

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 21-0591.01 Jennifer Berman x3286

SENATE BILL 21-060

SENATE SPONSORSHIP

Donovan,

HOUSE SPONSORSHIP

Roberts,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **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

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

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-15-102, **add** (5.7)

3 as follows:

4 **40-15-102. Definitions.** As used in this article 15, unless the
5 context otherwise requires:

1
2 (5.7) EXCEPT AS MODIFIED BY THE COMMISSION, BY RULE,
3 PURSUANT TO SECTION 40-15-509.5 (10.8), "CRITICALLY UNSERVED",
4 WHEN USED TO DESCRIBE A HOUSEHOLD OR AREA, MEANS A HOUSEHOLD
5 OR AREA THAT LACKS ACCESS TO AT LEAST ONE NONSATELLITE PROVIDER
6 OF BROADBAND SERVICE DELIVERED AT MEASURABLE SPEEDS OF AT LEAST
7 TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND
8 UPSTREAM.

9 **SECTION 2.** In Colorado Revised Statutes, 40-15-509.5, **amend**
10 **(10.5); repeal (10.6); and add (6.5) and (8)(a)(V) as follows:**

11 **40-15-509.5. Broadband service - report - broadband**
12 **deployment board - broadband administrative fund - creation -**
13 **definitions - rules - legislative declaration - short title - repeal.**

14 **(6.5) (a) ON OR BEFORE JANUARY 1, 2022, THE BOARD SHALL**
15 **DEVELOP A PROGRAM TO REIMBURSE COLORADO SUBSCRIBERS, AT UP TO**
16 **SIX HUNDRED DOLLARS PER HOUSEHOLD PER YEAR, FOR ACCESS TO**
17 **BROADBAND SERVICE TO HOUSEHOLDS THAT:**

18 **(I) INCLUDE ONE OR MORE CHILDREN ENROLLED IN KINDERGARTEN**
19 **THROUGH TWELFTH GRADE WHO ARE ELIGIBLE FOR FREE OR**
20 **REDUCED-PRICE LUNCH PURSUANT TO THE FEDERAL "RICHARD B. RUSSELL**
21 **NATIONAL SCHOOL LUNCH ACT", 42 U.S.C. SEC. 1751 ET SEQ., AS**
22 **AMENDED;**

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

25 **OR**

26 **(III) ARE LOCATED IN CRITICALLY UNSERVED AREAS OF THE STATE.**
27 **A HOUSEHOLD IS ELIGIBLE FOR REIMBURSEMENT UNDER THIS SUBSECTION**

1 (6.5)(a)(III) ONLY:

2 (A) FOR BROADBAND SERVICE PROVIDED BY A SATELLITE
3 PROVIDER;

4 (B) WITH RESPECT TO THE HOUSEHOLD'S PRIMARY RESIDENCE;
5 AND

6 (C) IF THE BOARD DETERMINES THAT BUILD-OUT OF BROADBAND
7 SERVICE IS UNLIKELY.

8 (b) A HOUSEHOLD MEETING THE CRITERIA DESCRIBED IN
9 SUBSECTION (6.5)(a) OF THIS SECTION MAY APPLY TO THE BOARD
10 ANNUALLY IN THE FORM AND MANNER DETERMINED BY THE BOARD TO
11 REQUEST REIMBURSEMENT TO COVER UP TO ONE-HALF OF THE COST OF
12 BROADBAND SERVICE, NOT TO EXCEED A TOTAL REIMBURSEMENT OF SIX
13 HUNDRED DOLLARS PER YEAR. A HOUSEHOLD THAT HAS RECEIVED
14 REIMBURSEMENT PURSUANT TO THIS SUBSECTION (6.5) MUST
15 DEMONSTRATE THAT IT STILL MEETS THE CRITERIA SET FORTH IN
16 SUBSECTION (6.5)(a) OF THIS SECTION TO RECEIVE REIMBURSEMENT IN A
17 SUBSEQUENT YEAR.

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

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

26 (a) (V) ON OR BEFORE NOVEMBER 1, 2021, THE DEPARTMENT
27 OF TRANSPORTATION SHALL SUBMIT A MAP OR MAPS TO THE BOARD

1 IDENTIFYING ANY BROADBAND INFRASTRUCTURE OR EXCESS CAPACITY
2 THAT THE DEPARTMENT COULD LEASE FOR THE DEPLOYMENT OF
3 BROADBAND IN THE STATE.

4 (10.5) (a) The board may apply for federal funding of broadband
5 deployment projects and programs. The HCSM third-party contractor
6 shall maintain any federal money awarded for broadband deployment in
7 a separate account of the HCSM that is dedicated to allocating federal
8 broadband deployment money. The commission is authorized to disburse
9 any money from the account as directed by the board.

10 (b) (I) NOTWITHSTANDING SUBSECTION (10.5)(a) OF THIS SECTION,
11 THE BOARD SHALL RECEIVE ANY FEDERAL COVID-19 FUNDING AWARDED
12 TO THE STATE FOR BROADBAND DEPLOYMENT AND SHALL EXPEND THE
13 MONEY IN ACCORDANCE WITH FEDERAL GUIDELINES FOR USE OF THE
14 MONEY, EVEN IF SUCH USE OF THE MONEY FALLS OUTSIDE THE
15 REQUIREMENTS FOR USE OF BROADBAND DEPLOYMENT GRANT MONEY SET
16 FORTH IN THIS SECTION. THE HCSM THIRD-PARTY CONTRACTOR SHALL
17 MAINTAIN ANY FEDERAL COVID-19 FUNDING AWARDED FOR BROADBAND
18 DEPLOYMENT IN A SEPARATE ACCOUNT OF THE HCSM THAT IS DEDICATED
19 TO ALLOCATING FEDERAL COVID-19 FUNDING FOR BROADBAND
20 DEPLOYMENT. THE COMMISSION IS AUTHORIZED TO DISBURSE ANY MONEY
21 FROM THE ACCOUNT AS DIRECTED BY THE BOARD.

22 (II) AS USED IN THIS SUBSECTION (10.5)(b):

23 (A) "COVID-19 PANDEMIC" MEANS THE PANDEMIC RESULTING
24 FROM THE CORONAVIRUS DISEASE 2019 CAUSED BY THE SEVERE ACUTE
25 RESPIRATORY SYNDROME CORONAVIRUS 2, ALSO KNOWN AS
26 SARS-CoV-2.

27 (B) "FEDERAL COVID-19 FUNDING" MEANS FEDERAL MONEY

1 AWARDED TO THE STATE IN RESPONSE TO, AND FOR THE PURPOSE OF
2 HELPING THE STATE RECOVER FROM, THE COVID-19 PANDEMIC.

3 (III) THIS SUBSECTION (10.5)(b) IS REPEALED, EFFECTIVE
4 SEPTEMBER 1, 2025.

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

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

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

13 ~~(B) Coordinate with the FCC to develop any conditions that the~~
14 ~~FCC might require to grant the petition.~~

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

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

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

22 ~~(IV) The board may coordinate with the FCC to comply with any~~
23 ~~conditions established by the FCC in granting the petition. If any such~~
24 ~~FCC conditions impose project eligibility, application process, award~~
25 ~~criteria, or other requirements that are distinct from the requirements set~~
26 ~~forth in this section or established by the board pursuant to this section,~~
27 ~~the commission may, by rule and in consultation with the board, establish~~

1 requirements that comply with the FCC's conditions, except that any
2 requirements established by the commission by rule pursuant to this
3 subsection (10.5)(b) must apply only to broadband deployment projects
4 that are eligible to receive auction money.

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

6 (I) ~~"Auction rules" refers to the FCC's rules in 47 CFR 54.309 to~~
7 ~~54.316, which rules concern the implementation of the connect America~~
8 ~~fund phase II auction.~~

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

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

22 (10.6) (a) (I) ~~Following the model of New York's petition for~~
23 ~~expedited waiver, the board, on or before January 1, 2019, shall petition~~
24 ~~the FCC for a waiver from the FCC's rules concerning the remote areas~~
25 ~~fund to seek FCC authorization for the board to itself allocate remote~~
26 ~~areas fund money for broadband deployment projects in Colorado.~~

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

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

3 (B) ~~Coordinate with the FCC to develop any conditions that the~~
4 ~~FCC might require to grant the petition.~~

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

8 (c) ~~If the FCC grants the board's petition:~~

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

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

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

1 ~~(d) As used in this subsection (10.6):~~

2 ~~(I) "Auction rules" refers to the FCC's rules in 47 CFR 54.309 to~~
3 ~~54.316, which rules concern the implementation of the connect America~~
4 ~~fund phase II auction.~~

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

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

14 ~~(IV) "New York's petition for expedited waiver" refers to a~~
15 ~~petition that the state of New York filed with the FCC seeking a waiver~~
16 ~~from the FCC's auction rules, which waiver the FCC granted on January~~
17 ~~26, 2017.~~

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

21 ~~== =====~~
22 ~~==~~

23 **SECTION 3. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, or safety.