

CHAPTER 362

GOVERNMENT - STATE

SENATE BILL 08-215

BY SENATOR(S) Schwartz, Bacon, Gibbs, Groff, Hagedorn, Morse, Penry, Romer, Shaffer, Tapia, Taylor, Tupa, Veiga, Wiens, Williams, and Windels;
also REPRESENTATIVE(S) Riesberg, Curry, and McFadyen.

AN ACT

CONCERNING BROADBAND TELECOMMUNICATIONS SERVICE, AND, IN CONNECTION THEREWITH, DIRECTING THE STATE'S CHIEF INFORMATION OFFICER TO CREATE AN INVENTORY OF BROADBAND SERVICE AREAS, AUTHORIZING THE PUBLIC UTILITIES COMMISSION TO ESTABLISH A FUNDING MECHANISM TO HELP DEFRAY THE COST OF PREPARING THE INVENTORY, AND MAKING AN APPROPRIATION IN THEREFOR.

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

SECTION 1. 24-37.5-106, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-37.5-106. Chief information officer - duties and responsibilities - broadband inventory fund created - repeal. (3) Broadband service areas - planning documents - statewide map. (a) (I) THE CHIEF INFORMATION OFFICER, WORKING IN CONSULTATION WITH THE GOVERNOR'S INNOVATION COUNCIL AND OTHER PUBLIC AND PRIVATE ENTITIES, SHALL IDENTIFY BROADBAND SERVICE AREAS WITHIN COLORADO, WITH THE GOAL OF CREATING AND MAINTAINING A GEOGRAPHICALLY BASED STATEWIDE INVENTORY OF AVAILABLE BROADBAND SERVICES.

(II) **Scope of inquiry.** THE INVENTORY SHALL INCLUDE, BUT IS NOT LIMITED TO:

(A) AN ILLUSTRATIVE STATEWIDE MAP TO HELP BROADBAND PROVIDERS AND POLICYMAKERS BETTER UNDERSTAND THE CURRENT AVAILABILITY OF BROADBAND SERVICE THROUGHOUT THE STATE. THE MAP SHALL INCLUDE ALL AVAILABLE BROADBAND TECHNOLOGIES, INCLUDING WIRED, WIRELESS, AND SATELLITE-DELIVERED SERVICES.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(B) THE POTENTIAL USE OF ENTERPRISE ZONES IN THE DEVELOPMENT OF RURAL BROADBAND SERVICE;

(C) THE NEED FOR ADDITIONAL INFRASTRUCTURE TO REACH LOCATIONS IN WHICH POTENTIAL BROADBAND CUSTOMERS ARE FOUND; AND

(D) NONPROPRIETARY DEMOGRAPHIC INFORMATION.

(b) **Confidentiality.** THE INVENTORY SHALL NOT DISCLOSE PROPRIETARY INFORMATION. PRIVATE ENTITIES SUBMITTING DATA IN CONNECTION WITH PREPARATION OF THE INVENTORY SHALL BE REQUIRED TO PROVIDE ONLY INFORMATION THAT IS RELEVANT TO THE INVENTORY AND MAINTAINED IN THE NORMAL COURSE OF BUSINESS. ANY INFORMATION DESIGNATED BY THE PROVIDING ENTITY AS CONFIDENTIAL OR PROPRIETARY SHALL BE TREATED AS SUCH UNDER SECTION 24-72-204 (3) AND, UPON REQUEST, THE CHIEF INFORMATION OFFICER SHALL ENTER INTO APPROPRIATE NONDISCLOSURE AGREEMENTS REGARDING SUCH INFORMATION.

(c) THE CHIEF INFORMATION OFFICER OR HIS OR HER DESIGNEE SHALL HOLD AT LEAST FOUR PUBLIC MEETINGS TO SOLICIT AND RECEIVE COMMENTS, INCLUDING WRITTEN COMMENTS, FROM MEMBERS OF THE PUBLIC. THE CHIEF INFORMATION OFFICER MAY DETERMINE THE MANNER IN WHICH SUCH COMMENTS ARE RECEIVED.

(d) IN PREPARING THE INVENTORY PURSUANT TO THIS SUBSECTION (3), THE CHIEF INFORMATION OFFICER:

(I) SHALL CONSIDER ANY COMMENTS RECEIVED FROM THE GENERAL PUBLIC AS WELL AS WRITTEN COMMENTS FROM AFFECTED COUNTIES, CITIES, PROVIDERS OF BROADBAND SERVICE AND THEIR CUSTOMERS, ENVIRONMENTAL GROUPS, AND OTHER INTERESTED STAKEHOLDERS;

(II) MAY EMPLOY OR CONTRACT WITH ONE OR MORE PRIVATE CONTRACTORS OR CONSULTANTS FOR RESEARCH, COMPILATION, PUBLICATION, DISTRIBUTION, OR OTHER DUTIES; AND

(III) SHALL EMPLOY OR CONTRACT WITH ONE OR MORE PRIVATE CONTRACTORS OR CONSULTANTS FOR THE PURPOSE OF COLLECTING INVENTORY INFORMATION AND OTHER PROPRIETARY INFORMATION, SUBJECT TO APPROPRIATE NONDISCLOSURE AGREEMENTS, AND COLLABORATING WITH THE CHIEF INFORMATION OFFICER AND HIS OR HER DESIGNEES IN PREPARATION OF THE INVENTORY.

(e) THE INVENTORY SHALL BE COMPLETED ON OR BEFORE APRIL 1, 2009, AND MADE AVAILABLE TO THE GENERAL ASSEMBLY IN ACCORDANCE WITH SECTION 24-1-136 (9). IN ADDITION, THE CHIEF INFORMATION OFFICER SHALL PUBLISH, ON A PUBLICLY AVAILABLE WEB SITE, THE AGGREGATE DATA ON WHICH THE INVENTORY IS BASED.

(f) **Funding.** (I) THE OFFICE OF INFORMATION TECHNOLOGY MAY ACCEPT ALLOCATIONS FROM THE HIGH COST SUPPORT MECHANISM CREATED PURSUANT TO SECTION 40-15-208, C.R.S., IF NECESSARY, AS WELL AS PRIVATE GIFTS, GRANTS, AND DONATIONS, FOR THE PURPOSE OF IMPLEMENTING THIS SUBSECTION (3). ANY SUCH

GIFTS, GRANTS, AND DONATIONS SHALL BE HELD IN THE BROADBAND INVENTORY FUND, ALSO REFERRED TO IN THIS SECTION AS THE "FUND", WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND SHALL ALSO CONSIST OF MONEYS APPROPRIATED AND TRANSFERRED TO THE FUND. EARNINGS FROM INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND. MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED TO THE CHIEF INFORMATION OFFICER FOR THE PURPOSE OF IMPLEMENTING THIS SUBSECTION (3).

(II) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE OFFICE OF INFORMATION TECHNOLOGY SOLICIT GIFTS, GRANTS, AND DONATIONS FROM ALL AVAILABLE SOURCES FOR THE PURPOSES OF THIS SECTION, ONLY DRAWING UPON THE HIGH COST SUPPORT MECHANISM PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (f) AS A LAST RESORT, AND THAT NO GENERAL FUND MONEYS BE USED TO PAY FOR THE IMPLEMENTATION OF THIS SUBSECTION (3).

(III) ON OR BEFORE SEPTEMBER 1, 2008, THE CHIEF INFORMATION OFFICER SHALL ESTIMATE THE AMOUNT NECESSARY TO FINANCE THE IMPLEMENTATION OF THIS SUBSECTION (3). IF, BY THAT TIME, MONEYS IN THE FUND CREATED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) DO NOT EQUAL OR EXCEED THAT AMOUNT, THE PUBLIC UTILITIES COMMISSION SHALL DIRECT PAYMENTS OF UP TO ONE HUNDRED THOUSAND DOLLARS INTO THE FUND FROM THE HIGH COST SUPPORT MECHANISM CREATED IN SECTION 40-15-208 (3), C.R.S.

(g) **Repeal.** THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1, 2009.

SECTION 2. 24-72-204 (3) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions. (3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(XX) ALL PROPRIETARY INFORMATION SUBMITTED BY A PROVIDER OF BROADBAND SERVICE IN CONNECTION WITH THE BROADBAND INVENTORY AUTHORIZED BY SECTION 24-37.5-106 (3).

SECTION 3. 40-15-208 (1) and (2) (a), Colorado Revised Statutes, are amended to read:

40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation. (1) ~~All moneys remaining in the Colorado high cost fund as of July 1, 1998, and not previously encumbered by the commission for payment to providers of telecommunications service shall be transferred to the Colorado high cost administration fund created in subsection (3) of this section.~~

(2) (a) (I) The commission is hereby authorized to establish a mechanism for the support of universal service, also referred to in this section as the "high cost support

mechanism", which shall operate in accordance with rules adopted by the commission. The PRIMARY purpose of the high cost support mechanism is to provide financial assistance to local exchange providers to help make basic local exchange service affordable and allow such providers to be fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and the price charged for such service, after taking into account any amounts received by such providers under price support mechanisms established by the federal government and by this state. THE HIGH COST SUPPORT MECHANISM MAY ALSO BE USED, TO THE EXTENT NECESSARY, TO SUPPLEMENT ANY GIFTS, GRANTS, AND DONATIONS RECEIVED PURSUANT TO SECTION 24-37.5-106 (3) (f), C.R.S., IN ASSISTING THE OFFICE OF INFORMATION TECHNOLOGY IN PREPARING THE STATEWIDE INVENTORY OF AVAILABLE BROADBAND SERVICES AS PROVIDED IN SECTION 24-37.5-106(3), C.R.S.

(II) The commission shall ensure that no local exchange provider is receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to customers of such provider. The high cost support mechanism shall be supported and distributed equitably and on a nondiscriminatory, competitively neutral basis through a rate element assessed on all telecommunications service providers in Colorado.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the broadband inventory fund created in section 24-37.5-106 (3) (f) (I), Colorado Revised Statutes, not otherwise appropriated, to the office of the governor, for allocation to the office of information technology, to create an inventory of broadband service areas within the state, for the fiscal year beginning July 1, 2008, the sum of twenty-one thousand dollars (\$21,000) and 0.1 FTE, or so much thereof as may be necessary, for the implementation of this act.

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, and safety.

Approved: June 2, 2008