

1 AN ACT relating to broadband deployment, making an appropriation therefor, and
 2 declaring an emergency.

3 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
 5 READ AS FOLLOWS:

6 *(1) There is established the Office of Broadband Development, which shall:*

7 *(a) Be administratively attached to the Kentucky Infrastructure Authority;*

8 *(b) Encourage, foster, develop, and improve broadband within the*
 9 *Commonwealth to:*

10 *1. Drive job creation, promote innovation, and expand markets for*
 11 *Kentucky businesses; and*

12 *2. Serve the ongoing and growing needs of Kentucky's:*

13 *a. Agricultural, educational, health care, and public safety systems;*

14 *b. Industries and businesses;*

15 *c. Governmental operations; and*

16 *d. Citizens;*

17 *(c) Improve broadband accessibility for unserved communities and*
 18 *populations;*

19 *(d) Develop, coordinate, administer, and implement the Commonwealth's*
 20 *broadband deployment fund under Section 3 of this Act;*

21 *(e) Perform all administrative functions necessary to carry out the purposes of*
 22 *this section;*

23 *(f) On behalf of the Commonwealth, serve as:*

24 *1. The central broadband planning and coordination entity;*

25 *2. The single point of contact and liaison to federal agencies and*
 26 *programs regarding broadband issues, including:*

27 *a. National Telecommunications and Information Administration;*

- 1 **b. Federal Communications Commission;**
- 2 **c. United States Department of Agriculture Rural Utilities Service;**
- 3 **and**
- 4 **d. United States Treasury;**
- 5 **3. An information clearinghouse for federal programs providing**
- 6 **financial assistance to institutions located in rural areas seeking to**
- 7 **obtain access to broadband;**
- 8 **(g) Coordinate with other state, regional, local, and private entities to:**
- 9 **1. Develop and implement a statewide broadband plan, including**
- 10 **relevant goals and objectives;**
- 11 **2. Develop and encourage cost-effective broadband;**
- 12 **3. Make recommendations for broadband infrastructure development,**
- 13 **particularly in rural and unserved areas; and**
- 14 **4. Provide consultation services to local units of government or other**
- 15 **project sponsors in connection with the planning, acquisition,**
- 16 **improvement, construction, or development of any broadband**
- 17 **deployment project;**
- 18 **(h) Monitor the broadband development efforts of other states and nations;**
- 19 **(i) Develop and improve carrier-neutral colocation, interconnection, and**
- 20 **content delivery network infrastructure, including the development of data**
- 21 **centers and neutral Internet exchange point facilities;**
- 22 **(j) Maintain data and statistics on broadband throughout the Commonwealth**
- 23 **by:**
- 24 **1. Collecting broadband availability data from Kentucky broadband**
- 25 **providers and other sources on a street address or location-specific**
- 26 **basis;**
- 27 **2. Verifying the accuracy of that data through on-the-ground testing;**

- 1 3. Creating and maintaining a statewide interactive map displaying
2 broadband availability, which shall be available for public and state
3 government use online;
- 4 4. Analyzing the deployment data collected to inform and guide future
5 investments in broadband infrastructure, including moneys expended
6 under the broadband deployment fund;
- 7 5. Empirically validating, on a targeted basis, the accuracy of broadband
8 data that is routinely collected by the Federal Communications
9 Commission to pinpoint areas of overstatement and understatement
10 that may exist; and
- 11 6. Challenging the validity of the data as may be warranted, on behalf of
12 the Commonwealth, to ensure that this state is receiving its due share
13 of funding from federal broadband programs; and
- 14 (k) Perform other duties and responsibilities as necessary to promote the
15 development of broadband within the Commonwealth.
- 16 (2) The office shall have all the power, not explicitly prohibited by statute, necessary
17 and convenient to carry out and effectuate the purposes of this section, including:
- 18 (a) Entering into contracts or agreements necessary or incidental to the
19 performance of its duties, functions, and responsibilities; and
- 20 (b) Soliciting, borrowing, accepting, receiving, and expending funds from any
21 public or private source, property, labor, or other things of value to be used
22 to carry out the office's operations, functions, and responsibilities.
- 23 (3) (a) The authority may contract with a private nonprofit corporation with at
24 least five (5) years of broadband and telecommunications public policy
25 research and mapping experience to fulfill the purposes, duties, and
26 responsibilities of the office as required in subsections (1) and (2) of this
27 section.

1 *(b) If the authority exercises its option to contract with an entity to fulfill the*
 2 *office's obligations under this section, the procurement shall not abrogate*
 3 *the authority from fulfilling the office's duties or achieving the timelines for*
 4 *issuing grants in Section 4 of this Act.*

5 *(4) The authority shall report the activities of the office to the Legislative Research*
 6 *Commission on a semiannual basis, each January 1 and each July 1.*

7 ➔Section 2. KRS 224A.011 is amended to read as follows:

8 As used in this chapter, unless the context requires otherwise:

- 9 (1) "Administrative fee" means a fee assessed and collected by the authority from
 10 borrowers and applicants under assistance agreements, to be used for operational
 11 expenses of the authority;
- 12 (2) "Applicable interest rate" means the rate of interest which shall be used as part of
 13 the repayment criteria for an assistance agreement between a governmental agency
 14 and the authority, and shall be determined by the authority pertinent to the source of
 15 funds from which the assistance agreement is funded;
- 16 (3) "Applicant" means a governmental agency or private sector entity that has
 17 submitted an application to the office~~[authority]~~ for a grant from the broadband
 18 deployment fund;
- 19 (4) "Application" means an application submitted by an applicant for a grant from the
 20 broadband deployment fund;
- 21 (5) "Assistance agreement" means the agreement to be made and entered into by and
 22 between a governmental agency or a private entity and the authority, as authorized
 23 by this chapter, providing for a lease, loan, services, or grant to a governmental
 24 agency or a private entity or for the purchase of obligations issued by the
 25 governmental agency, and for the repayment thereof to the authority by the
 26 governmental agency or a private entity;
- 27 (6) "Authority" means the Kentucky Infrastructure Authority, which is created by this

- 1 chapter;
- 2 (7) "Authority revenues" means the totality of all:
- 3 (a) Service charges;
- 4 (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the
5 authority during any fiscal period of the authority;
- 6 (c) Any gifts, grants, or loans received, to the extent not otherwise required to be
7 applied;
- 8 (d) Any and all appropriations made to the authority by the General Assembly of
9 the Commonwealth of Kentucky, to the extent not otherwise required to be
10 applied;
- 11 (e) All moneys received in repayment of and for interest on any loans made by the
12 authority to a governmental agency, except as provided in KRS 224A.111,
13 224A.1115, and 224A.112, or as principal of and interest on any obligations
14 issued by a governmental agency and purchased by the authority, or as receipts
15 under any assistance agreement;
- 16 (f) The proceeds of bonds or long-term debt obligations of governmental
17 agencies pledged to the payment of bond anticipation notes issued by the
18 authority on behalf of the said governmental agency to provide interim
19 construction financing; and
- 20 (g) Payments under agreements with any agencies of the state and federal
21 government;
- 22 (8) "Borrower or borrowing entity" means any agency of the state or its political
23 subdivisions, any city, or any special district created under the laws of the state
24 acting individually or jointly under interagency or interlocal cooperative agreements
25 to enter into assistance agreements with the authority;
- 26 (9) "Broadband" means any wireline~~[or fixed terrestrial]~~ technology having a capacity
27 to transmit data from or to the Internet with a minimum speed of ***one hundred***

1 ~~(100)~~~~[twenty five (25)]~~ megabits per second downstream and twenty (20)~~[three (3)]~~
 2 megabits per second upstream or a faster speed as defined by the Federal
 3 Communications Commission, the United States Treasury, the National
 4 Telecommunications and Information Administration, or the United States
 5 Department of Agriculture and any amendments to those definitions. If the agencies
 6 use different speed definitions, the faster speed definition shall apply to KRS
 7 224A.110, 224A.112, and 224A.1121;

8 (10) "Broadband deployment fund" means a fund to assist with the construction,
 9 development, or improvement of broadband infrastructure, broadband services, or
 10 technologies that constitute a part of, or are related to, broadband infrastructure or
 11 broadband services, to provide for broadband service in~~[underserved or]~~ unserved
 12 areas of the Commonwealth;

13 (11) "Broadband deployment project" means a proposed deployment of broadband
 14 service infrastructure set forth in an application for grant funding under KRS
 15 224A.112;

16 (12) "Broadband deployment project area" means a geographic area determined by
 17 census block~~[, or]~~ shapefile geospatial data, or list of addresses~~[, for]~~ which has
 18 been proposed for grant funding~~[has been authorized]~~ under this section and KRS
 19 224A.110, 224A.112, and 224A.1121;

20 (13) "Census block" means the smallest geographic unit used by the United States
 21 Census Bureau that is reported on the Federal Communications Commission (FCC)
 22 Form 477 relating to fixed broadband deployment data;

23 (14) "Community flood damage abatement project" means any structural or nonstructural
 24 study, plan, design, construction, development, improvement, or other activity to
 25 provide for flood control;

26 (15) "Construction" means and includes but is not limited to:

27 (a) Preliminary planning to determine the economic and engineering feasibility of

- 1 infrastructure projects, the engineering, architectural, legal, fiscal, and
 2 economic investigations, and studies necessary thereto, and surveys, designs,
 3 plans, working drawings, specifications, procedures, and other actions
 4 necessary to the construction of infrastructure or solid waste projects;
- 5 (b) The erection, building, acquisition, alteration, remodeling, improvement, or
 6 extension of infrastructure or solid waste projects; and
- 7 (c) The inspection and supervision of the construction of infrastructure or solid
 8 waste projects and all costs incidental to the acquisition and financing of
 9 same. This term shall also relate to and mean any other physical devices or
 10 appurtenances in connection with, or reasonably attendant to, infrastructure or
 11 solid waste projects;
- 12 (16) "Dams" means any artificial barrier, including appurtenant works, which does or
 13 can impound or divert water, and which either:
- 14 (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the
 15 stream or watercourse at the downstream toe of the barrier, as determined by
 16 the Energy and Environment Cabinet; or
- 17 (b) Has or will have an impounding capacity at maximum water storage elevation
 18 of fifty (50) acre feet or more;
- 19 (17) "Distribution facilities" means all or any part of any facilities, devices, and systems
 20 used and useful in obtaining, pumping, storing, treating, and distributing water for
 21 agricultural, industrial, commercial, recreational, public, and domestic use;
- 22 (18) "Energy and Environment Cabinet" means the Kentucky Energy and Environment
 23 Cabinet, or its successor, said term being meant to relate specifically to the state
 24 agency which is designated as the water pollution agency for the Commonwealth of
 25 Kentucky, for purposes of the federal act;
- 26 (19) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as
 27 said federal act may be amended from time to time in the future, or any other

1 enactment of the United States Congress providing funds that may assist in carrying
2 out the purposes of the authority;

3 (20) "Federally assisted wastewater revolving fund" means that fund which will receive
4 federal and state funds or the proceeds from the sale of revenue bonds of the
5 authority for the purpose of providing loans to finance construction of publicly
6 owned treatment works as defined in Section 212 of the federal act and for the
7 implementation of a management program established under Section 319 of the
8 federal act and for the development and implementation of a conservation and
9 management plan under Section 320 of the federal act;

10 (21) "Governmental agency" means any incorporated city or municipal corporation, or
11 other agency, or unit of government within or a department or a cabinet of the
12 Commonwealth of Kentucky, now having or hereafter granted, the authority and
13 power to finance, acquire, construct, or operate infrastructure or solid waste
14 projects. This definition shall specifically apply but not by way of limitation to
15 incorporated cities; counties, including any counties containing a metropolitan
16 sewer district; sanitation districts; water districts; water associations if these
17 associations are permitted to issue interest-bearing obligations which interest would
18 be excludable from gross income under Section 103 of the Internal Revenue Code
19 of 1986 as amended; sewer construction districts; metropolitan sewer districts;
20 sanitation taxing districts; a regional wastewater commission established under
21 KRS 65.8901 to 65.8923; and any other agencies, commissions, districts, or
22 authorities (either acting alone, or in combination with one another in accordance
23 with any regional or area compact, or intergovernmental cooperative agreements),
24 now or hereafter established in accordance with the laws of the Commonwealth of
25 Kentucky having and possessing the described powers described in this subsection;

26 (22) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting
27 from any process of industry, manufacture, trade, or business, or from the mining or

1 taking, development, processing, or recovery of any natural resources, including
2 heat and radioactivity, together with any sewage as is present therein, which
3 pollutes the waters of the state, and specifically, but not by way of limitation, means
4 heat or thermal differentials created in the waters of the state by any industrial
5 processing, generating, or manufacturing processes;

6 (23) "Infrastructure project" means any construction or acquisition of treatment works,
7 facilities related to the collection, transportation, and treatment of wastewater as
8 defined in KRS 65.8903, distribution facilities, or water resources projects instituted
9 by a governmental agency or an investor-owned water utility which is approved by
10 the authority and, if required, by the Energy and Environment Cabinet, Public
11 Service Commission, or other agency; solid waste projects; dams; storm water
12 control and treatment systems; gas or electric utility; broadband deployment project;
13 or any other public utility or public service project which the authority finds would
14 assist in carrying out the purposes set out in KRS 224A.300;

15 (24) "Infrastructure revolving fund" means that fund which will receive state funds, the
16 proceeds from the sale of revenue bonds of the authority or other moneys earmarked
17 for that fund for the purpose of providing loans or grants to finance construction or
18 acquisition of infrastructure projects as defined in this section;

19 (25) "Loan or grant" means moneys to be made available to governmental agencies by
20 the authority for the purpose of defraying all or any part of the total costs incidental
21 to construction or acquisition of any infrastructure project;

22 (26) "Market interest rate" means the interest rate determined by the authority under
23 existing market conditions at the time the authority shall provide financial
24 assistance to a governmental agency;

25 (27) "Obligation of a governmental agency" means a revenue bond, bond anticipation
26 note, revenue anticipation note, lease, or other obligation issued by a governmental
27 agency under KRS 58.010 et seq. or other applicable statutes;

- 1 (28) **"Office" means the Office of Broadband Development;**
- 2 **(29)** "Person" means any individual, firm, partnership, association, corporation, or
 3 governmental agency;
- 4 **(30)**~~(29)~~ "Pollution" means the placing of any noxious or deleterious substances
 5 ("pollutants"), including sewage and industrial wastes, in any waters of the state or
 6 affecting the properties of any waters of the state in a manner which renders the
 7 waters harmful or inimical to the public health or to animal or aquatic life, or to the
 8 use, present or future, of these waters for domestic water supply, industrial or
 9 agricultural purposes, or recreational purposes;
- 10 **(31)**~~(30)~~ "Prioritization schedules" means the list of wastewater treatment works,
 11 distribution facilities and water resources projects which the Energy and
 12 Environment Cabinet has evaluated and determined to be of priority for receiving
 13 financial assistance from the federally assisted wastewater revolving fund and the
 14 federally assisted drinking water revolving fund, or the list of infrastructure projects
 15 which the authority has evaluated and determined to be of priority for receiving
 16 financial aid from the infrastructure revolving fund. The evaluation by the authority
 17 of infrastructure projects for water systems shall be undertaken with input from the
 18 appropriate area development district;
- 19 **(32)**~~(31)~~ "Recovered material" means those materials which have known current use,
 20 reuse, or recycling potential, which can be feasibly used, reused, or recycled, and
 21 which have been diverted or removed from the solid waste stream for sale, use,
 22 reuse, or recycling, whether or not requiring subsequent separation and processing
 23 but does not include materials diverted or removed for purposes of energy recovery
 24 or combustion except refuse-derived fuel (RDF), which shall be credited as a
 25 recovered material in an amount equal to that percentage of the municipal solid
 26 waste received on a daily basis at the processing facility and processed into RDF;
 27 but not to exceed fifteen percent (15%) of the total amount of the municipal solid

1 waste received at the processing facility on a daily basis;

2 ~~(33)~~ "Recovered material processing facility" means a facility engaged solely in the
3 storage, processing, and resale or reuse of recovered material but does not mean a
4 solid waste facility if solid waste generated by a recovered material processing
5 facility is managed in accordance with KRS Chapter 224 and administrative
6 regulations adopted by the cabinet;

7 ~~(34)~~ "Revenue bonds" means special obligation bonds issued by the authority as
8 provided by the provisions of this chapter, which are not direct or general
9 obligations of the state, and which are payable only from a pledge of, and lien upon,
10 authority revenues as provided in the resolution authorizing the issuance of the
11 bonds, and shall include revenue bond anticipation notes;

12 ~~(35)~~ "Service charge" means any monthly, quarterly, semiannual, or annual charge
13 to be imposed by a governmental agency, or by the authority, for any infrastructure
14 project financed by the authority, which service charge arises by reason of the
15 existence of, and requirements of, any assistance agreement;

16 ~~(36)~~ "Sewage" means any of the waste products or excrements, or other discharges
17 from the bodies of human beings or animals, which pollute the waters of the state;

18 ~~(37)~~ "Shapefile" means a file format for storing, depicting, and analyzing
19 geospatial data showing broadband coverage;

20 ~~(38)~~ "Solid waste" means "solid waste" as defined by KRS 224.1-010(30)(a);

21 ~~(39)~~ "Solid waste facility" means any facility for collection, handling, storage,
22 transportation, transfer, processing, treatment, or disposal of solid waste, whether
23 the facility is associated with facilities generating the waste or otherwise, but does
24 not include a container located on property where the waste is generated and which
25 is used solely for the purpose of collection and temporary storage of that solid waste
26 prior to off-site disposal, or a recovered material processing facility;

27 ~~(40)~~ "Solid waste project" means construction, renovation, or acquisition of a solid

1 waste facility which shall be instituted and owned by a governmental agency;

2 ~~(41)~~~~(40)~~ "Solid waste revolving fund" means that fund which shall receive state funds,
3 the proceeds from the sale of revenue bonds of the authority, or other moneys
4 earmarked for the purpose of providing loans or grants to finance solid waste
5 projects defined in this section;

6 ~~(42)~~~~(41)~~ "State" means the Commonwealth of Kentucky;

7 ~~(43)~~~~(42)~~ "System" means the system owned and operated by a governmental agency
8 with respect to solid waste projects, treatment works, or infrastructure projects
9 financed as provided by the assistance agreement between the governmental agency
10 and the authority;

11 ~~(44)~~~~(43)~~ "Treatment works" or "wastewater treatment works" means all or any part of
12 any facilities, devices, and systems used and useful in the storage, treatment,
13 recycling, and reclamation of wastewater or the abatement of pollution, including
14 facilities for the treatment, neutralization, disposal of, stabilization, collecting,
15 segregating, or holding of wastewater, including without limiting the generality of
16 the foregoing, intercepting sewers, outfall sewers, pumping power stations, and
17 other equipment and their appurtenances; extensions, improvements, remodeling,
18 additions, and alterations thereof, and any wastewater treatment works, including
19 site acquisition of the land that will be an integral part of the wastewater treatment
20 process, or is used for ultimate disposal of residues resulting from wastewater
21 treatment, together with any other facilities which are deemed to be treatment works
22 in accordance with the federal act;

23 ~~[(44) "Underserved area" means any project area where fixed, terrestrial broadband~~
24 ~~service with a minimum twenty five (25) megabits per second downstream and~~
25 ~~three (3) megabits per second upstream is not available;]~~

26 (45) "Unserved area" means any project area where ~~fixed, terrestrial]~~ broadband service
27 with a minimum twenty-five (25)~~ten (10)~~ megabits per second downstream and

1 three (3) megabits~~one (1) megabit~~ per second upstream is not available;

2 (46) "Utility tax" means the tax which may be imposed by the authority on every
3 purchase of water or sewer service in the Commonwealth of Kentucky;

4 (47) "Variable rate revenue bonds" means revenue bonds the rate of interest on which
5 fluctuates either automatically by reference to a predetermined formula or index or
6 in accordance with the standards set forth in KRS 224A.120;

7 (48) "Wastewater" means any water or liquid substance containing sewage, industrial
8 waste, or other pollutants or contaminants derived from the prior use of these
9 waters;

10 (49) "Water resources" means all waters of the state occurring on the surface, in natural
11 or artificial channels, lakes, reservoirs, or impoundments, and in subsurface
12 aquifers, which are available, or which may be made available to agricultural,
13 industrial, commercial, recreational, public, and domestic users;

14 (50) "Water resources project" means any structural or nonstructural study, plan, design,
15 construction, development, improvement, or any other activity including programs
16 for management, intended to conserve and develop the water resources of the state
17 and shall include all aspects of water supply, facilities to collect, transport, and treat
18 wastewater as defined in KRS 65.8903, flood damage abatement, navigation, water-
19 related recreation, and land conservation facilities and measures; and

20 (51) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds,
21 marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or
22 accumulations of water, surface and underground, natural or artificial, which are
23 situated wholly or partly within, or border upon, this state, or are within its
24 jurisdiction, except those private waters which do not combine or effect a junction
25 with natural, surface, or underground waters.

26 ➔Section 3. KRS 224A.112 is amended to read as follows:

27 (1) The infrastructure revolving fund shall be established in the State Treasury and shall

1 be administered by the authority. The fund shall be a dedicated fund, and all moneys
 2 in the fund shall be allocated and dedicated solely to providing financial assistance
 3 to governmental agencies, and investor-owned water systems as provided for in
 4 KRS 96.540, 224A.306, 224A.308, and 224A.310, for the construction or
 5 acquisition of infrastructure projects through an account designated as the 2020
 6 water service account.

7 (2) The broadband deployment fund shall be established in the State Treasury and shall
 8 be administered by the ~~office~~^{authority}. The fund shall be a dedicated fund, and all
 9 moneys in the fund shall be allocated and dedicated solely to providing grant funds
 10 to governmental agencies and private sector entities to construct infrastructure for
 11 the deployment of broadband service to households and businesses in ~~underserved~~
 12 ~~or~~ unserved areas of the Commonwealth through an account designated as the
 13 broadband deployment fund.

14 (3) Funds in subsections (1) and (2) of this section shall not be commingled and shall
 15 be used only for the stated purposes in subsections (1) and (2) of this section.

16 (4) The financial assistance which may be provided by the revolving fund shall be
 17 limited to:

18 (a) Making loans, on the condition that the loans are made at or below market
 19 interest rates, including interest free loans, at terms not to exceed thirty (30)
 20 years and that the fund will be credited with all payments of principal and
 21 interest on all loans;

22 (b) Purchasing or guaranteeing, or purchasing insurance for, local or state
 23 obligations when the action would improve credit market access or reduce
 24 interest rates;

25 (c) Providing a source of revenue or security for the payment of principal and
 26 interest on bonds or notes issued by the authority or other agencies of the state
 27 if the proceeds of the sale of the bonds will be deposited in the fund;

- 1 (d) Providing moneys with which to carry out the requirements of assistance
2 agreements; and
- 3 (e) Making grants as funds specifically appropriated for grants or proceeds from
4 the sale of the authority's revenue bonds are available.
- 5 (5) The revolving fund shall be established, maintained, and credited with repayments
6 and the fund balance shall be available in perpetuity for its stated purposes.
- 7 (6) The authority may provide financial assistance from the revolving fund to
8 supplement assistance provided from the federally assisted wastewater revolving
9 fund as created in KRS 224A.111.
- 10 (7) The authority shall advise governmental agencies of the availability of the
11 infrastructure revolving fund and how moneys may be obtained from the fund.
- 12 (8) The authority may enter into any necessary or required agreement with federal or
13 state agencies or persons to carry out the provisions of this section. All state
14 agencies shall cooperate with the authority and share information with the authority
15 as appropriate to accomplish the purposes set out in KRS 224A.300.
- 16 (9) Moneys in the broadband deployment fund are hereby appropriated for the
17 purposes set forth in this section and KRS 224A.1121.
- 18 (10) Notwithstanding KRS 45.229, any moneys remaining in the broadband deployment
19 fund at the close of the fiscal year shall not lapse but shall be carried forward into
20 the succeeding fiscal year to be used for the purposes set forth in this section and
21 KRS 224A.1121.
- 22 (11) Interest earned on moneys in the broadband deployment fund shall stay in the fund.
- 23 ➔Section 4. KRS 224A.1121 is amended to read as follows:
- 24 (1) (a) The purpose of the broadband deployment fund set forth in KRS 224A.112
25 shall be to:
- 26 I. Assist governmental agencies and private sector entities to construct
27 infrastructure for the deployment of broadband service to ~~underserved~~

1 ~~or~~ unserved areas of the Commonwealth; **and**

2 **2. Provide supplemental funding for recipients of federal government**
 3 **awards specifically to support the deployment or expansion of**
 4 **broadband networks.**

5 **(b)** The **office**~~[authority]~~ shall manage the fund and may accept and receive
 6 appropriations from the General Assembly or other funds or gifts from both
 7 public and private sources, including but not limited to local governments and
 8 federal agencies.

9 (2) The **office**~~[authority]~~ shall establish a grant program that allocates funds from the
 10 broadband deployment fund in accordance with this section.

11 **(3) (a) The office shall issue grant applications for all projects awarded grant**
 12 **funds on or after April 5, 2022.**

13 **(b)** Grant funds may be used by government or private sector entities for
 14 broadband deployment projects.}

15 ~~(3) The grant program shall be developed to give highest funding priority to those~~
 16 ~~projects which most effectively provide broadband service to the greatest number of~~
 17 ~~underserved and unserved Kentucky citizens and at the lowest cost. Funding shall~~
 18 ~~not be used to duplicate broadband service to citizens, households, and businesses~~
 19 ~~in a broadband deployment project area where fixed, terrestrial broadband service~~
 20 ~~meets or exceeds twenty five (25) megabits per second downstream and three (3)~~
 21 ~~megabits per second upstream.}~~

22 (4) The **office**~~[authority]~~ shall develop funding criteria and prioritization schedules for
 23 broadband deployment projects~~[in a technology neutral manner]~~ in accordance
 24 with this section.

25 (5) **(a)** The **office**~~[authority]~~ shall establish guidelines and standards for applying for
 26 and approving grants from the broadband deployment fund **according to the**
 27 **minimum requirements in this section. No additional requirement shall be**

1 **added which could delay broadband deployment.**

2 **(b)** An eligible applicant shall submit an application to the **office**~~[authority]~~.

3 **(c)** An application for a grant shall contain any information the **office**~~[authority]~~
4 requires, including but not limited to:

5 **1.[(a)]** A **shapefile**~~[geographic description]~~ of the broadband deployment
6 project area **and a list of addresses in the broadband deployment**
7 **project area**~~[, including whether the area is partially served]~~;

8 **2.[(b)]** A description of the broadband deployment project, including
9 facilities, equipment, total cost, timeframe for completion, and network
10 capabilities, including minimum speed thresholds;

11 **3.[(c)]** Documentation of the applicant's technical, financial, and
12 managerial resources and experience to build, operate, and manage
13 broadband **networks** serving citizens, households, and businesses in
14 Kentucky, **including a detailed project management plan identifying**
15 **staff, contractors, and key responsibilities**;

16 **4.[(d)]** Documentation of the economic and commercial feasibility of the
17 proposed broadband deployment project, **including a detailed project**
18 **budget and documentation of availability of supplies**;

19 **5.[(e)]** The number of **addresses within the broadband deployment**
20 **project area**~~[citizens, households, or businesses]~~ that would have new
21 access to broadband as a result of the grant;

22 **6.[(f)]** The amount of matching funds the eligible applicant will
23 contribute and a certification that no portion of the matching funds is
24 derived from any state or federal grant received for the purpose of
25 funding broadband infrastructure within the project area; and

26 **7.[(g)]** A certification that none of the funds provided by the program for
27 the project in the application will be used to extend or deploy facilities

1 to any currently served addresses~~[citizens, households, or businesses]~~.

2 (6) The office~~[authority]~~ shall make all information within each application~~[the~~
3 ~~applications]~~ available to the public within five (5) business days following~~[of]~~ the
4 deadline for submission of applications, provided the information contained within
5 an application is not exempt from disclosure under the provisions of the Open
6 Records Act, KRS 61.870 to 61.884. The description of the geographic scope of the
7 broadband deployment project area shall not be exempt under the Open Records
8 Act, KRS 61.870 to 61.884, and shall be made available to the public within five (5)
9 days after submission of the application.

10 (7) (a) As part of the grant application process, under~~[pursuant to]~~ subsection
11 (5)~~(3)~~ of this section, the office~~[authority]~~ shall include an opportunity for a
12 challenging broadband service provider to challenge an~~[the]~~ application
13 within fifteen (15) days from making all information available to the public
14 under subsection (6) of this section.

15 (b) A challenging provider shall provide the office with proof that:~~[As part of~~
16 ~~the dispute process, the authority may consider any relevant geospatial data~~
17 ~~available from a broadband service provider or grant applicant. Geospatial~~
18 ~~data may include but is not limited to shapefiles detailing broadband coverage,~~
19 ~~the most current Federal Communications Commission Form 477 fixed~~
20 ~~broadband deployment data reporting, or other documentation of broadband~~
21 ~~deployment infrastructure in the project area to show that a challenged project~~
22 ~~area is underserved or unserved. A challenging provider may provide the~~
23 ~~authority with proof, including but not limited to:]~~

24 1.~~(a)~~ The broadband deployment project area is:

25 a. Currently served; ~~or [is]~~

26 b. Under construction for provision of broadband service within
27 twelve (12) months of the challenge; or

1 ~~2.[(b)]~~ The applicant has received funds from another state or federally
 2 funded grant program designed to encourage broadband deployment in
 3 the broadband deployment project area that covers more than fifty
 4 percent (50%) of the eligible project expenses.

5 (c) As part of the challenge process and in order to meet the burden of proof in
 6 paragraph (b) of this subsection, the challenging provider shall submit:

7 1. A shapefile and a list of addresses containing all addresses within the
 8 broadband deployment project area that the challenging broadband
 9 service provider currently serves and the maximum megabits per
 10 second downstream speed and the maximum megabits per second
 11 upstream speed provided to each challenged address;

12 2. A feasibility study, construction plan, or other relevant documentation
 13 that clearly and convincingly demonstrates that the challenging
 14 broadband service provider will be under construction within twelve
 15 (12) months of the application date for the broadband deployment
 16 fund grant, which may be extended by the office an additional six (6)
 17 months because of undue construction delays; or

18 3. Loan documents, grant award receipts, or other financial information
 19 that clearly and convincingly demonstrates to the office that the
 20 challenging broadband service provider has received adequate funds
 21 from another state or federally funded grant program designed to
 22 encourage broadband deployment in the area.

23 (d) Within five (5) business days of a challenge being submitted to the office,
 24 the provider submitting the application which is challenged shall be
 25 provided copies of all challenge material.

26 (e) The office shall treat any information submitted as part of a challenge as
 27 confidential and exempt from disclosure under the Open Records Act, KRS

1 61.870 to 61.884, upon the challenging provider's request for confidential
 2 treatment.

3 (f) Within fifteen (15) days of receipt of the copies under paragraph (d) of this
 4 subsection, the applicant shall respond to the challenge.

5 (g) Once the response to the challenge is submitted to the office by the
 6 applicant, the office shall have fifteen (15) business days to resolve the
 7 dispute.

8 (h) Upon a determination that a challenge is unsuccessful because the
 9 challenging provider is unable to prove, within the timeframe provided
 10 under this section, that the provider currently serves a broadband
 11 deployment project area, the office shall move forward with the funding
 12 process provided in this section.

13 (8) (a) Upon a determination that an application meets the funding criteria, but the
 14 proposed project area is found to be partially served, the office~~[authority]~~ may
 15 amend the application and grant partial funding based on the partial service
 16 provided in order to ensure that grant funds are used to only provide
 17 broadband service to addresses~~[citizens, households, or businesses]~~ deemed~~[~~
 18 ~~underserved or]~~ unserved.

19 (b) In the event of a challenge that involves subsection (7)(c)2. of this section
 20 and those addresses are not under construction within twelve (12) months,
 21 or eighteen (18) months if extended by the office, the challenging provider
 22 shall pay a civil penalty to the applicant in an amount equal to the amount
 23 of grant funding for those addresses plus ten percent (10%).

24 (9) When awarding grant funds, the office shall award funding to addresses with no
 25 broadband service and then shall:

26 (a) Score the remaining grant applications based on the following criteria,
 27 giving priority consideration in the order listed:

- 1 1. Projects in unserved areas that reach the customers that are the least
- 2 economical to serve, in the following order;
- 3 a. Projects that average zero to five (5) locations per route mile;
- 4 b. Projects that average five (5) to ten (10) locations per route mile;
- 5 and
- 6 c. Projects that average eleven (11) locations or more per route
- 7 mile;
- 8 2. Projects in unserved areas where local, state, or federal funds are not
- 9 available;
- 10 3. Fiber-to-the-premise projects that will deploy broadband services with
- 11 a capacity to transmit data from or to the Internet with symmetrical
- 12 downstream and upstream speeds of at least one (1) gigabit;
- 13 4. Projects deploying infrastructure capable of achieving symmetrical
- 14 speeds at a minimum of one hundred (100) megabits per second
- 15 download and upload speeds;
- 16 5. The size and the scope of the unserved area proposed to be served;
- 17 6. The technical, managerial, and financial capabilities of the applicant,
- 18 demonstrating the ability to successfully deploy the proposed project
- 19 and provide broadband service;
- 20 7. A project requesting less than fifty percent (50%) funding from the
- 21 requested grant;
- 22 8. Projects that will be eligible for the Affordable Connectivity Program
- 23 for low-income consumers administered by the Federal
- 24 Communications Commission; and
- 25 9. Projects that plan to encourage adoption of broadband services,
- 26 including community outreach to promote adoption, technical
- 27 support, and training on how to connect;

1 (b) Award no more than fifty percent (50%) of the total project cost, unless the
 2 project meets the following density requirements:

- 3 1. Projects that average zero (0) to five (5) locations per route mile,
 4 which may be eligible for reimbursement of up to seventy percent
 5 (70%) of the cost of the project;
 6 2. Projects that average five (5) to ten (10) locations per route mile,
 7 which may be eligible for reimbursement of up to sixty percent (60%)
 8 of the cost of the project; and
 9 3. Projects that average eleven (11) locations or more per route mile,
 10 which may be eligible for reimbursement of fifty percent (50%) of the
 11 cost of the project;

12 (c) Require the remaining project costs to be paid by matching funds from:

- 13 1. A private source, including but not limited to financial institutions
 14 that serve distribution cooperatives;
 15 2. A city, county, urban-county government, or consolidated local
 16 government; or
 17 3. Any combination of matching moneys provided under subparagraphs
 18 1. and 2. of this paragraph;

19 (d) Allow eligible project expenses, including those that are incurred starting
 20 on or after the date in the written acknowledgement of acceptance issued
 21 under paragraph (f) of this subsection and ending at the conclusion of the
 22 grant project, or grant project contractual term, whichever is earlier, and
 23 may include:

- 24 1. Project engineering or design plans;
 25 2. Permitting;
 26 3. Pre-construction costs to make ready the project site;
 27 4. Outside plant materials, including fiber; poles, hardware, conduit or

1 splitters;

2 5. Labor, construction management, and equipment; and

3 6. Installation and testing of the broadband services;

4 (e) Make a determination that an application meets the funding criteria, unless
 5 the proposed project area is found to be partially served, in which case the
 6 application may be amended and partial funding based on the partial
 7 service provided may be granted in order to ensure that grant funds are
 8 used to only provide broadband service to addresses unserved; and

9 (f) 1. Issue within sixty (60) days of receipt of an application for grant
 10 funds, except in the case of a challenged application under the
 11 timeline in subsection (7) of this section, a written acknowledgement
 12 of either:

13 a. Acceptance;

14 b. Denial and any reasons for denial of the application; or

15 c. A request for additional information to process the application
 16 listing the specific information required; and

17 2. Issue grant funds to the applicant within ten (10) days upon
 18 acceptance of the application.

19 (10) The office shall not reimburse applicants for special construction charges,
 20 including fees or charges imposed upon the end user as a condition of receiving
 21 broadband service at an address.

22 (11) The office may provide an incentive for timely completion or a disincentive for
 23 not meeting agreed upon timeframes.

24 (12) Grant funds awarded to an applicant to supplement the applicant's federal fund
 25 award may not be used for costs that will be reimbursed by the other federal
 26 funds.

27 (13) No funds shall be used;

1 **(a)** To support any broadband deployment project involving the upgrade of an
 2 existing facility **already delivering broadband services, including an**
 3 **upgrade of existing wireline, or terrestrial infrastructure capable of**
 4 **delivering services greater than twenty-five (25) megabits per second**
 5 **downstream and three (3) megabits per second upstream;** or

6 **(b)** For non-capital expenses, non-broadband services, marketing, or advertising.
 7 ~~[The broadband deployment project area shall be described by census block~~
 8 ~~including the specific addresses to be serviced or by shapefile geospatial data.~~

9 ~~(10) Grant applicants shall pay a minimum of fifty percent (50%) of the project cost~~
 10 ~~which shall not include any matching funds received from federal or state~~
 11 ~~government grants for broadband deployment in the project area.]~~

12 ~~**(14)**[(11)] Moneys in this fund shall not be used by or transferred to the Kentucky~~
 13 ~~Communications Network Authority.~~

14 ~~**(15)** **(a)**[(12)] To carry out the purposes of this section, the **office may**[authority shall]
 15 ~~promulgate administration regulations **under**[in accordance with] KRS~~
 16 ~~Chapter 13A.[Within one hundred eighty (180) days of July 15, 2020, the~~
 17 ~~authority shall promulgate regulations to implement the provisions of this~~
 18 ~~section and KRS 224A.011, 224A.110, and 224A.112 and govern the~~
 19 ~~submission, review, and approval of applications and the administration of~~
 20 ~~broadband deployment projects.]~~~~

21 **(b)** The **office**[authority] shall not promulgate any regulations that place
 22 obligations on the applicants that are more restrictive than applicable federal
 23 or state law.~~[Except as otherwise provided in this section, all of the~~
 24 ~~authority's records relating to the broadband deployment fund shall be deemed~~
 25 ~~confidential unless disclosure is required under the provisions of the Open~~
 26 ~~Records Act, KRS 61.870 to 61.884.]~~

27 **(c)** **In the event that any state law or administrative regulation affecting the**

1 broadband deployment fund conflicts with any federal law or regulation
 2 related to federal broadband funding, the federal law or regulation shall
 3 govern. The office may adopt state and local program requirements to
 4 comply with all federal laws and regulation related to federal broadband
 5 funding.

6 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 224A IS CREATED TO
 7 READ AS FOLLOWS:

8 (1) The General Assembly hereby finds and declares that:

9 (a) A rural infrastructure improvement fund, and a program to administer the
 10 fund, is necessary to further the Commonwealth's goal to expand and
 11 accelerate access to broadband service throughout the entire
 12 Commonwealth; and

13 (b) Supporting the replacement of utility poles will provide benefits to Kentucky
 14 residents by:

15 1. Facilitating the construction of broadband networks;

16 2. Minimizing the potential for disputes between broadband providers
 17 and utility pole owners that could otherwise delay deployment;

18 3. Improving the resiliency and longevity of broadband infrastructure;
 19 and

20 4. Addressing needs for broadband investment not yet fully met by
 21 existing programs.

22 (2) As used in this section:

23 (a) "Application" means an application made under subsection (4) of this
 24 section for eligible pole replacement costs;

25 (b) "Eligible pole replacement":

26 1. Means the removal of an existing utility pole and replacement with a
 27 new utility pole in an unserved area in order to accommodate the

1 attachment of facilities to be used, in whole or in part, by a retail
 2 provider to provide qualifying broadband service access to residences
 3 or businesses within an unserved area; and

4 2. Does not include the removal and replacement of a utility pole in
 5 order to accommodate facilities used only for the provision of
 6 wholesale broadband or data transport service, where the owner of the
 7 facilities, or its affiliate, does not use the facilities to provide
 8 qualifying broadband services directly to residences or businesses;

9 (c) "Eligible pole replacement costs":

10 1. Means:

11 a. The actual and reasonable costs paid or incurred to perform an
 12 eligible pole replacement;

13 b. The amounts of any expenditures to remove and dispose of the
 14 existing utility pole, to purchase and install a replacement utility
 15 pole, or to transfer any existing facilities to the new pole; and

16 c. The costs of reimbursing another party for the costs of
 17 performing an eligible pole replacement, when paid or incurred
 18 by the person responsible for the costs; and

19 2. Does not include:

20 a. Costs paid or incurred to perform an eligible pole replacement by
 21 a party who is not responsible for those costs, and which are
 22 charged or passed along to the responsible party; or

23 b. Costs for which the part incurring or paying the costs separately
 24 has received or is entitled to receive reimbursement under the
 25 terms of a state or federal grant program for the deployment of
 26 broadband facilities; and

27 c. The receipt of a state or federal grant where the pole

1 replacement costs, for which reimbursement is requested, exceed
 2 the pole replacement costs that were reasonably anticipated at
 3 the time of, or on which the amount of, the other support
 4 funding was predicated.

5 Costs are considered separately reimbursed for purposes of this paragraph
 6 if the amount of an award under another state or federal broadband
 7 program included consideration, by the awarding entity, of the pole
 8 replacement costs by the applicant;

9 (d) "Fund" means the rural infrastructure improvement fund established by
 10 subsection (3) of this section;

11 (e) "Pole owner" means any person or entity that owns or controls a utility
 12 pole;

13 (f) "Program" means the Kentucky Rural Infrastructure Improvement
 14 Program established by subsection (4) of this section;

15 (g) "Qualifying broadband service" means a retail wireline or wireless
 16 broadband service capable of delivering Internet access at speeds of at least
 17 one hundred (100) megabits per second in both the downstream and
 18 upstream directions, and with latency at a level sufficient to permit real-
 19 time, interactive applications; and

20 (h) "Utility pole" means any pole used, in whole or in part, for any wire
 21 communications or electric distribution, regardless of the owner or operator
 22 of the pole.

23 (3) (a) There is created within the State Treasury a trust and agency account to be
 24 known as the rural infrastructure improvement fund, consisting of moneys
 25 appropriated by the General Assembly, federal funds, grants, and gifts.

26 (b) The fund shall be administered by the Office of Broadband Development
 27 and all money deposited in the fund shall be used;

- 1 1. By the office to provide reimbursements to qualified applicants under
2 the Rural Infrastructure Improvement Program established under
3 subsection (4) of this section;
- 4 2. For the purposes of covering the costs of program administration and
5 operation; and
- 6 3. In a manner consistent with federal law.
- 7 (c) Notwithstanding KRS 45.229, any moneys remaining in the fund at the
8 close of the fiscal year shall not lapse but shall be carried forward into the
9 succeeding fiscal year to be used for the purposes set forth in this section.
- 10 (d) Interest earned on money deposited to the credit of the fund shall be
11 retained in the fund and shall not lapse.
- 12 (e) Moneys deposited in the fund are hereby appropriated for the purposes in
13 this section.
- 14 (4) (a) There is hereby established the Kentucky Rural Infrastructure Improvement
15 Program for the purpose of expediting and facilitating the deployment of
16 broadband service to individuals, businesses, agricultural operations, and
17 community access points in unserved areas by reimbursing a portion of
18 eligible pole replacement costs incurred by eligible applicants.
- 19 (b) The office shall administer and provide staff assistance for the program and
20 shall be responsible for receiving, reviewing, and approving applications for
21 pole reimbursements.
- 22 (c) The office shall award pole reimbursements from moneys in the fund
23 created by subsection (3) of this section until all moneys in the fund are
24 exhausted.
- 25 (d) No later than September 1, 2022, the office shall:
- 26 1. Promulgate administrative regulations under KRS Chapter 13A
27 necessary for the administration of this section;

- 1 2. Publish an application for pole replacement reimbursements that shall
2 require:
- 3 a. Information sufficient to establish the number, cost, and
4 eligibility of eligible pole replacements that qualify for
5 reimbursement;
- 6 b. Documentation sufficient to establish that the claimed eligible
7 pole replacements have been completed, including receipts
8 verifying the amount of eligible pole replacement costs paid by
9 the applicant;
- 10 c. The amount of program reimbursement requested in the
11 application and any grant funding or accounting information
12 required to justify the amount of the request;
- 13 d. i. A statement that the costs for which reimbursement is
14 requested have not been reimbursed through any other
15 state or federal broadband grant program.
- 16 ii. If the applicant is a recipient of funding from another
17 program, the statement shall include an explanation of
18 how the costs for which reimbursement is requested exceed
19 the pole replacement costs on which the original award was
20 predicated or that were reasonably anticipated at the time
21 of the original award;
- 22 e. A notarized statement from an officer or agent of the applicant
23 that the contents of the application are true and accurate and
24 that the applicant accepts the requirements of this section and
25 any promulgated administrative regulations as a condition of
26 receiving an award of program reimbursement; and
- 27 f. Any other information necessary for the office to comply with

1 any conditions on federal funding used in connection with the
 2 program; and

3 3. Publish and maintain on its Web site:

4 a. Statistics on the number of applications received, processed, and
 5 rejected by the office under the pole replacement program;

6 b. Statistics on the size, number, and status of reimbursements
 7 awarded by the office under the pole replacement program,
 8 including the pole owners and broadband providers receiving
 9 reimbursements; and

10 c. The amount of money remaining in the fund.

11 (e) An applicant who incurs or pays the costs of an eligible pole replacement to
 12 accommodate broadband facilities consistent with this section may apply to
 13 the office for reimbursement.

14 (f) As a condition of receiving reimbursement under this subsection, an
 15 applicant shall:

16 1. Certify its compliance with the requirements of this section;

17 2. Agree to comply with any requirements that the office determines to be
 18 necessary conditions on federal funding used in connection with the
 19 program;

20 3. Agree to refund, with interest at the applicable federal funds rate as
 21 specified by KRS 355.4A-506, to the fund, any reimbursements or
 22 portions of reimbursements received from the fund under this
 23 subsection, if the office finds, upon substantial evidence and after
 24 notice and opportunity to respond, that the recipient materially
 25 violated any of the requirements agreed to under this section;

26 4. Agree that no funds awarded by the program will be used to meet any
 27 cash match requirement under any other broadband program

1 administered by the Commonwealth or one (1) of its subdivisions;

2 5. Agree to submit reports as the office may require regarding broadband
 3 deployment facilitated by the program, which may include reports
 4 demonstrating that an application that has received a federally funded
 5 award is meeting or exceeding buildout requirements contained in
 6 that award; and

7 6. Agree to not include in any rates or fees charged for its services any
 8 eligible pole replacement costs that were reimbursed by the program,
 9 paid for by a broadband provider, or funded by another grant source.

10 (g) 1. If the necessary information is not otherwise reasonably available to
 11 the applicant, the applicant may request a pole owner performing an
 12 eligible pole replacement to provide the number and costs of the pole
 13 replacements, receipts verifying the amount of pole replacement costs
 14 paid by the applicant, and confirmation that the pole replacement
 15 costs were incurred to accommodate the applicant's attachment and
 16 not due to some other reason.

17 2. In the event the office requires additional information from an
 18 applicant following the submission of an application to confirm the
 19 eligibility of costs in an application that is in the possession of the pole
 20 owner and not otherwise reasonably available to the applicant, the
 21 applicant may also request that the pole owner assist with providing
 22 the information as requested by the office.

23 3. A pole owner shall coordinate in good faith to provide the information
 24 to the applicant, and may require reimbursement from the broadband
 25 provider of its actual and reasonable administrative expenses in
 26 connection with the coordination, which shall not exceed five percent
 27 (5%) of the eligible pole replacement costs.

1 4. Administrative costs that a broadband provider reimburses to a pole
 2 owner under this subsection are not eligible for reimbursement from
 3 the fund as eligible pole replacement costs.

4 (h) Within sixty (60) days of receipt of a completed application establishing the
 5 eligibility of costs for reimbursement, and to the extent that moneys are
 6 available in the fund, the office shall award the lesser of:

7 1. Five thousand dollars (\$5,000) for each pole replaced; or

8 2. Fifty percent (50%) of the total amount incurred or paid by the
 9 applicant for eligible pole replacement costs.

10 (i) Any application pending at the exhaustion of the moneys in the fund shall
 11 be deemed denied but may be refiled if sufficient moneys are later made
 12 available in the fund.

13 (j) No later than one (1) year after the fund receives moneys for the purpose of
 14 providing pole replacement reimbursements to qualified applicants, the
 15 Auditor of Public Accounts shall audit the fund and its administration by
 16 the office for compliance with the requirements of this section.

17 (k) No later than one (1) year after the exhaustion of the money in the fund, the
 18 office shall file a report with the Legislative Research Commission that
 19 identifies and examines the deployment of broadband infrastructure and
 20 technology facilitated by the eligible pole reimbursements the office has
 21 awarded under this section.

22 (5) A broadband provider's use of funds reimbursed under this subsection to pay
 23 eligible pole replacement costs shall have no effect on the subsequent ownership
 24 of any replacement pole purchases and installed by a pole owner using the funds.

25 ➔Section 6. KRS 278.5461 is amended to read as follows:

26 In addition to the definitions in KRS 278.010 and KRS 278.516(2), for KRS 278.546 to
 27 278.5462, the following definitions shall apply:

1 (1) "Broadband" ***has the same meaning as in Section 2 of this Act;*** ~~and means any~~
 2 ~~service that is used to deliver video or to provide access to the Internet and that~~
 3 ~~consists of the offering of the capability to transmit information at a rate that is~~
 4 ~~generally not less than two hundred (200) kilobits per second in at least one~~
 5 ~~direction; or any service that combines computer processing, information storage,~~
 6 ~~and protocol conversion to enable users to access Internet content and services.~~
 7 ~~Nothing in this definition shall be construed to include any intrastate service, other~~
 8 ~~than digital subscriber line service, tariffed at the commission as of July 15, 2004.]~~

9 (2) "Local exchange carrier" means any company certified by the commission to
 10 provide local exchange telecommunications service in the Commonwealth on or
 11 before June 30, 1995.

12 ➔Section 7. KRS 278.5464 is amended to read as follows:

13 (1) The General Assembly recognizes and declares:

14 (a) The provision of broadband service to residential, commercial, and industrial
 15 customers is critical to securing a sound economy and promoting the general
 16 welfare of the Commonwealth; and

17 (b) Distribution cooperatives are able to access and leverage federal funding to
 18 extend and enhance the availability of broadband service to Kentucky
 19 residents who are currently unserved~~[or underserved]~~.

20 (2) As used in this section:

21 (a) "Broadband" ***has the same meaning as in Section 2 of this Act;*** ~~means any~~
 22 ~~wireline, fixed wireless, or fixed terrestrial technology having a capacity to~~
 23 ~~transmit data from or to the Internet with a minimum speed of twenty five~~
 24 ~~(25) megabits per second downstream and three (3) megabits per second~~
 25 ~~upstream as defined by the Federal Communications Commission or the~~
 26 ~~United States Department of Agriculture and any amendments to those~~
 27 ~~definitions. If the agencies use different speed definitions, the faster speed~~

1 definition shall apply;

2 ~~(b) "Underserved area" means any project area where broadband service with a~~
 3 ~~minimum twenty five (25) megabits per second downstream and three (3)~~
 4 ~~megabits per second upstream is not available]; and~~

5 ~~(b)~~~~(c)~~ "Unserved area" **has the same meaning as in Section 2 of this**
 6 **Act**~~means any project area where broadband service with a minimum ten (10)~~
 7 ~~megabits per second downstream and one (1) megabit per second upstream is~~
 8 ~~not available].~~

9 (3) Notwithstanding any other statute to the contrary, ~~[-~~

10 ~~(a)]~~a distribution cooperative may facilitate the operation of an affiliate engaged
 11 exclusively in the provision of broadband service to unserved~~[or underserved]~~
 12 households and businesses by:

13 ~~(a)~~~~[1.]~~ **Constructing and** leasing excess capacity on any fiber optic cable **for**
 14 **broadband service which shall not require a certificate of public**
 15 **convenience and necessity under KRS 278.020, however the construction of**
 16 **fiber optic cable** used to support the distribution cooperative's **electric**
 17 distribution system **shall require a certificate of public convenience and**
 18 **necessity under KRS 278.020;**

19 ~~(b)~~~~[2.]~~ Issuing securities or evidences of indebtedness in an amount not to
 20 exceed twenty-five percent (25%) of the net book value of its assets, the
 21 proceeds of which shall be used for the exclusive purpose of capitalizing the
 22 affiliate; or

23 ~~(c)~~~~[3.]~~ Pledging up to twenty-five percent (25%) of the net book value of its
 24 assets as collateral for a loan entered into by the affiliate for the purpose of
 25 providing broadband services~~[-; and~~

26 ~~(b) The commission shall grant approval of the leasing of excess capacity, the~~
 27 ~~issuing of securities or evidences of indebtedness, or the pledging of assets~~

1 upon a finding the proposal is in the public interest.

2 ~~(4) The commission shall take into consideration the policy of encouraging the~~
 3 ~~provision of broadband service to unserved or underserved households and~~
 4 ~~businesses throughout the Commonwealth when determining whether:~~

5 ~~(a) The proposed investment will result in wasteful duplication of investment in~~
 6 ~~the case of any distribution cooperative's application for a certificate of public~~
 7 ~~convenience and necessity under KRS 278.020 that includes the construction~~
 8 ~~of a fiber optic cable system with capacity in excess of that which is necessary~~
 9 ~~to support the distribution cooperative's system under subsection (3)(a)1. of~~
 10 ~~this section; and~~

11 ~~(b) The issuance or assumption of securities or evidence of indebtedness satisfies~~
 12 ~~the criteria of KRS 278.300(3) in the case of any distribution cooperative's~~
 13 ~~application for approval of an issuance of securities or evidence of~~
 14 ~~indebtedness or pledge of assets under subsection (3)(a)2. and 3. of this~~
 15 ~~section].~~

16 ~~(4)~~~~[(5)] A distribution cooperative shall comply with the cost allocation requirements~~
 17 of:

18 (a) KRS 278.2201, 278.2203, 278.2205, 278.2207, 278.2209, and 278.2211; and

19 (b) Only KRS 278.2213(1) and (3) with regard to any costs associated with its
 20 facilitation of an affiliate's provision of broadband services.

21 ~~(5)~~~~[(6)] [Prior to December 31, 2021,]The commission shall promulgate~~
 22 administrative regulations regarding pole attachments under the commission's
 23 jurisdiction, including those necessary for the provision of broadband service.

24 ~~(6) **Before broadband services may be offered under this section, a distribution**~~
 25 ~~**cooperative shall, by resolution of the board of directors and spread upon its**~~
 26 ~~**minutes, have an economic feasibility study conducted. The feasibility study shall**~~
 27 ~~**be provided to the commission and made available to distribution cooperative**~~

1 members upon request.

2 (7) A distribution cooperative shall not allow the installation or operation of a
 3 broadband system on its electric delivery system by an affiliate or other
 4 broadband operator to diminish the reliability of the electric delivery system.

5 (8) A distribution cooperative shall not require any person to purchase broadband
 6 services from an affiliate or other broadband operator as a condition of receiving
 7 or continuing to receive electric energy from the distribution cooperative.

8 (9) A distribution cooperative shall not disconnect or threaten to disconnect its
 9 electric service to any customer due to the customer's failure to pay for
 10 broadband services provided to the customer by an affiliate or other broadband
 11 operator.

12 (10) Every distribution cooperative shall conduct an annual audit of compliance with
 13 this section, which shall be provided to the commission and made available to
 14 distribution cooperative members upon request.

15 (11) The commission shall have no jurisdiction over the creation or operation of an
 16 distribution cooperative's broadband affiliate, except as referred to in subsection
 17 (4) of this section.

18 ➔Section 8. There is hereby appropriated Federal Fund moneys from the State
 19 Fiscal Recovery Fund of the American Rescue Plan Act in the amount of \$20,000,000 in
 20 fiscal year 2022-2023 to the Rural Infrastructure Improvement Fund established in
 21 Section 5 of this Act.

22 ➔Section 9. 2021 Ky. Acts ch. 171, sec. 3, as amended by 2021 Ky. Acts ch. 196,
 23 sec. 4, is amended to read as follows:

24 (1) There is hereby appropriated Federal Funds from the Coronavirus Capital
 25 Projects Fund of the American Rescue Plan Act of 2021~~[federal funds]~~ in the amount of
 26 \$127,000,000 and Federal Funds from the State Fiscal Recovery Fund of the
 27 American Rescue Plan Act of 2021 in the amount of \$123,000,000~~[\$250,000,000]~~ in

1 fiscal year 2021-2022 to the broadband deployment fund, with no more than \$50,000,000
2 of which to be awarded before May~~April~~ 1, 2022.

3 (2) ~~[(a)]~~In addition to the appropriation in subsection (1) of this section, there is
4 hereby appropriated Federal Funds from the State Fiscal Recovery Fund of the American
5 Rescue Plan Act in the amount of \$50,000,000 in fiscal year 2020-2021. Notwithstanding
6 KRS 45.229, the Federal Fund appropriation in fiscal year 2020-2021 shall not lapse and
7 shall carry forward for use in fiscal year 2021-2022 and fiscal year 2022-2023.~~]~~

8 ~~(b) The appropriation in paragraph (a) of this subsection shall be used for projects
9 that provide broadband service in furtherance of securing economic development
10 opportunities for commercial and industrial customers, excluding the broadband service
11 provider itself.]~~

12 (3) The agency administering the broadband deployment fund shall promulgate
13 administrative regulations to ensure that~~]:~~

14 ~~(a) Related to the appropriation in subsection (1) of this section,]~~ the moneys are
15 awarded based on the ~~following]~~ criteria in subsection (9) of Section 4 of this Act~~the
16 order as listed:~~

17 ~~1. Projects in underserved areas or unserved areas where local, state, or federal
18 funds are not currently designated;~~

19 ~~2. Projects within underserved areas or unserved areas where local, state, or
20 federal broadband funds are inadequate; and~~

21 ~~3. Projects that reach the customers that are the least economical to serve;~~

22 ~~(b) Related to the appropriations in subsections (1) and (2) of this section, a
23 request for proposal shall be issued for projects;~~

24 ~~(c) Notwithstanding KRS 224A.1121(5)(f) and (10), and related to the
25 appropriations in subsections (1) and (2) of this section, projects will require:~~

26 ~~1. A private match of moneys of not less than 50 percent of the total project cost;~~

27 ~~or~~

1 ~~2.—Matching funds from a city, county, urban county government, or consolidated~~
 2 ~~local government of not less than 50 percent of the total project cost; and~~

3 ~~(d)—Related to the appropriations in subsections (1) and (2) of this section, project~~
 4 ~~scope should be for the smallest feasible geographical area.]~~

5 (4) The agency may provide incentive for timely completion and disincentive for
 6 not meeting agreed upon timeframes.

7 (5) (a) The agency administering the broadband deployment fund shall
 8 promulgate administrative regulations to develop a process for:

- 9 1. Receiving complaints related to insufficient broadband service;
- 10 2. Incorporating forms for the collection of data related to the complaints;
- 11 3. Reporting the information collected; and
- 12 4. Referring complaints to the Office of Attorney General, Federal
 13 Communications Commission, or Federal Trade Commission, as appropriate.

14 (b) The agency shall report to the Legislative Research Commission on a
 15 quarterly basis, beginning October 1, 2021, and the first day of each calendar quarter
 16 thereafter, the following information:

- 17 1. The location, by county, for each consumer complaint received related to
 18 insufficient broadband service;
- 19 2. A brief description of the complaint;
- 20 3. The broadband provider related to the complaint received;
- 21 4. The response of the broadband provider regarding the complaint received;
- 22 5. Whether the complaint was resolved to the satisfaction of the consumer; and
- 23 6. Whether a referral was made to the Office of Attorney General, Federal
 24 Communications Commission, or Federal Trade Commission.

25 ➔Section 10. Whereas it is critical to support the replacement of utility poles to
 26 facilitate and expedite the construction of broadband networks, and to address the needs of
 27 broadband investment not yet fully met by existing programs, an emergency is declared to

- 1 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
- 2 otherwise becoming a law.