### **102ND GENERAL ASSEMBLY**

## State of Illinois

## 2021 and 2022

#### HB4758

Introduced 1/27/2022, by Rep. Rita Mayfield

## SYNOPSIS AS INTRODUCED:

New Act 5 ILCS 140/7.5

Creates the Illinois Broadband Deployment, Equity, Access, and Affordability Act of 2022. Provides that access to affordable, reliable, high-speed broadband service is essential to full participation in modern life in the State and throughout the United States. Defines terms. Provides that the Department of Commerce and Economic Opportunity shall establish and implement a statewide broadband service grant program. Provides that the Department shall use money from the grant program only for the exclusive purpose of awarding grants to applicants for projects that are limited to the construction and deployment of broadband service into unserved areas in the State and for the Department's cost to administer the program. Provides that the Department shall not award grant money to a governmental entity or educational institution. Provides that the Department shall not, as a condition of an award of grant money, impose an open network architecture requirement, rate regulation, or other term or condition of service that differs from the applicant's terms or conditions of service in its other service areas. Includes provisions providing for the criteria for determining the award of funds, the information an applicant must provide for an application for a grant, the priority by which the Department shall follow in granting awards, and when the Department shall not award a grant to an applicant. Provides that when a grant is awarded, the Department shall provide notice on its website of each application receiving a grant. Provides that the Department shall require an applicant awarded a grant to submit a semi-annual report from the time the applicant receives the grant to 3 years after completion of the project. Makes a conforming change in the Freedom of Information Act. Effective immediately.

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AN ACT concerning regulation.

# Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the
Illinois Broadband Deployment, Equity, Access, and
Affordability Act of 2022.

7 Section 5. Findings. The General Assembly finds:

8 (1) that access to affordable, reliable, high-speed 9 broadband service is essential to full participation in 10 modern life in the State and throughout the United States;

11 (2) that the persistent "digital divide" in the State 12 and in the United States is a barrier to the economic 13 competitiveness in the economic distribution of essential 14 public services, including health care and education;

15 (3) that the digital divide disproportionately affects 16 communities of color, lower-income areas, and rural areas, 17 and the benefits of broadband should be broadly enjoyed by 18 all;

(4) that on November 15, 2021, the Infrastructure,
Investment and Jobs Act was signed into law by President
Biden which provides for historic levels of investment in
the nation's infrastructure, including \$65,000,000,000 to
construct and upgrade networks used to provide high-speed

internet access, as well as making permanent a program that reduces the cost to low-income consumers purchasing these services;

(5) that federal funding from the Infrastructure 4 5 Investment and Jobs Act for the construction and 6 deployment of broadband infrastructure will primarily be 7 disbursed in the form of one-time grants to states, 8 territories, tribal organizations, and other governmental 9 entities, in some instances for those entities to further 10 distribute the funding to private industry through a 11 subgrant process; and

12 (6) that in addition to the network and affordability 13 funding provisions, the Infrastructure Investment and Jobs 14 Act also establishes 2 grant programs to promote digital 15 equity, which will provide up to \$1,500,000,000 to states 16 and territories, and entities such as nonprofit 17 foundations and anchor institutions, to implement programs that promote digital equity and increase broadband 18 19 adoption.

20 Section 10. Purpose. The purpose of this Act is to enact 21 all necessary legal requirements, to adopt all required 22 policies, and to establish the exclusive processes that the 23 State will use to distribute and grant funds the State 24 receives pursuant to the federal Infrastructure Investment and 25 Jobs Act.

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Section 15. Definitions. As used in this Act:

2 "Applicant" means a provider that submits an applicant for 3 a grant after collaborating with the community in the unserved 4 area.

5 "Broadband service" means a retail service, not including 6 a satellite service, capable of delivering high-speed internet 7 access at speeds of at least 100 megabits per second 8 downstream and 20 megabits per second upstream.

9 "Department" means the Department of Commerce and Economic10 Opportunity.

11 "Deployed" means that a provider meets either of the 12 following:

(1) currently provides broadband service of at least 14 100 megabits per second download and 20 megabits per 15 second upload in the specific geographic area of the 16 proposed project of the applicant; or

(2) is able to provide broadband service of at least 17 18 100 megabits per second download and 20 megabits per 19 second upload in a specific geographic area of the 20 proposed project of the applicant to a customer that 21 requests that service not later than 30 days after the 22 customer requests installation of that service and without 23 an extraordinary commitment of resources or construction 24 charges or fees exceeding an ordinary service activation 25 fee. The 30-day period is extended to 60 days if permits

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are needed before the broadband service is activated.

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"Provider" means any of the following:

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(1) an entity that is a holder under the Cable andVideo Competition Law of 2007;

5 (2) an entity providing cable services or video 6 services in a particular area under a franchise agreement 7 with a unit of local government pursuant to Section 8 11-42-11 of the Illinois Municipal Code or Section 5-1095 9 of the Counties Code; or

10 (3) an entity currently providing broadband service in
11 this State on a commercial basis to its subscribers.

"Person" includes an individual, community organization, cooperative association, corporation, federally recognized Indian tribe, limited liability company, nonprofit corporation, partnership, or political subdivision of this State.

"Unserved area" means an area lacking access to broadband service from at least one internet service provider according to the map provided by the Federal Communications Commission pursuant to 47 USC 641, the Broadband Deployment Accuracy and Technological Availability Act.

22 Section 20. Establishment of the statewide broadband 23 service grant program. The Department shall establish and 24 implement a statewide broadband service grant program. The 25 program shall consist of all money designated, accepted, or appropriated by the State for broadband deployment, all money received from the federal government awarded to or allocated by the State for broadband deployment, and donations, gifts, and money received from any other source, including transfers from other funds or accounts.

6 Section 25. Grants exclusive to unserved areas.

7 (a) The Department shall use money from the grant program 8 only for the exclusive purpose of awarding grants to 9 applicants for projects that are limited to the construction 10 and deployment of broadband service into unserved areas in the 11 State and for the Department's costs to administer the 12 program.

(b) The Department shall not, directly or indirectly, award grant money to a governmental entity or educational institution or affiliate to own, purchase, construct, operate, or maintain a communications network, or to provide service to any residential or commercial premises.

(c) The Department shall not, as a condition of an award of grant money, impose an open network architecture requirement, rate regulation, or other term or condition of service that differs from the applicant's terms or conditions of service in its other service areas.

(d) An applicant shall not receive a grant for the same
project or geographic area for which the applicant has
obtained federal, State, or local government funding awarded

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specifically to support the expansion of broadband networks.
The Department shall not award more than \$10,000,000 to any
one project or to any one applicant. The Department shall
award initial grant money within 270 days after the money is
made available under this program.

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Section 30. Competitive grant process.

7 (a) An award of funds must be issued by a competitive grant process. The grant process must be technology neutral and 8 9 result in awards to applicants proposing projects based on 10 objective and efficient procedures. The criteria for 11 determining the award of funds must include the following:

12 (1) the applicant's experience and financial13 wherewithal;

14 (2) the readiness to build, operate, and maintain the 15 project;

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(3) the long-term viability of the project;

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(4) the scalability of the network;

(5) the applicant's ability to leverage broadband forcommunity and economic development; and

20 (6) the applicant's ability to provide discounted
21 broadband service throughout the unserved area to
22 low-income households.

23 (b) Priority must be given to projects that:

(1) demonstrate collaboration to achieve communityinvestment and economic development goals of the area

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1 impacted;

2 (2) are able to demonstrate that they have the 3 managerial, financial, and technical ability to build, 4 operate, and manage a broadband network; and

5 (3) demonstrate that the project, to the greatest 6 extent possible, hire women-owned, minority-owned, and 7 veteran-owned businesses in the construction and 8 completion of the project.

9 (c) Within 30 days after receiving an appropriation or 10 federal funding to implement this Act, the Department shall 11 establish and publish on the Department's website the criteria 12 for competitively scoring applications. Within 60 days after 13 the Department publishes the criteria, an applicant shall 14 submit an application for funding of the proposed project.

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Section 35. Application for a grant.

16 (a) An applicant for a grant under this Act shall provide17 the following information on the application:

(1) the location of the project in the unserved area described by either the specific street addresses to be served or a shapefile as that term is defined in 47 USC 641;

(2) the kind and amount of broadband infrastructure tobe purchased for the project;

(3) evidence regarding the unserved nature of thecommunity in which the project is to be located;

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1 (4) the number of households that will have access to 2 broadband service as a result of the project, or whose 3 internet access service will be upgraded to broadband 4 service as a result of the project;

5 (5) the significant community institutions that will
6 benefit from the proposed project;

(6) evidence of community support for the project with
a narrative on the impact that the investment will have on
community and economic development efforts in the area;

10 (7) the total cost of the project and a detailed11 budget and schedule for the project;

12 (8) all sources of funding or in-kind contributions13 for the project in addition to any grant award; and

14 (9) the Internet service provider's experience and 15 financial wherewithal.

(b) The applicant's trade secrets, financial information, and proprietary information submitted under this Act as part of an applicant are exempt from disclosure under the Freedom of Information Act.

(c) After scoring and considering all grant applications, the Department shall make grant award recommendations. The Department shall give priority in making grant award recommendations to applicants that demonstrate one or more of the following:

(1) collaboration to achieve community investment and
 economic development goals of an impacted area;

1 (2) the applicant has the managerial, financial, and 2 technical ability to build, operate, and manage a 3 broadband network;

4 (3) the likelihood that the unserved area will not be
5 served without State grant funding;

6 (4) the project will serve a larger unserved area or a 7 greater number of locations within an unserved area than 8 other proposed applications; and

9 (5) the ability of the applicant to commit to 10 providing at least 20% of the cost to deploy the project 11 set forth in the applicant. This commitment must consist 12 of actual capital contribution and is exclusive of in-kind 13 contributions or sunk costs.

(d) Within 30 days after the award recommendations have been made, the Department shall publish on its website the grant applications, redacted and consistent with the Freedom of Information Act, the proposed geographic broadband service area, and the proposed broadband service speeds for each application that receives an award recommendation.

(e) Before granting an award to an applicant, the Department shall establish a period of at least 60 days after the date the award recommendations are published on the Department's website, during which time the Department shall accept comments or objections concerning each application. The Department shall consider all comments or objections received, and investigate them as needed, in deciding whether an applicant is eligible for a grant. If an objection submitted by a provider contains information that requires an investigation and the objection is found to be inaccurate, the provider shall reimburse the Department for the cost of verifying the information.

6 (f) The Department shall not award a grant to an applicant 7 if information made available to the Department through 8 comments or objections received under Section 8 of this 9 Chapter or otherwise indicate any of the following:

(1) the proposed project includes an area where at
 least one provider has deployed broadband service;

12 (2) the Department receives a sworn statement from an 13 officer of an Internet service provider that the proposed 14 project includes an area where construction of a network 15 to provide broadband service is underway, and the 16 construction is scheduled to be completed within one year 17 after the date of the application; or

(3) the Department receives a sworn statement from an
officer of an Internet service provider that the proposed
project includes:

(A) a specific geographical area where an Internet 21 22 service provider has been selected to receive, 23 provisionally or otherwise, funding from the Federal Commission or the 24 Communications United States 25 Department of Agriculture specifically for the 26 expansion of broadband services. This subparagraph

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does not apply to an area once either of the following has occurred:

3 (i) the Internet service provider does not
4 complete the requirements for obtaining the
5 funding described in this subparagraph; or

6 (ii) the time period for the Internet service 7 provider to meet its obligation described in this 8 subparagraph has expired and the area remains 9 unserved; or

(B) an area where the construction of a network to
provide broadband service is to be completed no later
than 2 years after the date of an application.

13 (g) The Department's decision to award or deny a grant 14 application pursuant to this Act is a final administrative 15 decision subject to the Administrative Review Law.

16 (h) Any entity or individual affiliated with an entity 17 that has provided consulting services to or partnered with any State executive branch agency or department to conduct 18 workshops in relation to the State's policies or programs 19 20 impacting broadband service deployment, access, and 21 infrastructure, regardless of whether the consulting services 22 were provided to the State for compensation, is, for a period 23 of 2 years after the conclusion of any engagement, prohibited 24 from accepting employed or receiving compensation from any 25 grantee, and is prohibited from accepting or benefiting from 26 any grant funds awarded by the State pursuant to this Act. For

the purposes of this Act, "consulting services" do not include 1 2 advice, consultation, or participation to or with the State on grant applications to the federal government. Acknowledgment 3 of and compliance with the provisions of this Section must be 4 5 certified to in writing by the applicant and by all subcontractors of 6 subgrantees and the applicant. The 7 Department shall not consider and shall deny any grant 8 application that fails to include such written 9 acknowledgments.

Section 40. Notice on Department website. At the time a grant is awarded to an applicant, the Department shall immediately provide notice on its website of each application receiving a grant, including the name of the entity, the amount of money being received, the broadband speed, and the unserved area for which the applicant is receiving the grant.

16 Section 45. Annual reports from applicants. The Department 17 shall require an applicant awarded a grant to submit a semi-annual report from the time the applicant receives the 18 grant to 3 years after completion of the project. 19 The 20 semi-annual reports must be made available on the Department's 21 website with any proprietary information redacted. The reports must be in a format specified by the Department and give an 22 23 accounting by the applicant of the use of the money received 24 and the progress toward fulfilling the objectives for which

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1 the money was granted, including:

(1) the number and location of residences and
businesses that will have access to the broadband service;
(2) the speed of broadband service;
(3) the average price of broadband service; and
(4) the broadband service adoption rates.

Section 50. False statements. A person that files a false
statement under this Act is ineligible to receive a grant
under this Act.

Section 65. The Freedom of Information Act is amended by changing Section 7.5 as follows:

12 (5 ILCS 140/7.5)

Sec. 7.5. Statutory exemptions. To the extent provided for by the statutes referenced below, the following shall be exempt from inspection and copying:

(a) All information determined to be confidential
 under Section 4002 of the Technology Advancement and
 Development Act.

(b) Library circulation and order records identifying
 library users with specific materials under the Library
 Records Confidentiality Act.

(c) Applications, related documents, and medical
 records received by the Experimental Organ Transplantation

Procedures Board and any and all documents or other
 records prepared by the Experimental Organ Transplantation
 Procedures Board or its staff relating to applications it
 has received.

5 (d) Information and records held by the Department of 6 Public Health and its authorized representatives relating 7 to known or suspected cases of sexually transmissible 8 disease or any information the disclosure of which is 9 restricted under the Illinois Sexually Transmissible 10 Disease Control Act.

(e) Information the disclosure of which is exempted
 under Section 30 of the Radon Industry Licensing Act.

(f) Firm performance evaluations under Section 55 of
the Architectural, Engineering, and Land Surveying
Qualifications Based Selection Act.

16 (g) Information the disclosure of which is restricted 17 and exempted under Section 50 of the Illinois Prepaid 18 Tuition Act.

(h) Information the disclosure of which is exempted under the State Officials and Employees Ethics Act, and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.

(i) Information contained in a local emergency energyplan submitted to a municipality in accordance with a

1 2 local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code.

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(j) Information and data concerning the distribution of surcharge moneys collected and remitted by carriers under the Emergency Telephone System Act.

6 (k) Law enforcement officer identification information 7 or driver identification information compiled by a law 8 enforcement agency or the Department of Transportation 9 under Section 11-212 of the Illinois Vehicle Code.

10 (1) Records and information provided to a residential
11 health care facility resident sexual assault and death
12 review team or the Executive Council under the Abuse
13 Prevention Review Team Act.

14 (m) Information provided to the predatory lending 15 database created pursuant to Article 3 of the Residential 16 Real Property Disclosure Act, except to the extent 17 authorized under that Article.

(n) Defense budgets and petitions for certification of
compensation and expenses for court appointed trial
counsel as provided under Sections 10 and 15 of the
Capital Crimes Litigation Act. This subsection (n) shall
apply until the conclusion of the trial of the case, even
if the prosecution chooses not to pursue the death penalty
prior to trial or sentencing.

(o) Information that is prohibited from being
 disclosed under Section 4 of the Illinois Health and

1 Hazardous Substances Registry Act.

2 (p) Security portions of system safety program plans, 3 investigation reports, surveys, schedules, lists, data, or information compiled, collected, or prepared by or for the 4 5 Department of Transportation under Sections 2705-300 and 6 2705-616 of the Department of Transportation Law of the 7 Civil Administrative Code of Illinois, the Regional 8 Transportation Authority under Section 2.11 of the 9 Regional Transportation Authority Act, or the St. Clair 10 County Transit District under the Bi-State Transit Safety 11 Act.

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(q) Information prohibited from being disclosed by the Personnel Record Review Act.

14 (r) Information prohibited from being disclosed by the15 Illinois School Student Records Act.

(s) Information the disclosure of which is restricted
 under Section 5-108 of the Public Utilities Act.

(t) All identified or deidentified health information 18 in the form of health data or medical records contained 19 in, stored in, submitted to, transferred by, or released 20 21 from the Illinois Health Information Exchange, and 22 identified or deidentified health information in the form 23 of health data and medical records of the Illinois Health 24 Information Exchange in the possession of the Illinois 25 Information Exchange Office Health due to its 26 administration of the Illinois Health Information

Exchange. The terms "identified" and "deidentified" shall be given the same meaning as in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or any subsequent amendments thereto, and any regulations promulgated thereunder.

6 (u) Records and information provided to an independent 7 team of experts under the Developmental Disability and 8 Mental Health Safety Act (also known as Brian's Law).

9 (v) Names and information of people who have applied 10 for or received Firearm Owner's Identification Cards under 11 the Firearm Owners Identification Card Act or applied for 12 or received a concealed carry license under the Firearm Concealed Carry Act, unless otherwise authorized by the 13 14 Firearm Concealed Carry Act; and databases under the 15 Firearm Concealed Carry Act, records of the Concealed 16 Carry Licensing Review Board under the Firearm Concealed 17 Carry Act, and law enforcement agency objections under the Firearm Concealed Carry Act. 18

(v-5) Records of the Firearm Owner's Identification
 Card Review Board that are exempted from disclosure under
 Section 10 of the Firearm Owners Identification Card Act.

(w) Personally identifiable information which is
exempted from disclosure under subsection (g) of Section
19.1 of the Toll Highway Act.

(x) Information which is exempted from disclosure
 under Section 5-1014.3 of the Counties Code or Section

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1 8-11-21 of the Illinois Municipal Code.

2 Confidential information under (y) the Adult 3 Protective Services Act and its predecessor enabling statute, the Elder Abuse and Neglect Act, including 4 5 information about the identity and administrative finding against any caregiver of a verified and substantiated 6 7 decision of abuse, neglect, or financial exploitation of 8 an eligible adult maintained in the Registry established under Section 7.5 of the Adult Protective Services Act. 9

10 (z) Records and information provided to a fatality 11 review team or the Illinois Fatality Review Team Advisory 12 Council under Section 15 of the Adult Protective Services 13 Act.

14 (aa) Information which is exempted from disclosure
 15 under Section 2.37 of the Wildlife Code.

(bb) Information which is or was prohibited fromdisclosure by the Juvenile Court Act of 1987.

18 (cc) Recordings made under the Law Enforcement
19 Officer-Worn Body Camera Act, except to the extent
20 authorized under that Act.

(dd) Information that is prohibited from being
disclosed under Section 45 of the Condominium and Common
Interest Community Ombudsperson Act.

(ee) Information that is exempted from disclosure
 under Section 30.1 of the Pharmacy Practice Act.

(ff) Information that is exempted from disclosure

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under the Revised Uniform Unclaimed Property Act.

2 (gg) Information that is prohibited from being
3 disclosed under Section 7-603.5 of the Illinois Vehicle
4 Code.

5 (hh) Records that are exempt from disclosure under
6 Section 1A-16.7 of the Election Code.

7 (ii) Information which is exempted from disclosure
8 under Section 2505-800 of the Department of Revenue Law of
9 the Civil Administrative Code of Illinois.

10 (jj) Information and reports that are required to be 11 submitted to the Department of Labor by registering day 12 and temporary labor service agencies but are exempt from 13 disclosure under subsection (a-1) of Section 45 of the Day 14 and Temporary Labor Services Act.

15 (kk) Information prohibited from disclosure under the16 Seizure and Forfeiture Reporting Act.

17 (11) Information the disclosure of which is restricted
18 and exempted under Section 5-30.8 of the Illinois Public
19 Aid Code.

(mm) Records that are exempt from disclosure under
 Section 4.2 of the Crime Victims Compensation Act.

(nn) Information that is exempt from disclosure under
 Section 70 of the Higher Education Student Assistance Act.

(oo) Communications, notes, records, and reports
 arising out of a peer support counseling session
 prohibited from disclosure under the First Responders

1 Suicide Prevention Act.

(pp) Names and all identifying information relating to
an employee of an emergency services provider or law
enforcement agency under the First Responders Suicide
Prevention Act.

6 (qq) Information and records held by the Department of 7 Public Health and its authorized representatives collected 8 under the Reproductive Health Act.

9 (rr) Information that is exempt from disclosure under
10 the Cannabis Regulation and Tax Act.

11 (ss) Data reported by an employer to the Department of 12 Human Rights pursuant to Section 2-108 of the Illinois 13 Human Rights Act.

14 (tt) Recordings made under the Children's Advocacy 15 Center Act, except to the extent authorized under that 16 Act.

(uu) Information that is exempt from disclosure under
 Section 50 of the Sexual Assault Evidence Submission Act.

(vv) Information that is exempt from disclosure under
 subsections (f) and (j) of Section 5-36 of the Illinois
 Public Aid Code.

(ww) Information that is exempt from disclosure under
 Section 16.8 of the State Treasurer Act.

(xx) Information that is exempt from disclosure or
information that shall not be made public under the
Illinois Insurance Code.

- (yy) Information prohibited from being disclosed under
   the Illinois Educational Labor Relations Act.
- 3 (zz) Information prohibited from being disclosed under
  4 the Illinois Public Labor Relations Act.

(aaa) Information prohibited from being disclosed
 under Section 1-167 of the Illinois Pension Code.

7 (bbb) (ecc) Information that is prohibited from
8 disclosure by the Illinois Police Training Act and the
9 <u>Illinois</u> State Police Act.

10(ccc)(ddd)Records exempt from disclosure under11Section 2605-304 of the <u>Illinois</u> <del>Department of</del> State12Police Law of the Civil Administrative Code of Illinois.

13 <u>(ddd)</u> (bbb) Information prohibited from being 14 disclosed under Section 35 of the Address Confidentiality 15 for Victims of Domestic Violence, Sexual Assault, Human 16 Trafficking, or Stalking Act.

17 <u>(eee)</u> (ddd) Information prohibited from being
18 disclosed under subsection (b) of Section 75 of the
19 Domestic Violence Fatality Review Act.

20 (fff) Information prohibited from being disclosed
21 under subsection (b) of Section 35 of the Illinois
22 Broadband Deployment, Equity, Access, and Affordability
23 Act of 2022.

24 (Source: P.A. 101-13, eff. 6-12-19; 101-27, eff. 6-25-19;
25 101-81, eff. 7-12-19; 101-221, eff. 1-1-20; 101-236, eff.
26 1-1-20; 101-375, eff. 8-16-19; 101-377, eff. 8-16-19; 101-452,

1 eff. 1-1-20; 101-466, eff. 1-1-20; 101-600, eff. 12-6-19; 2 101-620, eff 12-20-19; 101-649, eff. 7-7-20; 101-652, eff. 3 1-1-22; 101-656, eff. 3-23-21; 102-36, eff. 6-25-21; 102-237, 4 eff. 1-1-22; 102-292, eff. 1-1-22; 102-520, eff. 8-20-21; 5 102-559, eff. 8-20-21; revised 10-5-21.)

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6 Section 99. Effective date. This Act takes effect upon 7 becoming law.