

BYLAWS
of
THE PENNSYLVANIA BROADBAND DEVELOPMENT AUTHORITY

ARTICLE I

Offices

Section 1. The principal office of the Pennsylvania Broadband Development Authority (“Authority”) shall be in the City of Harrisburg, County of Dauphin, Commonwealth of Pennsylvania. Other offices or places of business may be established whenever or wherever in the judgment of the Board of Directors of the Authority (“Board”) it may be deemed advisable.

ARTICLE II

Board

Section 1. The Authority shall be governed and its corporate powers exercised by a governing body consisting of the Board established under the Act of December 22, 2021 (P.L. 459, No. 96), 64 Pa.C.S. § 6101 *et seq.* (“Act”). Subject to the Act, other applicable laws, and these Bylaws, the Board may exercise all such powers and do all such things as may be exercised or done by the Authority, by vote at a meeting of the Board at which a quorum is present.

Section 2. The Board shall consist of the eleven (11) individuals identified in § 6112(a) and § 6112(d) of the Act.

Section 3. The members of the Board shall not be entitled to compensation for their services as members. However, the members of the Board shall be entitled to reimbursement for all necessary and reasonable expenses incurred in connection with the performance of their duties as members of the Board.

Section 4. Members of the Board shall at all times act in a manner consistent with the ethical, transparency, and fiduciary obligations set forth in § 6111(f) and § 6112(g) of the Act.

Section 5. Any action of the Board on behalf of the Authority shall satisfy the quorum and voting requirements of § 6112(c)(1) of the Act.

Section 6. The term “qualified majority” shall refer to any action by the Board that requires the affirmative vote of at least six (6) members of the Board, with at least five (5) of the affirmative votes being cast by the Secretary of the Budget and the members of the Board appointed by the four (4) legislative caucuses, or their designees, pursuant to § 6112(c)(1) of the Act. A qualified majority shall be required for: (i) adopting Bylaws, if necessary; (ii) making and executing contracts, grants, and other instruments; (iii) applying for and receiving money from any source consistent with the purposes of the Act, including letters of intent and proposals under § 6122(f) of the Act; (iv) establishing priorities for and allocating and disbursing money received consistent with the purposes of the Act; (v) establishing subcommittees composed of members of the Board or nonmembers of the Board to consult with and advise the Authority; and (vi) adopting a statewide broadband plan. A majority of the Board shall be necessary to take other action on behalf of the Authority.

ARTICLE III

Meetings

Section 1. The Board shall meet to conduct official business no less than on a quarterly basis on a schedule proposed by the Chairperson and agreed to by the Board.

Section 2. Board meetings shall be held at the office of the Authority or such other location, including exclusively on a virtual meeting platform consistent with Article X of these Bylaws, as proposed by the Chairperson and agreed to by the Board.

Section 3. Special meetings of the Board may be called by: (a) the Chairperson; (b) the Executive Director of the Authority with the approval of the Chairperson; or (c) any two (2) members of the Board with the approval of the Chairperson. Special meetings of the Board may be held at any time or place, including exclusively on a virtual meeting platform consistent with Article X of these Bylaws. Special meetings of the Board shall be held pursuant to the notice requirements imposed by these Bylaws and laws applicable to the Authority. Unless otherwise indicated in the meeting notice thereof, any and all business may be transacted at a special meeting.

Section 4. Written notice to each member of the Board shall be given at least ten (10) days before any quarterly meeting of the Board and at least two (2) days before any special meeting of the Board.

Section 5. All meetings of the Board shall be held, and public notice of such meetings shall be given, in accordance with the provisions of the Act of October 15, 1998 (P.L. 729, No. 93), 65 Pa.C.S. § 701 *et seq.*, known as the Sunshine Act.

Section 6. Six (6) members of the Board shall constitute a quorum. A quorum need not be present to recess or adjourn. Subject to the provisions of the Act, no vacancy on the Board shall impair the right of a quorum of the sitting members of the Board to exercise the powers and

perform the duties of the Authority. Subject to the provisions of § 6112(c)(1) of the Act, the action of an applicable majority of the members present and voting at a meeting of the Board at which a quorum is present shall be the action of the Board.

ARTICLE IV

Officers

Section 1. The executive officers of the Authority shall be a Chairperson, a Secretary, and an Assistant Secretary, each of whom shall be a member of the Board. The same person shall not hold more than one office.

Section 2. The Governor shall select one member of the Board to serve as Chairperson. The Chairperson shall serve at the pleasure of the Governor.

Section 3. The Secretary and Assistant Secretary shall each be elected from among the members of the Board during the first meeting of the Board after the initial adoption of these Bylaws and then on an annual basis during the first meeting of the Board in each calendar year. The Secretary and Assistant Secretary shall each serve for a term of one (1) calendar year. If the office of Secretary or Assistant Secretary becomes vacant during its term, the Board shall fill the same for the unexpired term. The Secretary and Assistant Secretary shall serve until his or her successor is elected and qualifies for the office.

Section 4. The Chairperson shall preside at all meetings of the Board. In the absence or disability of the Chairperson, whether temporary or otherwise, the Chairperson shall designate from the members of the Board (or, in the absence of any designation, the Board shall elect from its members) an Acting Chairperson to preside at its meetings or take such other action as may be necessary. Neither the Secretary nor Assistant Secretary shall be eligible to serve as Acting

Chairperson. The Chairperson or Acting Chairperson may delegate such functions as he or she may choose to the Executive Director of the Authority, subject to review by, and guidance of, the Board.

Section 5. The Chairperson may appoint members of subcommittees of the Board that may be established pursuant to § 6121(5) of the Act. The members of the Board appointed by the four (4) legislative caucuses, or their designees, pursuant to § 6112(c)(1) of the Act may serve or elect to appoint (1) member to each subcommittee if they so choose. No subcommittee may have more than eight (8) members in total.

Section 6. The Secretary shall be responsible for keeping the minutes of all meetings of the Board. The Secretary shall have charge of the seal of the Authority established by Article IX of these Bylaws, and shall affix the seal, attested by the Secretary's signature, to such instruments as may require the same. The Secretary shall have charge of the books and records of the Authority and shall perform such other duties as may be conferred from time to time by the Board.

Section 7. The Assistant Secretary shall, in the absence or disability of the Secretary, whether temporary or otherwise, carry out the duties and responsibilities of the Secretary.

ARTICLE V

Employees and Administrative Staff

Section 1. Pursuant to § 6112(e) of the Act, the Department of Community and Economic Development ("DCED") shall provide administrative services and staff, including counsel and legal staff, to the Authority and the Board. The Authority shall reimburse DCED for the cost of providing such administrative services and staff. The Authority and DCED shall enter

into an agreement specifying the rights and obligations that they have in administering their duties under the Act, including, but not limited to, the hiring of an Executive Director and other staff of the Authority and the payment of reimbursement for the cost of providing administrative services and staff.

Section 2. The Executive Director of the Authority shall, subject to the authority of the Board, have general supervision and direction of the day-to-day business affairs of the Authority. He or she shall see that all actions, decisions, orders, resolutions, rules, and regulations of the Authority are carried into effect, subject, however, to the right of the Board to delegate any powers or duties to any other individual or entity. At each meeting of the Board, or more frequently if necessary, the Executive Director shall report to the Board all substantive assignments or activities undertaken by the Executive Director.

Section 3. The Board may retain outside attorneys, accountants, auditors, and financial experts to render services and engage the services of such other advisors, consultants, and agents as necessary, with the consent of an applicable majority of the Board.

Section 4. It is the intent and goal of the Board to promote diversity in all aspects of services employed, retained, and engaged under this Article V. The Board shall work to enhance the representation and participation of diverse groups in the provision of professional services to the Board, including outside attorneys, accountants, auditors, financial experts, advisors, consultants, and agents.

ARTICLE VI

Conflicts of Interest

Section 1. A member of the Board, who in the discharge of his or her official duties would engage in conduct that constitutes a conflict of interest under the provisions of the Act of October 15, 1998 (P.L. 729, No. 93), 65 Pa.C.S. §1101 *et seq.*, known as the Public Official and Employee Ethics Act (“Ethics Act”), which results in a private pecuniary gain to the Board member, a member of his or her immediate family (parent, spouse, child, or sibling) or a business with which the Board member or a member of his or her immediate family is associated (is a director, officer, owner, employee, or has a financial interest (five percent (5%) of the equity of a for-profit business or more than five percent (5%) of the assets of the economic interest in indebtedness)), must divest him or herself of such private pecuniary gain or resign from the Board.

Section 2. A member of the Board, who in the discharge of his or her official duties would be required to vote on a matter that would result in such member of the Board having a non-pecuniary conflict of interest under the Ethics Act, shall either:

- (a) abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his or her interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever the Board would be unable to take any action on a matter before it because the number of members of the Board required to abstain from voting under the provisions of this section would make the applicable majority or other legally required vote of approval unattainable, then such members may be permitted to vote if disclosures are made as otherwise provided in the Ethics Act; or

- (b) refrain from any discussion on the matter as soon as the member of the Board is aware of the conflict, refrain from discussing the matter with the other members of the Board as soon as the Board member is aware of the conflict, and prior to any discussion on the matter to be brought to a vote before the members of the Board, recuse himself or herself and leave the room until such time as the matter creating the conflict of interest is voted on by the remaining members of the Board, the effect of which is to cause a temporary vacancy on the Board.

The preceding sentence shall not require abstention by a Board member to the extent that the professional relationship at issue took place exclusively in the course of an *ex-officio* Board member's performance of official duties for the Commonwealth of Pennsylvania.

Section 3. A member of the Board or his or her spouse or child or any business in which the member of the Board or his or her spouse or child is associated shall not enter into any contract valued at five hundred dollars (\$500.00) or more with the Authority or any subcontract valued at five hundred dollars (\$500.00) or more with any person who has been awarded a contract with the Authority, unless the contract has been awarded through an open and public process. An open and public process includes:

- (a) prior public notice of the employment or contracting possibility;
- (b) sufficient time for a reasonable and prudent competitor/applicant to be able to prepare and present an application or proposal;
- (c) public disclosure of all applications or proposals considered; and
- (d) public disclosure of the contract awarded and offered and accepted.

In such a case, the member of the Board affected shall not have any supervisory or overall responsibility for the implementation or administration of the contract.

ARTICLE VII

Indemnification of Board Members, Officers and Administrative Staff

Section 1. Each Indemnitee (as defined below) shall be indemnified and held harmless by the Authority for all actions taken by such Indemnitee and for all failures to take action (regardless of the date of any such action or failure to take action) to the fullest extent permitted by Pennsylvania law against all expense, liability, and loss (including, without limitation, attorneys' fees, judgments, fines, taxes, penalties, and amounts paid or to be paid in settlement) reasonably incurred or suffered by the Indemnitee in connection with any Proceeding as defined below. No indemnification pursuant to this Section 1 shall be made, however, in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted criminal conduct, willful misconduct, or recklessness. The right to indemnification provided in this Section 1 shall include the right to have the expenses reasonably incurred by the Indemnitee in defending any Proceeding paid by the Authority in advance of the final disposition of the Proceeding upon receipt by the Authority of a written undertaking by the Indemnitee to refund amounts so advanced if it is ultimately determined that the Indemnitee is not entitled to indemnification under this Section 1. Indemnification pursuant to this Section 1 shall continue as to an Indemnitee who has ceased to be a Board member, officer, or administrative staff member of the Authority and shall inure to the benefit of such person's legal representatives, heirs, executors, and administrators. For purposes of this Article VII,

- (a) "Indemnitee" shall mean each current or former Board member, duly appointed designee of a Board member, officer, or administrative staff member of the Authority who was or is a party to, or is threatened to be made a party to, or is otherwise involved in, any Proceeding, by reason of the fact that such person is or

- was a Board member, officer, or administrative staff member of the Authority; and
- (b) “Proceeding” shall mean any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

Section 2. Upon an Indemnitee’s receipt of notice of the commencement of any Proceeding for which such Indemnitee intends to seek indemnification under this Article VII, such Indemnitee shall give prompt written notice to the Authority (to the attention of the Executive Director), whereupon the Authority shall assume the defense of such Proceeding and shall advise such Indemnitee of the identity of counsel appointed to represent the Indemnitee. The Indemnitee may engage other counsel to participate in the defense of such Proceeding. The fees and expenses of such other counsel shall be paid by the Authority, provided that the Authority shall not be obligated to pay for such legal services in excess of the amount of six hundred dollars (\$600.00) per hour. The Authority shall have authority to settle any claim involving only monetary relief to be paid solely by the Authority. The Authority shall not settle any other claim without the prior written consent of the Indemnitee.

Section 3. To the extent that an Indemnitee has been successful on the merits or otherwise in defense of any Proceeding or in defense of any claim, issue, or matter therein, the Authority shall indemnify such person against expenses (including attorneys’ fees, but subject to the limitation in Section 2 above) actually and reasonably incurred by such person in connection therewith. If indemnification under this Article VII or advancement of expenses are not made or paid by the Authority, or on its behalf, within ninety (90) days after a written claim for indemnification or a request for an advancement of expenses by an Indemnitee has been received by the Authority, such Indemnitee may, at any time thereafter, bring suit against the Authority to recover the unpaid amount of the claim and/or the advancement of expenses. The right to

indemnification and advancement of expenses provided hereunder shall be enforceable by an Indemnitee in the Board of Claims, and if indemnification and/or advancement of expenses is obtained by an Indemnitee in whole or in part, the expenses reasonably incurred by such Indemnitee in connection with obtaining such indemnification and/or advancement of expenses shall also be indemnified by the Authority.

Section 4. The Authority may purchase and maintain insurance, at its expense, for the benefit of any person on behalf of whom insurance is permitted to be purchased by Pennsylvania law against any expense, liability, or loss, whether or not the Authority would have the power to indemnify such person under Pennsylvania law. The Authority may also purchase and maintain insurance to insure its indemnification obligations, whether arising hereunder or otherwise.

Section 5. Notwithstanding the foregoing provisions, (i) no indemnification shall be provided to the extent that an Indemnitee otherwise receives reimbursement under insurance policies or other state programs of self-insurance, and (ii) no indemnification shall be provided in cases involving any personal profit or advantage to which an Indemnitee was not legally entitled or for bodily injury, sickness, disease, or death of any person or damage or destruction of tangible personal property, including loss of use.

Section 6. The provisions of this Article VII shall constitute a contract between the Authority and each Indemnitee, which may be modified as to any Indemnitee only with that person's consent or as specifically provided in this Section 6. This Article VII may be repealed or amended without the consent of an Indemnitee for whom such repeal or amendment is adverse so long as such repeal or amendment applies to such Indemnitee only on a prospective basis and does not limit the rights of such Indemnitee to indemnification or to the advancement of expenses with respect to any action or failure to act occurring prior to the time of such repeal or amendment.

ARTICLE VIII

Liability of Members

Members of the Board shall not be liable personally on any obligations of the Authority. Members of the Board shall not be personally liable for monetary damages as a result of any action taken in good faith and in a manner they reasonably believe to be in the best interests of the Authority and with such care, including reasonable inquiry, skill, and diligence, as a person of ordinary prudence would use under similar circumstances, unless the breach or failure to perform constitutes self-dealing, willful misconduct, or recklessness; this exemption from liability shall not apply to the responsibility or liability of a member pursuant to any criminal statute or the liability of a member for the payment of taxes pursuant to local, state, or federal law.

ARTICLE IX

Seal

The corporate seal of the Authority shall be circular in form and shall have inscribed thereon the name of the Authority and the year of its creation (2021). Said seal may be used by causing it or a facsimile thereof to be impressed on, affixed to, or otherwise reproduced on any document, instrument, or other writing.

ARTICLE X

Miscellaneous

Section 1. The fiscal year of the Authority shall be the same as the fiscal year of the Commonwealth of Pennsylvania.

Section 2. All bills, notes, checks, or other instruments for the payment of money shall be signed and countersigned by the Chairperson and the Executive Director or by such officers and in such manner as from time to time may be prescribed by resolution, whether general or special, of the Board.

Section 3. All contracts and obligations of the Authority shall be signed by the Chairperson or the Executive Director of the Authority and shall be attested by the Secretary or Assistant Secretary and, if applicable, under the seal of the Authority.

Section 4. Whenever, under the provisions of these Bylaws, notice is required to be given to any member of the Board, unless otherwise specifically stated, it shall not be construed to mean personal notice, but such notice may be given via email or in writing by mail, postage prepaid, addressed to such member at such address as appears on the books of the Authority, or in default of such address, to such member at his or her official office, or in the case of a member appointed to the Authority, at his or her usual place of business, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Section 5. Any notice required to be given under these Bylaws may be waived by attendance at the meeting or in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein.

Section 6. Any or all meetings by or of the Board may be telephone and/or video meetings in which discussion takes place, either originating from an established physical site or exclusively on a virtual meeting platform, and is heard (a) by all participating Board members, and (b) by all members of the public at the physical and/or virtual meeting site. Participation by a Board member in this fashion is deemed to be full participation for purposes of a quorum.

Section 7. Decisions by the Board, made after appropriate motions which are seconded and favorably voted on by the Board, shall become effective immediately after the favorable vote is counted and acknowledged by the Chairperson or Acting Chairperson, unless otherwise stated within the motion.

ARTICLE XI

Parliamentary Authority

The rules contained in the most current edition of *Robert's Rules of Order Newly Revised* shall govern the Authority in all cases to which they are applicable and in which they are not inconsistent with the laws of the Commonwealth of Pennsylvania, these Bylaws, and any special rules of order that the Authority may adopt.

ARTICLE XII

Amendments

The Board shall have power to alter, amend, delete, cancel, suspend, or repeal the Bylaws of the Authority in whole or in part by the vote of a qualified majority of the Board, at any regular or special meeting of the Board without previous notice of such purpose, provided at least ten (10) days' notice of the purpose to alter, amend, delete, cancel, suspend, or repeal the Bylaws in whole or in part at such meeting and of the substance of the proposed action shall have been previously given to each member of the Board.