~such~~ A city, or town,**
17 **~~shall have power to~~ COUNTY, CITY AND COUNTY, SPECIAL DISTRICT, OR**
18 **OTHER LOCAL GOVERNMENT MAY contract with any person or corporation,**
19 **the owner of any ~~lands~~ LAND or any franchise, easement, or interest**
20 **~~therein~~ ON THE LAND over or under which ~~the~~ A line of electric light wire,**
21 **power, or pipeline is proposed to be laid or created for the right-of-way**
22 **for the construction, maintenance, and operation of ~~its~~ electric light wires,**
23 **pipes, poles, regulator stations, substations, or other property and for the**
24 **erection, maintenance, occupation, and operation of offices at suitable**
25 **distances for the public accommodation.**

26 (2) AN ELECTRIC UTILITY, AS DEFINED IN SECTION 40-15-601 (6),
27 EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN

1 ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW
2 THE INSTALLATION OF ANY ATTACHED FACILITY FOR COMMERCIAL
3 BROADBAND SERVICE, AS THOSE TERMS ARE DEFINED IN SECTION
4 40-15-601 (1) AND (3), RESPECTIVELY.

5 **SECTION 4. Act subject to petition - effective date.** This act
6 takes effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly (August
8 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within such period, then the act, item, section, or part will not take effect
12 unless approved by the people at the general election to be held in
13 November 2020 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.