A BILL FOR AN ACT

CONCERNING BROADBAND DEPLOYMENT.

Bill Summary

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

Section 1 of the bill amends the definition of "broadband network" to increase downstream and upstream speed requirements and adds a definition of "critically unserved", which means a household or area that lacks access to at least one provider of nonsatellite broadband service delivered at measurable speeds of at least 10 megabits per second downstream and one megabit per second upstream.

Section 2 reduces the membership of the broadband deployment board (board) in the department of regulatory agencies from 16 members...
to 9 members.

The board is required to develop a reimbursement program to reimburse certain households for up to $600 per year for broadband service. A household is eligible to apply for reimbursement if the household:

- Includes children enrolled in grades K-12 who receive free or reduced-price lunch through a school’s lunch program; or
- Has an income that does not exceed the higher of the federal poverty level or 30% of area median income.

The board is also required to develop a request for proposal process through which the board will solicit bids for proposed projects to serve areas of the state that the office of information technology has determined lack access to broadband service at measurable speeds of at least 10 megabits per second downstream and one megabit per second upstream. Each year, the board is required to reserve at least 50% of the money from the high cost support mechanism that is allocated for broadband deployment to award grants to proposed projects solicited through the request for proposal process.

Section 2 also limits the notice and comment period for a local entity’s review of an application from 60 days to 30 days and removes provisions requiring the board to apply for specific types of federal funding because the board has completed those applications.

Section 2 further requires the public utilities commission, in consultation with the board, to:

- Adopt rules establishing speed testing protocols by which broadband grant applicants must abide; and
- Consider, on a biennial basis starting in 2023, whether to modify by rule the definitions of "broadband network" and "critically unserved" and certain aspects of the reimbursement program, including eligibility for reimbursement and the maximum amount of money that the board may annually reimburse a household.

Section 3 repeals the current board composition requirements on August 31, 2021.

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

**SECTION 1.** In Colorado Revised Statutes, 40-15-102, amend (3.7); and add (5.7) as follows:

**40-15-102. Definitions.** As used in this article 15, unless the context otherwise requires:
EXCEPT AS MODIFIED BY THE COMMISSION, BY RULE, PURSUANT TO SECTION 40-15-509.5 (10.8), "broadband network" means the plant, equipment, components, facilities, hardware, and software used to provide broadband internet service at measurable speeds of at least 
TWENTY-FIVE megabits per second downstream and one megabit THREE MEGABITS per second upstream or at measurable speeds at least equal to the federal communications commission's definition of high-speed internet access or broadband, whichever is faster. with:

(a) Sufficiently low latency to enable the use of real-time communications, including voice over internet protocol service; and

(b) Either no usage limits or usage limits that are reasonably comparable to those found in urban areas for the same technology.

EXCEPT AS MODIFIED BY THE COMMISSION, BY RULE, PURSUANT TO SECTION 40-15-509.5 (10.8), "CRITICALLY UNSERVED", WHEN USED TO DESCRIBE A HOUSEHOLD OR AREA, MEANS A HOUSEHOLD OR AREA THAT LACKS ACCESS TO AT LEAST ONE NONSATELLITE PROVIDER OF BROADBAND SERVICE DELIVERED AT MEASURABLE SPEEDS OF AT LEAST TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM.

SECTION 2. In Colorado Revised Statutes, 40-15-509.5, amend (5)(b), (8)(a)(I), (8)(a)(IV), (10.5), and (10.7); repeal (10.6); and add (5)(c.5), (5)(f)(II)(C), (5)(f)(III), (5)(h), (6.5), (8)(a)(V), and (10.8) as follows:


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

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

(II) (A) COMMENCING ON SEPTEMBER 1, 2021, THE BOARD CONSISTS OF NINE MEMBERS, EIGHT OF WHOM ARE VOTING MEMBERS AND ONE OF WHOM IS A NONVOTING REPRESENTATIVE OF THE OFFICE OF INFORMATION TECHNOLOGY, CREATED IN SECTION 24-37.5-103. THE MEMBERS OF THE BOARD SHALL BE SELECTED ON THE BASIS OF THEIR KNOWLEDGE OF AND INTEREST IN BROADBAND SERVICE AND SHALL SERVE FOR FOUR-YEAR TERMS. A MEMBER OF THE BOARD SHALL NOT SERVE MORE THAN TWO CONSECUTIVE FULL FOUR-YEAR TERMS; EXCEPT THAT THE LIMIT ON TERMS OF OFFICE DOES NOT APPLY TO THE BOARD MEMBER REPRESENTING THE OFFICE OF INFORMATION TECHNOLOGY.

(c.5) Commencing on September 1, 2021, no more than four members of any one major political party may serve on the board at the same time. Members of the board are entitled to seventy-five dollars per diem for attendance at official meetings plus actual and necessary expenses incurred in the conduct of official business. Voting members of the board shall be appointed by the governor as follows:

(I) Three members representing geographically diverse local entities;

(II) Three members representing the broadband industry, whom the governor shall select in a manner that ensures geographic, political, and industry diversity; and

(III) Two members of the public:

(A) One of whom resides in an unserved area of the western slope of the state; and

(B) One of whom resides in an unserved area of the eastern plains of the state.

(f) (II) (C) This subsection (5)(f)(II) is repealed, effective September 1, 2021.

(III) (A) Commencing on September 1, 2021, the board member representing the office of information technology or a board member appointed pursuant to subsection (5)(c.5)(I) or (5)(c.5)(III) of this section is not deemed to have a conflict of interest merely by virtue of residing in or representing an unserved area, a critically unserved area, or an area that is the subject of an application before the board.

(B) Commencing on September 1, 2021, a board member
APPOINTED PURSUANT TO SUBSECTION (5)(c.5)(II) OF THIS SECTION IS DEEMED TO HAVE A CONFLICT OF INTEREST WITH RESPECT TO AN APPLICATION FILED BY AN ENTITY THAT THE BOARD MEMBER REPRESENTS. IF SUCH AN APPLICATION IS FILED, THE BOARD MEMBER MAY STILL PARTICIPATE IN DISCUSSIONS ABOUT OTHER APPLICATIONS BEFORE THE BOARD BUT SHALL NOT VOTE ON THOSE OTHER APPLICATIONS.

(h) Commencing on September 1, 2021, five members of the board constitute a quorum of the board.

(6.5) (a) On or before January 1, 2022, the board shall develop a program to reimburse Colorado subscribers, at up to six hundred dollars per household per year, for access to broadband service to households that either:

(I) INCLUDE ONE OR MORE CHILDREN ENROLLED IN KINDERGARTEN THROUGH TWELFTH GRADE WHO ARE ELIGIBLE FOR FREE OR REDUCED-PRICE LUNCH PURSUANT TO THE FEDERAL "RICHARD B. RUSSELL NATIONAL SCHOOL LUNCH ACT", 42 U.S.C. sec. 1751 et seq., as amended; OR

(II) HAVE AN INCOME THAT DOES NOT EXCEED THE HIGHER OF THE FEDERAL POVERTY LEVEL OR THIRTY PERCENT OF AREA MEDIAN INCOME.

(b) A household meeting the criteria described in subsection (6.5)(a) of this section may apply to the board annually in the form and manner determined by the board to request reimbursement to cover up to one-half of the cost of broadband service, not to exceed a total reimbursement of six hundred dollars per year. A household that has received reimbursement pursuant to this subsection (6.5) must demonstrate that it still meets the criteria set forth in...
SUBSECTION (6.5)(a) OF THIS SECTION TO RECEIVE REIMBURSEMENT IN A
SUBSEQUENT YEAR.

(c) A PORTION OF THE HCSM MONEY ALLOCATED FOR
BROADBAND DEPLOYMENT SHALL BE RESERVED FOR REIMBURSEMENT
PURSUANT TO THIS SUBSECTION (6.5).

(8) The board shall direct the commission to transfer money, in a
manner consistent with this section, from the account for broadband
deployment established in the HCSM to approved grant applicants. The
board shall develop criteria for awarding money for new projects to
deploy broadband in unserved areas, including:

(a) (I) EXCEPT AS SET FORTH IN SUBSECTION (8)(a)(V) OF THIS
SECTION, developing a project application process that places the burden
on an eligible applicant to demonstrate that its proposed project meets the
project eligibility criteria established in this subsection (8), including a
requirement that the proposal concern a new project, and not a project
already in progress, and a requirement to prove that the area to be served
by the proposed project is an unserved area.

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

(V) (A) THE BOARD SHALL DEVELOP A REQUEST FOR PROPOSAL
PROCESS UNDER WHICH, EACH YEAR, THE BOARD RESERVES AT LEAST
FIFTY PERCENT OF THE HCSM MONEY ALLOCATED FOR BROADBAND
DEPLOYMENT TO AWARD GRANTS TO PROPOSED PROJECTS THAT SERVE
CRITICALLY UNSERVED AREAS IDENTIFIED BY THE OFFICE OF INFORMATION
TECHNOLOGY CREATED IN SECTION 24-37.5-103, INCLUDING ANY
CRITICALLY UNSERVED AREAS WITHIN THE BOUNDARIES OF AN INDIAN
RESERVATION LOCATED WITHIN THE STATE.

(B) ON OR BEFORE NOVEMBER 1, 2021, THE OFFICE OF
INFORMATION TECHNOLOGY SHALL DEVELOP AND SUBMIT TO THE BOARD
ONE OR MORE MAPS THAT IDENTIFY THE CRITICALLY UNSERVED AREAS
DESCRIBED IN SUBSECTION (8)(a)(V)(A) OF THIS SECTION. TO THE EXTENT
POSSIBLE, THE OFFICE OF INFORMATION TECHNOLOGY SHALL ALSO
DEVELOP AND SUBMIT TO THE BOARD A MAP THAT IDENTIFIES AREAS OF
THE STATE SERVED OR PROPOSED TO BE SERVED BY FEDERAL SOURCES OF
MONEY. ON OR BEFORE NOVEMBER 1, 2021, THE DEPARTMENT OF
TRANSPORTATION SHALL ALSO SUBMIT A MAP OR MAPS TO THE BOARD
IDENTIFYING ANY BROADBAND INFRASTRUCTURE OR EXCESS CAPACITY
THAT THE DEPARTMENT COULD LEASE FOR THE DEPLOYMENT OF
BROADBAND IN THE STATE. BASED ON THE MAPS SUBMITTED, THE BOARD
SHALL CHOOSE CRITICALLY UNSERVED AREAS FOR WHICH THE BOARD
SHALL SOLICIT PROPOSED PROJECT BIDS TO SERVE THOSE AREAS. IN
CHOOSING THE CRITICALLY UNSERVED AREAS FOR WHICH THE BOARD WILL
SOLICIT PROPOSED PROJECT BIDS, THE BOARD SHALL STRIVE TO ENSURE
GEOGRAPHIC DIVERSITY AMONG THE AREAS CHOSEN.

(C) THE BOARD, IN IMPLEMENTING THE REQUEST FOR PROPOSAL
PROCESS PURSUANT TO THIS SUBSECTION (8)(a)(V), NEED NOT COMPLY
WITH THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF TITLE 24.

(10.5) (a) The board may apply for federal funding of broadband
deployment projects and programs. The HCSM third-party contractor
shall maintain any federal money awarded for broadband deployment in
a separate account of the HCSM that is dedicated to allocating federal
broadband deployment money. The commission is authorized to disburse any money from the account as directed by the board.

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

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

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

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

(III) If the FCC grants the board's petition and awards the board auction money:

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

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

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

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

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

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

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

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

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

(A) File any additional documentation that the FCC requires of the board in considering the board's petition; and
(B) Coordinate with the FCC to develop any conditions that the
FCC might require to grant the petition.

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

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

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

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

(III) The board is authorized to coordinate with the FCC to
comply with any conditions established by the FCC in granting the
petition. If any such FCC conditions impose project eligibility,
application process, award criteria, or other requirements that are distinct
from the requirements set forth in this section or established by the board
pursuant to this section, the commission may, by rule and in consultation
with the board, establish requirements that comply with the FCC's
conditions; except that any requirements established by the commission
by rule pursuant to this subsection (10.6) must apply only to broadband
deployment projects that are eligible to receive the federal remote areas
fund money.

d) As used in this subsection (10.6):

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

(II) "Connect America fund" refers to the federal universal service
high-cost program that allows eligible telecommunications providers to
recover some of their costs from the federal government for providing
voice and broadband service in high-cost areas.

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

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

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

(10.7) The board shall make every effort to ensure that a project
funded pursuant to this section does not overbuild any project supported
or approved by the department of local affairs. IN FURTHERANCE OF THAT
EFFORT, THE DEPARTMENT OF LOCAL AFFAIRS SHALL SUBMIT TO THE
BOARD FOR ITS REVIEW AND RECOMMENDATIONS A COPY OF EACH
APPLICATION THAT THE DEPARTMENT RECEIVES IN WHICH AN APPLICANT
SEEKS GRANT MONEY FOR BROADBAND PLANNING OR INFRASTRUCTURE,
WHICH GRANTS THE DEPARTMENT AWARDS FROM THE LOCAL
GOVERNMENT MINERAL IMPACT FUND CREATED IN SECTION 34-63-102
(5)(a)(I). The board shall review each application submitted, and provide the department its recommendations regarding the application, as soon as practicable, but no later than thirty days after the department has furnished a copy of the application to the board.

(10.8) (a) On or before December 31, 2021, the commission, in consultation with the board, shall establish by rule speed testing protocols by which applicants seeking broadband grants pursuant to this section must abide.

(b) On or before September 1, 2023, and on or before September 1 every two years thereafter, the commission, in consultation with the board, shall consider whether to modify the following by rule:

(I) The measurable downstream and upstream speeds in the definition of "broadband network" set forth in section 40-15-102 (3.7). The commission may, by rule, establish downstream and upstream speeds that are faster than whichever of the following speeds are faster:

(A) The speeds set forth in section 40-15-102 (3.7); or

(B) The speeds set forth in the FCC's definition of high-speed internet access or broadband.

(II) The definition of "critically unserved" set forth in section 40-15-102 (5.7); and

(III) The reimbursement program set forth in subsection (6.5) of this section, including eligibility criteria, the maximum reimbursement amount, and the portion of the money from the HCSM allocated for broadband deployment pursuant to
SUBSECTION (3) OF THIS SECTION THAT IS RESERVED FOR REIMBURSEMENT.

(b) Nothing in this subsection (10.8) subjects broadband service providers, including incumbent providers, to regulation by the commission beyond any regulation that is otherwise required in this Article 15.

SECTION 3. In Colorado Revised Statutes, 40-15-509.5, repeal (5)(c) as follows:

40-15-509.5. Broadband service - report - broadband deployment board - broadband administrative fund - creation - definitions - rules - repeal. (5) (c) No more than eight voting members of any one major political party may serve on the board at the same time. Members of the board are entitled to seventy-five dollars per diem for attendance at official meetings plus actual and necessary expenses incurred in the conduct of official business. Members of the board shall be appointed as follows:

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

(II) Three voting members representing local entities:

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

(B) One of whom is a mayor or city councilperson, as appointed by the speaker of the house of representatives in consultation with the
Colorado municipal league; and

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

(III) Seven voting members representing the broadband industry:

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

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

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

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

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

(F) One of whom represents a competitive local exchange carrier,
as appointed by the speaker of the house of representatives; and

(G) One of whom represents a cable provider serving rural areas,
as appointed by the president of the senate; and

(IV) Two voting members of the public:

(A) One of whom resides in an unserved area of the western slope
of the state, as appointed by the speaker of the house of representatives;

and

(B) One of whom resides in an unserved area of the eastern slope
of the state, as appointed by the minority leader of the house of
representatives:
SECTION 4. Effective date. This act takes effect upon passage; except that section 3 of this act takes effect August 31, 2021.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.