A BILL FOR AN ACT

CONCERNING THE BROADBAND DEPLOYMENT BOARD, AND, IN CONNECTION THEREWITH, MODIFYING THE COMPOSITION OF THE BOARD, REQUIRING THE BOARD TO DEVELOP A REQUEST FOR PROPOSAL PROCESS FOR DEPLOYING BROADBAND INTO CRITICALLY UNSERVED AREAS IN THE STATE, AND REQUIRING THE BOARD TO GIVE ADDITIONAL CONSIDERATION TO PROPOSED PROJECTS THAT WOULD INCLUDE DISCOUNTED SERVICE FOR LOW-INCOME HOUSEHOLDS.

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

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.)
Sections 1 and 3 of the bill exempt certain mapping data submitted to the office of information technology (office) from public disclosure under the "Colorado Open Records Act".

Section 2 adds a definition of "critically unserved", which means a household or area that lies outside municipal boundaries and 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, and a definition of "office of information technology".

Section 3 reduces the membership of the broadband deployment board (board) in the department of regulatory agencies from 16 members to 11 members.

The board is 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 has determined lack access to broadband service at measurable speeds of at least 10 megabits per second downstream and one megabit per second upstream. The board is required to reserve at least 75% 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 3 also directs the board to:

- Require an applicant or appellant to submit a speed test performed on an incumbent provider's network and conducted in accordance with industry-standard speed-test protocols;
- Give additional consideration to proposed projects that would give discounted service for low-income households;
- Contractually require an applicant receiving a grant award to:
  - Report annually on the number of homes and businesses served by the grant-supported broadband network, the number of homes and businesses expected to be served in the following year, and the speeds, rates, and services offered to customers through the grant-supported broadband network; and
  - Provide third-party certification, after the grant money has been fully expended, that the project meets the original design of, and provides the measurable speeds, rates, and services set forth in, the application.
- Require an applicant or appellant to submit to the office, in a form and manner determined by the office, certain
granular mapping data.

Section 4 repeals the current board composition requirements on August 31, 2021.

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

SECTION 1. In Colorado Revised Statutes, 24-72-202, add (6)(b)(XV) as follows:

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(6)(b) "Public records" does not include:

(XV) GRANULAR COVERAGE DATA, AS DEFINED IN AND SUBMITTED TO THE OFFICE OF INFORMATION TECHNOLOGY PURSUANT TO SECTION 40-15-509.5 (8)(l).

SECTION 2. In Colorado Revised Statutes, 40-15-102, amend (17.5); and add (5.7) and (19.7) as follows:

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

(5.7) "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 EITHER AT LEAST TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM OR AT MEASURABLE SPEEDS AT LEAST EQUAL TO ONE-HALF OF THE MINIMUM MEASURABLE SPEEDS THAT QUALIFY AS BROADBAND UNDER THE FCC DEFINITION AND ROUNDED UP TO THE NEAREST WHOLE NUMBER, WHICHEVER IS FASTER.

(17.5) (a) "Local entity" means elected members of a county or municipal government OR THE ELECTED MEMBERS OF A METROPOLITAN
DISTRICT THAT LIES WHOLLY WITHIN THE UNINCORPORATED PART OF A COUNTY.

(b) For purposes of this subsection (17.5):

(I) "METROPOLITAN DISTRICT" HAS THE MEANING SET FORTH IN SECTION 32-1-103 (10); AND

(II) "Municipal government" means a home rule or statutory city, town, or city and county or a territorial charter city.

(19.7) "OFFICE OF INFORMATION TECHNOLOGY" OR "OFFICE" MEANS THE OFFICE OF INFORMATION TECHNOLOGY CREATED IN SECTION 24-37.5-103.

SECTION 3. In Colorado Revised Statutes, 40-15-509.5, amend (5)(b), (8)(a)(II)(B), (8)(d)(II), (8)(e)(IV), (8)(e)(V), (8)(k)(III), and (10.5); repeal (10.6); and add (5)(c.5), (5)(f)(II)(C), (5)(f)(III), (5)(h), (8)(a)(V), (8)(a)(VI), (8)(a)(VII), (8)(e)(VI), (8)(k)(V), (8)(k)(VI), and (8)(l) as follows:

40-15-509.5. Broadband service - report - broadband deployment board - broadband administrative fund - creation - definitions - repeal. (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 ELEVEN 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; EXCEPT THAT THE LIMIT ON TERMS OF OFFICE
DOES NOT APPLY TO THE BOARD MEMBER REPRESENTING THE OFFICE OF
INFORMATION TECHNOLOGY.

(B) AN APPOINTING AUTHORITY MAY APPOINT A BOARD MEMBER
SEATED ON THE BOARD ON AUGUST 31, 2021, TO CONTINUE SERVING THE
BOARD ON AND AFTER SEPTEMBER 1, 2021, FOR THE REMAINDER OF THE
BOARD MEMBER'S EXISTING TERM AS OF AUGUST 31, 2021, IF THE BOARD
MEMBER MEETS THE BOARD MEMBERSHIP CRITERIA SET FORTH IN
SUBSECTION (5)(c.5) OF THIS SECTION AND THE BOARD MEMBER'S
CONTINUED MEMBERSHIP ON THE BOARD DOES NOT ENLARGE THE
MEMBERSHIP OF THE BOARD AUTHORIZED UNDER SUBSECTION
(5)(b)(II)(A) OF THIS SECTION. IF OTHERWISE ELIGIBLE FOR
REAPPOINTMENT, THE BOARD MEMBER MAY BE APPOINTED FOR AN
ADDITIONAL TERM AFTER SEPTEMBER 1, 2021. THIS SUBSECTION
(5)(b)(II)(B) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2025.

(c.5) COMMENCING ON SEPTEMBER 1, 2021, NO MORE THAN FIVE
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) ONE VOTING MEMBER FROM THE OFFICE OF INFORMATION
TECHNOLOGY APPOINTED BY THE GOVERNOR;

(II) THREE VOTING MEMBERS REPRESENTING LOCAL ENTITIES:
(A) One of whom is a county commissioner from the eastern plains of the state, appointed by the president of the senate;

(B) One of whom is a county commissioner from the western slope of the state, appointed by the speaker of the house of representatives; and

(C) One of whom represents a rural city or town as a mayor or city councilperson, as appointed by the governor. As used in this subsection (5)(c.5)(II)(C), "rural" has the meaning set forth in section 24-32-3603 (3)(a).

(III) Five voting members representing the broadband industry:

(A) One of whom represents a wireless provider, appointed by the president of the senate;

(B) One of whom represents a wireline provider, appointed by the speaker of the house of representatives;

(C) One of whom represents a broadband satellite provider, appointed by the minority leader of the house of representatives;

(D) One of whom represents a cable provider, appointed by the minority leader of the senate; and

(E) One of whom represents a rural wireline provider, appointed by the minority leader 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, appointed by the governor; and

(B) One of whom resides in an unserved area of the
EASTERN PLAINS OF THE STATE, APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

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

(III) (A) Commencing on September 1, 2021, a board member appointed pursuant to subsection (5)(c.5)(I), (5)(c.5)(II), or (5)(c.5)(IV) 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)(III) 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; however, if such 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, six members of the board constitute a quorum of the board.

(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)(II) To prove that the area to be served is an unserved area, the applicant;

(B) May submit to the board either the written certification of a
local entity as described in subsection (8)(a)(III) of this section OR A
STATISTICALLY REPRESENTATIVE NUMBER OF SPEED TESTS PERFORMED IN
ACCORDANCE WITH SUBSECTION (8)(a)(VII) OF THIS SECTION.

(V) (A) The board shall develop a request for proposal
process under which, for each calendar year, the board reserves
up to sixty 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, including any critically unserved areas within the
boundaries of an Indian reservation located within the state.

(B) At the end of each calendar year, any of the reserved
money not awarded through the request for proposal process
remains available for distribution through the existing grant
application process.

(C) All application and appeal processes and criteria set
forth in this subsection (8) apply to the request for proposal
process; except that the requirement to prove that an area to be
served by a proposed project is an unserved area as set forth in
subsection (8)(a)(I) of this section does not apply and subsections
(8)(a)(II), (8)(a)(III), (8)(b), and (8)(c.5) of this section do not apply.
Subsection (8)(d)(II) of this section only applies to the request
for proposal process in the limited manner indicated in that
subsection.

(D) The board, in implementing the request for proposal
process, need not comply with the "Procurement Code", articles
101 to 112 of title 24.

(E) This subsection (8)(a)(V) is repealed, effective January
On or before November 1, 2021, the Office of Information Technology shall develop and submit to the Board one or more maps identifying the critically unserved areas in the state. The board shall utilize the maps submitted when reviewing any application or appeal pursuant to this section.

With regard to the request for proposal process set forth in subsection (8)(a)(V) of this section, 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.

If an applicant filing an application or an appellant filing an appeal pursuant to subsection (8)(j)(III) of this section submits, as part of the application or appeal, a speed test performed on an incumbent provider’s network, the speed test shall be performed in accordance with industry-standard speed-test protocols as identified by the FCC.

(d) Ensuring that a proposed project includes:

(II) Independent funding secured for at least twenty-five percent of the total cost of the proposed project; except that the board may authorize a proposed project awarded grant money pursuant to subsection (8)(a)(V) of this section to secure a lesser amount of independent funding if the proposed project meets the criteria set forth in this subsection (8) and the amount of independent
FUNDING SECURED IS THE HIGHEST AMOUNT OF INDEPENDENT FUNDING
PROPOSED AMONG MULTIPLE PROPOSALS TO SERVE THE AREA TO BE
SERVED BY THE PROPOSED PROJECT; and

(e) Providing additional consideration for proposed projects that
include at least some of the following factors:

(IV) Proposed projects for which the applicant has an established
record of operation in the area of the grant application; and

(V) Proposed projects providing last-mile broadband service,
which is defined as the portion of broadband service that delivers an
internet connection to an end user that lacks access to broadband service
at measurable speeds greater than fifty-six kilobits per second; AND

(VI) PROPOSED PROJECTS THAT PROVIDE DISCOUNTED BROADBAND
SERVICE TO LOW-INCOME HOUSEHOLDS.

(k) Establishing reporting and accountability requirements for a
project receiving financial support from the fund, including contractual
requirements that:

(III) The applicant demonstrate an ability to complete the
proposed project within a reasonable time, not to exceed two years, unless
delayed by a government entity; and

(V) THE APPLICANT, ON AN ANNUAL BASIS UNTIL THE GRANT
MONEY HAS BEEN FULLY EXPENDED, REPORT TO THE BOARD ON THE
FOLLOWING:

(A) THE NUMBER OF HOMES AND BUSINESSES THAT THE
APPLICANT'S GRANT-SUPPORTED BROADBAND NETWORK SERVES;

(B) THE NUMBER OF ADDITIONAL HOMES AND BUSINESSES THAT
THE APPLICANT EXPECTS TO SERVE THROUGH THE GRANT-SUPPORTED
BROADBAND NETWORK WITHIN THE FOLLOWING YEAR; AND
(C) The speed tiers, advertised rates, and services that
the applicant offers to customers through the grant-supported
broadband network, including speed tiers, rates, and other
services that the applicant offers to low-income households;
and

(VI) The applicant, after the grant money has been fully
expended, provide third-party performance-testing
certification, based on FCC-approved performance-testing
protocols, that the project meets the original design of, and
provides the measurable speeds, rates, and services set forth in,
the application.

(I) (I) Commencing in the grant funding cycle that begins
immediately after the effective date of this subsection (8)(I),
requiring an applicant, or an appellant filing an appeal pursuant
to subsection (8)(j)(III) of this section, to submit, in the form and
manner determined by the Office of Information Technology or,
if the FCC adopts regulations requiring the submission of
granular coverage data, in the form and manner required by the
FCC, granular coverage data to the Office of Information
technology. If the FCC adopts such regulations, the office shall
not impose any granular coverage data submission requirements
that are more onerous than the requirements set forth in the
FCC's regulations. Upon request of the board, the office shall
inform the board if an applicant has submitted the granular
coverage data in accordance with this subsection (8)(I).

(II) Granular coverage data submitted pursuant to this
subsection (8)(I) is not a public record as defined in, and is not
SUBJECT TO PUBLIC DISCLOSURE UNDER THE "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

(III) AS USED IN THIS SUBSECTION (8)(l), "GRANULAR COVERAGE DATA" MEANS MAPPING DATA PRESENTED IN THE FORM OF A COVERAGE POLYGON OR LOCATION COORDINATES THAT REFLECTS:

(A) THE MAXIMUM DOWNLOAD AND UPLOAD SPEEDS AVAILABLE IN EACH AREA;

(B) THE TECHNOLOGY USED TO PROVIDE THE SERVICE; AND

(C) A DIFFERENTIATION AMONG RESIDENTIAL-ONLY, BUSINESS-ONLY, AND RESIDENTIAL-AND-BUSINESS BROADBAND SERVICES.

(10.5)(a) The board may apply for or otherwise receive federal funding of broadband deployment projects and programs. If the board receives any federal funding, the board shall utilize the request for proposal process established under subsection (8)(a)(V) of this section to distribute the federal funds as soon as practicable, so long as such process complies with federal requirements for use of the funds.

(b) 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:

(f) 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.

SECTION 4. 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.

(C) (Deleted by amendment, L. 2018.)

SECTION 5. Effective date - applicability. This act takes effect
upon passage and applies to applications filed on or after the effective
date of this act; except that section 4 of this act takes effect August 31,
2021.

SECTION 6. 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.