

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee Members  
FROM JBC Staff  
DATE February 21, 2018  
SUBJECT JBC Bill Drafts and Memos

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This memo includes the following bill draft for the Committees consideration.

- JBC Bill #12 - LLS 18-1004 “Concerning the Manner in which Money is Appropriated from the Healthcare Affordability and Sustainability Fee Cash Fund.” (Eric Kurtz)
- JBC Bill #32&33 – LLS 18-0857 “Concerning Broadband Deployment into Unserved Areas of the State, and, in connection therewith, making an Appropriation.” (Vance Roper)

Additionally the Committee will be discussing the following bills from the Anytime Potential Bill List:

- Potential Bill #30 – Stationary Sources Fund Fee Adjustment (Tom Dermody)
- Potential Bill #46
- Potential Bill #58

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

DRAFT  
2.15.18

DRAFT

LLS NO. 18-1004.01 Jason Gelender x4330

COMMITTEE BILL

Joint Budget Committee

**BILL TOPIC:** "Healthcare Afford & Sustain Fee Cash Fund Approps"

**A BILL FOR AN ACT**

101 **CONCERNING THE MANNER IN WHICH MONEY IS APPROPRIATED FROM**  
102 **THE HEALTHCARE AFFORDABILITY AND SUSTAINABILITY FEE**  
103 **CASH FUND.**

**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/>.)*

**Joint Budget Committee.** Current law specifies that money in the healthcare affordability and sustainability fee cash fund is continuously appropriated to the Colorado healthcare affordability and sustainability enterprise for specified healthcare related purposes. Beginning with state fiscal year 2018-19, the bill makes the expenditure of money from the

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

fund by the enterprise subject to annual appropriation by the general assembly.

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

2           **SECTION 1.** In Colorado Revised Statutes, 25.5-4-402.4, **amend**  
3 (5)(b) introductory portion as follows:

4           **25.5-4-402.4. Hospitals - healthcare affordability and**  
5 **sustainability fee - legislative declaration - Colorado healthcare**  
6 **affordability and sustainability enterprise - federal waiver - fund**  
7 **created - rules. (5) Healthcare affordability and sustainability fee**  
8 **cash fund. (b)** All money in the fund is subject to federal matching as  
9 authorized under federal law ~~and is continuously appropriated to~~ AND,  
10 SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY, SHALL  
11 BE EXPENDED BY the enterprise for the following purposes:

12           **SECTION 2. Effective date.** This act takes effect July 1, 2018.

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

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

DRAFT  
2.9.18

DRAFT

LLS NO. 18-0857.01 Jennifer Berman x3286

COMMITTEE BILL

Joint Budget Committee

**BILL TOPIC:** "Broadband Support Mechanism & Deployment Board"

**A BILL FOR AN ACT**

101 **CONCERNING BROADBAND DEPLOYMENT INTO UNSERVED AREAS OF**  
102 **THE STATE, AND, IN CONNECTION THEREWITH, MAKING AN**  
103 **APPROPRIATION.**

**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/>.)*

**Joint Budget Committee.** To support universal access to broadband service, **section 2** of the bill requires the public utilities commission (commission) to establish a broadband support mechanism and to require each telecommunications provider that provides certain data services in the state to charge and collect a data surcharge from its

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Dashes through the words indicate deletions from existing statute.*

customers in the state, which money will go into the broadband support mechanism. The commission shall direct a third-party contractor maintaining the broadband support mechanism to disburse money from the mechanism to broadband deployment grant applicants approved by the broadband deployment board (board).

**Sections 3 and 4** move the board from the department of regulatory agencies to the office of economic development within the office of the governor. Section 4 also:

- Allows public-private partnerships to apply for broadband deployment grant awards;
- Allows nonprofit entities to apply for broadband deployment grant awards for an unserved area if for-profit entities and public-private partnerships have not applied for broadband deployment grant awards in that area. A local government entity may so apply only if the local government entity has been authorized to provide or offer broadband service by a vote of the people served by the local government entity at an election or by statutory exemption.
- Allows an incumbent provider to exercise a right of first refusal to implement a project for an unserved area only if the incumbent provider submitted an application for a proposed project for the unserved area in the same grant cycle that another applicant submitted an application for the unserved area. An incumbent provider exercising a right of first refusal is required to complete its proposed project within one year after another applicant submitted a proposed project for the area and is required to provide demonstrated downstream and upstream speeds equal to or greater than, and costs equal to or less than, the speeds and costs indicated in the other applicant's proposed project.
- Requires the board, on or before September 1, 2018, to establish a reverse auction process for granting broadband deployment grant awards.

**Section 8** appropriates \$8 million from the general fund to the broadband deployment board for the purpose of making broadband deployment grant awards.

**Sections 1, 2, and 7** make conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, 40-15-102, **amend**  
3 the introductory portion; and **repeal** (6.7) as follows:

1           **40-15-102. Definitions.** As used in this ~~article~~ ARTICLE 15, unless  
2 the context otherwise requires:

3           (6.7) "~~Eligible applicant~~" means ~~an applicant seeking grant~~  
4 ~~funding for a proposed broadband project under section 40-15-509.5 with~~  
5 ~~a sufficient business track record to indicate that the applicant's~~  
6 ~~operations will be sustainable after receiving infrastructure support under~~  
7 ~~section 40-15-509.5. The term is limited to for-profit entities, except that~~  
8 ~~a nonprofit telephone cooperative, including its affiliates and subsidiaries,~~  
9 ~~or a nonprofit rural electric association that existed on May 10, 2014,~~  
10 ~~qualifies as an "eligible applicant". The term is not limited to a current~~  
11 ~~recipient of high cost support mechanism funds.~~

12           **SECTION 2.** In Colorado Revised Statutes, 40-15-208, **amend**  
13 (2)(a)(I)(B), (2)(a)(III), and (3)(a); and **add** (2.5) as follows:

14           **40-15-208. High cost support mechanism - Colorado high cost**  
15 **administration fund - broadband support mechanism - creation -**  
16 **purpose - operation - rules - report - repeal.** (2) (a) (I) The  
17 commission is hereby authorized to establish a mechanism for the support  
18 of universal service, also referred to in this section as the "high cost  
19 support mechanism", which must operate in accordance with rules  
20 adopted by the commission. The primary purpose of the high cost support  
21 mechanism is to provide financial assistance as a support mechanism to:

22           (B) Provide access to broadband service through broadband  
23 networks in unserved areas pursuant to section ~~40-15-509.5~~ **24-48.5-403**  
24 only.

25           (III) The commission, at its regularly scheduled meetings to  
26 establish the high cost support mechanism surcharge and surcharge rate  
27 shall reduce the amount of the high cost support mechanism surcharge by

1 the following percentages of the new broadband funds allocated in that  
2 year pursuant to section ~~40-15-509.5 (3)~~ **24-48.5-403 (2)** from the high  
3 cost support mechanism ACCOUNT DEDICATED TO BASIC VOICE SERVICE  
4 to the HIGH COST SUPPORT MECHANISM ACCOUNT DEDICATED TO  
5 broadband fund, ~~created in section 40-15-509.5 (4)~~ DEPLOYMENT:

- 6 (A) In years 2016 and 2017, five percent;
- 7 (B) In years 2018 and 2019, ten percent;
- 8 (C) In years 2020 and 2021, fifteen percent; and
- 9 (D) In years 2022 and 2023, twenty percent.

10 (2.5) (a) IN ORDER TO SUPPORT UNIVERSAL ACCESS TO  
11 BROADBAND SERVICE IN ACCORDANCE WITH SECTIONS 40-15-502 (5) AND  
12 24-48.5-403, THE COMMISSION SHALL CREATE A BROADBAND SUPPORT  
13 MECHANISM CONSISTING OF THE MONEY COLLECTED FROM THE DATA  
14 SURCHARGE IMPOSED BY TELECOMMUNICATIONS PROVIDERS IN  
15 ACCORDANCE WITH SUBSECTION (2.5)(b)(I) OF THIS SECTION. THE  
16 THIRD-PARTY CONTRACTOR THAT MAINTAINS THE HIGH COST SUPPORT  
17 MECHANISM SHALL MAINTAIN THE BROADBAND SUPPORT MECHANISM. THE  
18 COMMISSION SHALL DIRECT THE THIRD-PARTY CONTRACTOR TO DISBURSE  
19 MONEY FROM THE BROADBAND SUPPORT MECHANISM TO BROADBAND  
20 DEPLOYMENT GRANT APPLICANTS APPROVED BY THE BROADBAND  
21 DEPLOYMENT BOARD IN ACCORDANCE WITH SECTION 24-48.5-403 (6).

22 (b) (I) THE COMMISSION SHALL REQUIRE EACH  
23 TELECOMMUNICATIONS PROVIDER OFFERING THE FOLLOWING DATA  
24 SERVICES IN COLORADO TO CHARGE AND COLLECT A DATA SURCHARGE  
25 FROM THE PROVIDER'S CUSTOMERS:

- 26 (A) ETHERNET;
- 27 (B) DIGITAL SUBSCRIBER LINE;

1 (C) BROADBAND INTERNET SERVICE;  
2 (D) DIAL-UP INTERNET ACCESS;  
3 (E) IP-ENABLED SERVICE;  
4 (F) VOIP SERVICE; AND  
5 (G) DATA SERVICES PROVIDED THROUGH COMMERCIAL MOBILE  
6 RADIO SERVICE, INCLUDING INTERNET ACCESS, TEXT MESSAGING, VIDEO  
7 MESSAGING, AND IP-ENABLED SERVICE APPLICATIONS.

8 (II) THE SURCHARGE AMOUNT THAT A PROVIDER CHARGES ITS  
9 CUSTOMERS PURSUANT TO SUBSECTION (2.5)(b)(I) OF THIS SECTION IS  
10 BASED ON THE SURCHARGE RATE ESTABLISHED BY THE COMMISSION IN  
11 ACCORDANCE WITH SUBSECTION (2.5)(c) OF THIS SECTION.

12 (c) THE COMMISSION SHALL INITIALLY ESTABLISH THE SURCHARGE  
13 RATE FOR THE BROADBAND SUPPORT MECHANISM AT TWO AND SIX-TENTHS  
14 PERCENT. THE COMMISSION, AT ITS REGULARLY SCHEDULED MEETINGS TO  
15 ESTABLISH THE HIGH COST SUPPORT MECHANISM SURCHARGE AND  
16 SURCHARGE RATE, SHALL SET THE BROADBAND SUPPORT MECHANISM  
17 SURCHARGE RATE AT THE SAME SURCHARGE RATE ESTABLISHED FOR THE  
18 HIGH COST SUPPORT MECHANISM.

19 (d) THE COMMISSION, IN COLLABORATION WITH THE BROADBAND  
20 DEPLOYMENT BOARD, SHALL DETERMINE THE AMOUNT OF MONEY  
21 REQUIRED TO COVER THE DIRECT AND INDIRECT ADMINISTRATIVE COSTS  
22 OF THE COMMISSION AND THE BROADBAND DEPLOYMENT BOARD WITH  
23 RESPECT TO BROADBAND DEPLOYMENT. IN DETERMINING THE AMOUNT OF  
24 MONEY REQUIRED TO COVER THEIR DIRECT AND INDIRECT  
25 ADMINISTRATIVE COSTS, THE COMMISSION, IN COLLABORATION WITH THE  
26 BROADBAND DEPLOYMENT BOARD, SHALL DETERMINE THE PERCENTAGE  
27 OF ADMINISTRATIVE COSTS TO BE ALLOCATED FROM THE BROADBAND



1 SUPPORT MECHANISM AND THE PERCENTAGE TO BE ALLOCATED FROM THE  
2 HIGH COST SUPPORT MECHANISM. BASED ON THE PERCENTAGES  
3 DETERMINED, THE COMMISSION SHALL DIRECT THE THIRD-PARTY  
4 ADMINISTRATOR TO ALLOCATE MONEY FROM THE BROADBAND SUPPORT  
5 MECHANISM TO THE COLORADO HIGH COST ADMINISTRATION FUND,  
6 CREATED IN SUBSECTION (3) OF THIS SECTION, AND THE BROADBAND  
7 ADMINISTRATIVE FUND, CREATED IN SECTION 24-48.5-403 (3).

8 (e) THE COMMISSION, IN COLLABORATION WITH THE BROADBAND  
9 DEPLOYMENT BOARD, MAY PROMULGATE RULES CONCERNING THE  
10 BROADBAND SUPPORT MECHANISM AND THE DATA SURCHARGE  
11 ESTABLISHED IN THIS SUBSECTION (2.5).

12 (f) THIS SUBSECTION (2.5) IS REPEALED, EFFECTIVE SEPTEMBER 1,  
13 2024. BEFORE ITS REPEAL, THIS SUBSECTION (2.5) IS SCHEDULED FOR  
14 REVIEW IN ACCORDANCE WITH SECTION 24-34-104.

15 (3) (a) There is hereby created, in the state treasury, the Colorado  
16 high cost administration fund, referred to in this section as the "fund",  
17 which shall be used to reimburse the commission and its contractors for  
18 reasonable expenses incurred in the administration of the high cost  
19 support mechanism AND THE BROADBAND SUPPORT MECHANISM,  
20 including administrative costs incurred in association with broadband  
21 service, as determined by rules of the commission. The general assembly  
22 shall appropriate annually the ~~moneys~~ MONEY in the fund that ~~are~~ IS to be  
23 used for the direct and indirect administrative costs incurred by the  
24 commission and its contractors. At the end of any fiscal year, all  
25 unexpended and unencumbered ~~moneys~~ MONEY in the fund ~~remain~~  
26 REMAINS in the fund and shall not be credited or transferred to the general  
27 fund or any other fund. Based upon the high cost support mechanism, THE

1 BROADBAND SUPPORT MECHANISM, the balance remaining in the fund, and  
2 the amount appropriated annually by the general assembly for use by the  
3 commission, each year the commission shall determine BOTH the  
4 nondiscriminatory, competitively neutral HIGH COST SUPPORT MECHANISM  
5 assessment on all telecommunications service providers in Colorado AND  
6 THE NONDISCRIMINATORY, COMPETITIVELY NEUTRAL BROADBAND  
7 SUPPORT MECHANISM ASSESSMENT ON ALL TELECOMMUNICATIONS  
8 SERVICE PROVIDERS IN COLORADO THAT PROVIDE DATA SERVICES IN  
9 ACCORDANCE WITH SUBSECTION (2.5)(b)(I) OF THIS SECTION that will be  
10 necessary to cover the cost of implementing and administering the high  
11 cost support mechanism AND THE BROADBAND SUPPORT MECHANISM.  
12 Only the ~~moneys~~ MONEY from the ~~assessment~~ ASSESSMENTS for  
13 administering the high cost support mechanism AND THE BROADBAND  
14 SUPPORT MECHANISM shall be transmitted to the state treasurer, who shall  
15 credit the same to the fund. All interest derived from the deposit and  
16 investment of ~~moneys~~ MONEY in the fund ~~remain~~ REMAINS in the fund and  
17 ~~do~~ DOES not revert to the general fund.

18 **SECTION 3.** In Colorado Revised Statutes, **repeal** 40-15-509.5.

19 **SECTION 4.** In Colorado Revised Statutes, 24-34-104, **amend**  
20 (25)(a)(VI) as follows:

21 **24-34-104. General assembly review of regulatory agencies**  
22 **and functions for repeal, continuation, or reestablishment - legislative**  
23 **declaration - repeal.** (25) (a) The following agencies, functions, or both,  
24 are scheduled for repeal on September 1, 2024:

25 (VI) The functions of the broadband deployment board created in  
26 section ~~40-15-509.5~~, regarding the administration of the broadband fund  
27 ~~created in section 40-15-509.5~~ 24-48.5-403 AND THE BROADBAND

1 SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION 40-15-208  
2 (2.5);

3 **SECTION 5.** In Colorado Revised Statutes, 24-48.5-101, **amend**  
4 (4); and **add** (2)(i) as follows:

5 **24-48.5-101. Colorado office of economic development -**  
6 **creation - duties - report.** (2) The Colorado office of economic  
7 development shall:

8 (i) OVERSEE THE BROADBAND DEPLOYMENT BOARD, CREATED IN  
9 PART 4 OF THIS ARTICLE 48.5.

10 (4) The Colorado office of economic development shall provide  
11 staff support for the gateway computer network AND THE BROADBAND  
12 DEPLOYMENT BOARD.

13 **SECTION 6.** In Colorado Revised Statutes, **add with amended**  
14 **and relocated provisions** part 4 to article 48.5 of title 24 as follows:

15 PART 4

16 BROADBAND DEPLOYMENT BOARD

17 **24-48.5-401. Short title.** THE SHORT TITLE OF THIS PART 4 IS THE  
18 "CONNECT COLORADO TO ENHANCE ECONOMIC DEVELOPMENT,  
19 TELEHEALTH, EDUCATION, AND SAFETY ACT".

20 **24-48.5-402. Definitions.** AS USED IN THIS PART 4, UNLESS THE  
21 CONTEXT OTHERWISE REQUIRES:

22 (1) "BOARD" MEANS THE BROADBAND DEPLOYMENT BOARD  
23 CREATED IN SECTION 24-48.5-403.

24 (2) "BROADBAND" OR "BROADBAND SERVICE" HAS THE MEANING  
25 SET FORTH IN SECTION 40-15-102 (3.3).

26 (3) "BROADBAND INTERNET SERVICE" HAS THE MEANING SET  
27 FORTH IN SECTION 40-15-102 (3.5).

1 (4) "BROADBAND NETWORK" HAS THE MEANING SET FORTH IN  
2 SECTION 40-15-102 (3.7).

3 (5) "BROADBAND SUPPORT MECHANISM" OR "BSM" MEANS THE  
4 BROADBAND SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION  
5 40-15-208 (2.5).

6 (6) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION  
7 CREATED IN SECTION 40-2-101.

8 (7) "COMPETITIVE LOCAL EXCHANGE CARRIER" HAS THE MEANING  
9 SET FORTH IN SECTION 40-15-102 (5.5).

10 (8) (a) "ELIGIBLE APPLICANT" MEANS AN APPLICANT SEEKING  
11 GRANT FUNDING FOR A PROPOSED BROADBAND PROJECT, WHICH  
12 APPLICANT HAS A SUFFICIENT BUSINESS TRACK RECORD TO INDICATE THAT  
13 THE APPLICANT'S OPERATIONS WILL BE SUSTAINABLE AFTER RECEIVING  
14 INFRASTRUCTURE SUPPORT UNDER SECTION 24-48.5-403.

15 (b) THE TERM "ELIGIBLE APPLICANT":

16 (I) IS NOT LIMITED TO FOR-PROFIT ENTITIES AND MAY INCLUDE A  
17 LOCAL GOVERNMENT ENTITY THAT, BY VOTE OF THE PEOPLE AT AN  
18 ELECTION PURSUANT TO SECTION 29-27-201 OR AS EXEMPTED PURSUANT  
19 TO SECTION 29-27-202, IS AUTHORIZED TO PROVIDE OR OFFER TO PROVIDE  
20 ADVANCED SERVICE, AS THAT TERM IS DEFINED IN SECTION 29-27-102 (1);  
21 AND

22 (II) MAY INCLUDE PUBLIC-PRIVATE PARTNERSHIPS.

23 (9) "HIGH COST SUPPORT MECHANISM" OR "HCSM" MEANS THE  
24 HIGH COST SUPPORT MECHANISM ESTABLISHED PURSUANT TO SECTION  
25 40-15-208.

26 (10) "INCUMBENT PROVIDER" HAS THE MEANING SET FORTH IN  
27 SECTION 40-15-102 (9.5).

1 (11) "LOCAL ENTITY" HAS THE MEANING SET FORTH IN SECTION  
2 40-15-102 (17.5).

3 (12) "LOCAL EXCHANGE CARRIER" HAS THE MEANING SET FORTH  
4 IN SECTION 40-15-102 (18).

5 (13) "OFFICE" MEANS THE COLORADO OFFICE OF ECONOMIC  
6 DEVELOPMENT CREATED IN SECTION 24-48.5-101.

7 (14) "UNSERVED AREA" HAS THE MEANING SET FORTH IN SECTION  
8 40-15-102 (32).

9 **24-48.5-403. Broadband service - definition - report -**  
10 **broadband deployment board - broadband administrative fund -**  
11 **creation - repeal. [Formerly 40-15-509.5]** (1) THE GENERAL ASSEMBLY  
12 HEREBY FINDS, DETERMINES, AND DECLARES THAT TO PROMOTE THE STATE  
13 POLICY OF PROVIDING UNIVERSAL ACCESS TO BROADBAND SERVICE, AS SET  
14 FORTH IN SECTION 40-15-502 (5), IT MAY BE NECESSARY TO PROVIDE  
15 FINANCIAL ASSISTANCE THROUGH ADDITIONAL SUPPORT MECHANISMS IF  
16 COMPETITION FOR LOCAL EXCHANGE SERVICES FAILS TO DELIVER  
17 BROADBAND SERVICE THROUGHOUT THE STATE. "ADVANCED SERVICE"  
18 INCLUDES "BROADBAND SERVICE" FOR PURPOSES OF THIS SECTION ONLY.

19 (2) THE COMMISSION MAY ALLOCATE THE HIGH COST SUPPORT  
20 MECHANISM AND THE BROADBAND SUPPORT MECHANISM FOR THE  
21 DEPLOYMENT OF BROADBAND SERVICE IN UNSERVED AREAS OF THE STATE.  
22 THE COMMISSION MAY FUND THE DEPLOYMENT OF BROADBAND SERVICE  
23 IN UNSERVED AREAS OF THE STATE THROUGH USE OF THE HCSM  
24 SURCHARGE AND SURCHARGE RATE IN EFFECT ON MAY 10, 2014, AND THE  
25 SURCHARGE AND SURCHARGE RATE ESTABLISHED FOR THE BSM.  
26 PURSUANT TO SUBSECTION (3) OF THIS SECTION AND CONSISTENT WITH  
27 SECTIONS 40-15-207 AND 40-15-208, THE COMMISSION SHALL DETERMINE

1 FUNDS AVAILABLE FOR BROADBAND DEPLOYMENT AND THE  
2 ADMINISTRATION OF THE BOARD ONLY FROM THE HCSM MONEY THAT IT  
3 DETERMINES IS NO LONGER REQUIRED BY THE HCSM TO SUPPORT  
4 UNIVERSAL BASIC SERVICE THROUGH AN EFFECTIVE COMPETITION  
5 DETERMINATION AND FROM THE BSM. THE HCSM MONEY AVAILABLE  
6 FOR BROADBAND DEPLOYMENT SHALL BE MAINTAINED BY THE HCSM  
7 THIRD-PARTY CONTRACTOR AND HELD IN A SEPARATE ACCOUNT FROM  
8 MONEY USED FOR BASIC VOICE SERVICE. HCSM MONEY HELD FOR  
9 BROADBAND DEPLOYMENT SHALL NOT BE DISBURSED FOR BASIC VOICE  
10 SERVICE, AND MONEY HELD FOR BASIC VOICE SERVICE SHALL NOT BE  
11 DISBURSED FOR BROADBAND DEPLOYMENT. THE COMMISSION SHALL ONLY  
12 DISBURSE MONEY FOR BROADBAND DEPLOYMENT GRANTS FROM THE  
13 HCSM OR FROM THE BSM AS DIRECTED BY THE BOARD. NOTHING IN THIS  
14 SECTION INCREASES ANY SURCHARGE RATE CHARGED TO HELP FUND THE  
15 HCSM OR THE BSM.

16 (3) THERE IS HEREBY CREATED IN THE STATE TREASURY THE  
17 BROADBAND ADMINISTRATIVE FUND, REFERRED TO IN THIS SECTION AS  
18 THE "FUND". THE FUND CONSISTS OF ALL MONEY ALLOCATED FROM THE  
19 HCSM OR THE BSM FOR THE ADMINISTRATION OF THE BOARD AND ALL  
20 MONEY THAT THE GENERAL ASSEMBLY MAY APPROPRIATE TO THE FUND.  
21 THE MONEY IN THE FUND IS SUBJECT TO ANNUAL APPROPRIATION BY THE  
22 GENERAL ASSEMBLY FOR THE PURPOSES SET FORTH IN THIS SECTION. ALL  
23 INTEREST EARNED FROM THE INVESTMENT OF MONEY IN THE FUND IS  
24 CREDITED TO THE FUND. ALL MONEY NOT EXPENDED AT THE END OF THE  
25 FISCAL YEAR REMAINS IN THE FUND AND DOES NOT REVERT TO THE  
26 GENERAL FUND OR ANY OTHER FUND.

27 (4) (a) THERE IS HEREBY CREATED IN THE OFFICE THE BROADBAND

1 DEPLOYMENT BOARD. THE BOARD IS AN INDEPENDENT BOARD CREATED TO  
2 IMPLEMENT AND ADMINISTER THE DEPLOYMENT OF BROADBAND SERVICE  
3 IN UNSERVED AREAS FROM THE FUND. THE OFFICE SHALL STAFF THE  
4 BOARD. THE BOARD HAS THE POWERS AND DUTIES SPECIFIED IN THIS  
5 SECTION.

6 (b) THE BOARD CONSISTS OF SIXTEEN MEMBERS. THE MEMBERS OF  
7 THE BOARD SHALL BE SELECTED ON THE BASIS OF THEIR KNOWLEDGE OF  
8 AND INTEREST IN BROADBAND SERVICE AND SHALL SERVE FOR FOUR-YEAR  
9 TERMS; EXCEPT THAT, OF THE MEMBERS FIRST APPOINTED TO THE BOARD,  
10 EIGHT MEMBERS SHALL SERVE FOR TERMS OF TWO YEARS, AND EIGHT  
11 MEMBERS SHALL SERVE FOR TERMS OF FOUR YEARS. A MEMBER OF THE  
12 BOARD SHALL NOT SERVE MORE THAN TWO CONSECUTIVE FULL FOUR-YEAR  
13 TERMS.

14 (c) NO MORE THAN EIGHT MEMBERS OF ANY ONE MAJOR POLITICAL  
15 PARTY MAY SERVE ON THE BOARD AT THE SAME TIME. MEMBERS OF THE  
16 BOARD ARE ENTITLED TO SEVENTY-FIVE DOLLARS PER DIEM FOR  
17 ATTENDANCE AT OFFICIAL MEETINGS PLUS ACTUAL AND NECESSARY  
18 EXPENSES INCURRED IN THE CONDUCT OF OFFICIAL BUSINESS. MEMBERS  
19 OF THE BOARD SHALL BE APPOINTED AS FOLLOWS:

20 (I) ONE MEMBER FROM THE COMMISSION; ONE MEMBER FROM THE  
21 OFFICE; ONE MEMBER FROM THE DEPARTMENT OF LOCAL AFFAIRS,  
22 CREATED IN SECTION 24-1-125; AND ONE MEMBER FROM THE OFFICE OF  
23 INFORMATION TECHNOLOGY, CREATED IN SECTION 24-37.5-103, AS  
24 APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL DETERMINE WHICH  
25 THREE OF THESE FOUR BOARD MEMBERS WILL SERVE AS VOTING MEMBERS  
26 OF THE BOARD. THE FOURTH PERSON WILL SERVE AS A NONVOTING  
27 MEMBER OF THE BOARD.

1 (II) THREE VOTING MEMBERS REPRESENTING LOCAL ENTITIES:

2 (A) ONE OF WHOM IS A COUNTY COMMISSIONER, AS APPOINTED BY  
3 THE PRESIDENT OF THE SENATE IN CONSULTATION WITH COLORADO  
4 COUNTIES, INC.;

5 (B) ONE OF WHOM IS A MAYOR OR CITY COUNCILPERSON, AS  
6 APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES IN  
7 CONSULTATION WITH THE COLORADO MUNICIPAL LEAGUE; AND

8 (C) ONE OF WHOM IS ANY OTHER REPRESENTATIVE OF A LOCAL  
9 ENTITY, AS APPOINTED BY THE MINORITY LEADER OF THE SENATE;

10 (III) SIX VOTING MEMBERS REPRESENTING THE BROADBAND  
11 INDUSTRY:

12 (A) ONE OF WHOM REPRESENTS A WIRELESS PROVIDER, AS  
13 APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF  
14 REPRESENTATIVES;

15 (B) ONE OF WHOM REPRESENTS A WIRELINE PROVIDER, AS  
16 APPOINTED BY THE MINORITY LEADER OF THE SENATE;

17 (C) ONE OF WHOM REPRESENTS A BROADBAND SATELLITE  
18 PROVIDER, AS APPOINTED BY THE GOVERNOR;

19 (D) ONE OF WHOM REPRESENTS A CABLE PROVIDER, AS APPOINTED  
20 BY THE PRESIDENT OF THE SENATE;

21 (E) ONE OF WHOM REPRESENTS A RURAL LOCAL EXCHANGE  
22 CARRIER, AS APPOINTED BY THE GOVERNOR; AND

23 (F) ONE OF WHOM REPRESENTS A COMPETITIVE LOCAL EXCHANGE  
24 CARRIER, AS APPOINTED BY THE SPEAKER OF THE HOUSE OF  
25 REPRESENTATIVES;

26 (IV) THREE VOTING MEMBERS OF THE PUBLIC:

27 (A) ONE OF WHOM RESIDES IN AN UNSERVED AREA OF THE



1 WESTERN SLOPE OF THE STATE, AS APPOINTED BY THE PRESIDENT OF THE  
2 SENATE;

3 (B) ONE OF WHOM RESIDES IN AN UNSERVED AREA OF THE  
4 EASTERN SLOPE OF THE STATE, AS APPOINTED BY THE MINORITY LEADER  
5 OF THE HOUSE OF REPRESENTATIVES; AND

6 (C) ONE OF WHOM RESIDES IN AN UNSERVED URBAN AREA OF THE  
7 STATE, AS APPOINTED BY THE SPEAKER OF THE HOUSE OF  
8 REPRESENTATIVES.

9 (d) THE BOARD SHALL MEET AS OFTEN AS NECESSARY TO CARRY  
10 OUT ITS DUTIES AS DEFINED IN THIS SECTION.

11 (e) THE TERM OF ANY MEMBER OF THE BOARD WHO MISSES MORE  
12 THAN TWO CONSECUTIVE REGULAR BOARD MEETINGS WITHOUT GOOD  
13 CAUSE SHALL BE TERMINATED, AND HIS OR HER SUCCESSOR SHALL BE  
14 APPOINTED IN THE MANNER PROVIDED FOR APPOINTMENTS UNDER THIS  
15 SECTION.

16 (f) IF A BOARD MEMBER HAS A CONFLICT OF INTEREST WITH  
17 RESPECT TO ANY MATTER ADDRESSED BY THE BOARD, INCLUDING A  
18 FINANCIAL INTEREST IN THE MATTER, THE MEMBER SHALL RECUSE  
19 HIMSELF OR HERSELF FROM ANY DISCUSSION OR DECISIONS ON THE  
20 MATTER.

21 (5) THE BOARD SHALL DIRECT THE COMMISSION TO TRANSFER  
22 MONEY, IN A MANNER CONSISTENT WITH THIS SECTION, FROM THE  
23 ACCOUNT FOR BROADBAND DEPLOYMENT ESTABLISHED IN THE HCSM OR  
24 FROM THE BSM TO APPROVED GRANT APPLICANTS. THE BOARD SHALL  
25 DEVELOP CRITERIA FOR AWARDING MONEY FOR NEW PROJECTS EXPANDING  
26 BROADBAND NETWORKS INTO UNSERVED AREAS, INCLUDING:

27 (a) UNTIL THE BOARD DEVELOPS A REVERSE AUCTION PROCESS IN

1 ACCORDANCE WITH SUBSECTION (8) OF THIS SECTION, DEVELOPING A  
2 PROJECT APPLICATION PROCESS THAT PLACES THE BURDEN ON AN ELIGIBLE  
3 APPLICANT TO DEMONSTRATE THAT ITS PROPOSED PROJECT MEETS THE  
4 PROJECT ELIGIBILITY CRITERIA ESTABLISHED IN THIS SUBSECTION (5),  
5 INCLUDING A REQUIREMENT THAT THE PROPOSAL CONCERN A NEW  
6 PROJECT, AND NOT A PROJECT ALREADY IN PROGRESS, AND A  
7 REQUIREMENT TO PROVE THAT THE AREA TO BE SERVED BY THE PROPOSED  
8 PROJECT IS AN UNSERVED AREA. TO PROVE THAT THE AREA TO BE SERVED  
9 IS AN UNSERVED AREA, THE APPLICANT MUST SUBMIT A MAP  
10 DEMONSTRATING THE INSUFFICIENT AVAILABILITY OF BROADBAND  
11 SERVICE IN THE AREA. THE APPLICANT MUST SUBMIT THE APPLICATION  
12 AND MAP TO: THE BOARD; THE BOARD OF COUNTY COMMISSIONERS, CITY  
13 COUNCIL, OR OTHER LOCAL ENTITY WITH AUTHORITY OVER THE AREA TO  
14 BE SERVED; AND AN INCUMBENT PROVIDER. THE BOARD SHALL ESTABLISH  
15 A NOTICE AND COMMENT PERIOD OF AT LEAST SIXTY DAYS WITHIN WHICH  
16 THE LOCAL ENTITY MAY REVIEW AND COMMENT ON THE APPLICATION.

17 (b) DEVELOPING A METHODOLOGY FOR DETERMINING WHETHER A  
18 PROPOSED PROJECT WILL SERVE UNSERVED AREAS;

19 (c) MINIMIZING CONFLICTS WITH, OR DUPLICATION OF, FEDERAL  
20 SOURCES OF HIGH COST SUPPORT OR FEDERAL BROADBAND GRANTS SO AS  
21 TO MAXIMIZE THE TOTAL AVAILABLE STATE AND FEDERAL SUPPORT FOR  
22 RURAL BROADBAND DEVELOPMENT;

23 (d) ENSURING THAT A PROPOSED PROJECT INCLUDES:

24 (I) ACCESS TO A BROADBAND NETWORK;

25 (II) INDEPENDENT FUNDING SECURED FOR AT LEAST TWENTY-FIVE  
26 PERCENT OF THE TOTAL COST OF THE PROPOSED PROJECT; AND

27 (III) A REQUIREMENT TO UTILIZE ANY AWARD GRANTED FROM THE

1 FUND FOR INFRASTRUCTURE PURPOSES ONLY AND NOT FOR OPERATIONS;

2 (e) PROVIDING ADDITIONAL CONSIDERATION FOR PROPOSED  
3 PROJECTS THAT INCLUDE AT LEAST SOME OF THE FOLLOWING FACTORS:

4 (I) PROPOSED PROJECTS THAT ARE ENDORSED BY LOCAL ENTITIES  
5 INTERESTED IN OBTAINING BROADBAND INTERNET SERVICE IN UNSERVED  
6 AREAS OF THE STATE;

7 (II) PROPOSED PROJECTS THAT HAVE DOWNSTREAM AND  
8 UPSTREAM SPEEDS IN EXCESS OF THE MINIMUM REQUIRED UNDER SECTION  
9 40-15-102 (3.7);

10 (III) PROPOSED PROJECTS FOR WHICH THE APPLICANT HAS AN  
11 ESTABLISHED RECORD OF OPERATION IN THE AREA OF THE GRANT  
12 APPLICATION; AND

13 (IV) PROPOSED PROJECTS PROVIDING LAST-MILE BROADBAND  
14 SERVICE, WHICH IS DEFINED AS THE PORTION OF BROADBAND SERVICE  
15 THAT DELIVERS AN INTERNET CONNECTION TO AN END USER THAT LACKS  
16 ACCESS TO BROADBAND SERVICE AT MEASURABLE SPEEDS GREATER THAN  
17 FIFTY-SIX KILOBITS PER SECOND;

18 (f) PROVIDING AN ASSESSMENT OF THE FOLLOWING FACTORS:

19 (I) WHETHER THE PROPOSED PROJECT WILL PROVIDE SERVICES VIA  
20 A LICENSED OR UNLICENSED MEANS OF TRANSMISSION;

21 (II) THE COST-EFFECTIVENESS OF THE PROPOSED PROJECT'S  
22 PROPOSED METHOD FOR EXPANDING BROADBAND INTERNET SERVICE INTO  
23 UNSERVED AREAS; AND

24 (III) THE RELIABILITY OF THE NETWORK PROVIDING BROADBAND  
25 SERVICES;

26 (g) (I) WITH REGARD TO AN APPLICANT THAT HAS SUBMITTED A  
27 PROPOSED PROJECT TO THE BOARD, AFFORDING EACH INCUMBENT

1 PROVIDER IN THE AREA THAT IS NOT PROVIDING ACCESS TO A BROADBAND  
2 NETWORK IN THE UNSERVED AREA A RIGHT OF FIRST REFUSAL REGARDING  
3 THE IMPLEMENTATION OF A PROJECT IN THE UNSERVED AREA IF THE  
4 INCUMBENT PROVIDER SUBMITTED AN APPLICATION FOR THE UNSERVED  
5 AREA IN THE SAME GRANT CYCLE AS THE APPLICANT.

6 (II) IF AN INCUMBENT PROVIDER PROPOSES A PROJECT FOR THE  
7 AREA, THE INCUMBENT PROVIDER COMMITS TO PROVIDING ACCESS TO A  
8 BROADBAND NETWORK:

9 (A) WITHIN ONE YEAR AFTER THE APPLICANT'S SUBMISSION OF A  
10 PROPOSED PROJECT;

11 (B) AT DEMONSTRATED DOWNSTREAM AND UPSTREAM SPEEDS  
12 EQUAL TO OR FASTER THAN THE SPEEDS INDICATED IN THE APPLICANT'S  
13 PROPOSED PROJECT; AND

14 (C) AT A COST PER HOUSEHOLD IN THE AREA TO BE SERVED THAT  
15 IS EQUAL TO OR LESS THAN THE COST PER HOUSEHOLD INDICATED IN THE  
16 APPLICANT'S PROPOSED PROJECT.

17 (h) ENSURING THAT BROADBAND SERVICE GRANT AWARDS ARE  
18 NOT PROVIDED IN AREAS OTHER THAN UNSERVED AREAS;

19 (i) IN THE CASE OF A FRANCHISE AGREEMENT, ENSURING THAT  
20 BROADBAND SERVICE GRANT AWARDS ARE NOT PROVIDED IN AREAS WITH  
21 A POPULATION DENSITY LARGE ENOUGH TO REQUIRE SERVICE UNDER AN  
22 EXISTING FRANCHISE AGREEMENT;

23 (j) ALLOWING A PUBLIC ENTITY, INCLUDING A LOCAL GOVERNMENT  
24 ENTITY THAT, BY VOTE OF THE PEOPLE AT AN ELECTION PURSUANT TO  
25 SECTION 29-27-201 OR AS EXEMPTED PURSUANT TO SECTION 29-27-202,  
26 IS AUTHORIZED TO PROVIDE OR OFFER TO PROVIDE ADVANCED SERVICE, AS  
27 THAT TERM IS DEFINED IN SECTION 29-27-102 (1), TO APPLY TO SERVE AN

1 UNSERVED AREA ONLY IF NO PRIVATE, FOR-PROFIT ENTITY OR  
2 PUBLIC-PRIVATE PARTNERSHIP HAS YET APPLIED FOR APPROVAL OF A  
3 PROJECT TO SERVE THAT UNSERVED AREA;

4 (k) ESTABLISHING A GRANT AWARD PROCESS THAT:

5 (I) ALLOWS FOR ONLY ONE GRANT TO BE AWARDED PER APPLICANT  
6 PER YEAR;

7 (II) ENSURES THE GEOGRAPHICALLY EQUITABLE DISTRIBUTION OF  
8 GRANT AWARDS; AND

9 (III) PROVIDES FOR AN APPEALS PROCESS FOR ANY PARTY  
10 AGGRIEVED BY AN AWARD OR DENIAL OF GRANT MONEY;

11 (l) ESTABLISHING REPORTING AND ACCOUNTABILITY  
12 REQUIREMENTS FOR A PROJECT RECEIVING FINANCIAL SUPPORT FROM THE  
13 FUND, INCLUDING CONTRACTUAL REQUIREMENTS THAT:

14 (I) THE APPLICANT SECURE A PERFORMANCE BOND FOR THE  
15 PROJECT, AS APPROPRIATE;

16 (II) THE APPLICANT DEMONSTRATE AN ABILITY TO PROVIDE  
17 BROADBAND SERVICE AT A REASONABLE COST PER HOUSEHOLD IN THE  
18 AREA TO BE SERVED BY THE PROPOSED PROJECT;

19 (III) THE APPLICANT DEMONSTRATE AN ABILITY TO COMPLETE THE  
20 PROPOSED PROJECT WITHIN A REASONABLE TIME, NOT TO EXCEED TWO  
21 YEARS, UNLESS DELAYED BY A GOVERNMENT ENTITY; AND

22 (IV) PROHIBIT AN APPLICANT FROM USING GRANT AWARD MONEY  
23 TO OFFER, PROVIDE, OR SELL BROADBAND SERVICES IN AN AREA NOT  
24 MEETING THE DEFINITION OF UNSERVED AREA.

25 (6) (a) THE BOARD SHALL REPORT ANNUALLY TO THE  
26 TRANSPORTATION AND ENERGY COMMITTEE AND BUSINESS, LABOR, AND  
27 ECONOMIC AND WORKFORCE DEVELOPMENT COMMITTEE IN THE HOUSE OF

1 REPRESENTATIVES AND TO THE AGRICULTURE, NATURAL RESOURCES, AND  
2 ENERGY COMMITTEE AND BUSINESS, LABOR, AND TECHNOLOGY  
3 COMMITTEE IN THE SENATE, OR THEIR SUCCESSOR COMMITTEES, ON THE  
4 PROJECTS SUPPORTED BY MONEY FROM THE FUND IN A GIVEN YEAR,  
5 INCLUDING INFORMATION ON:

- 6 (I) THE NUMBER OF PROJECTS APPROVED;
- 7 (II) THE LOCATION OF EACH APPROVED PROJECT;
- 8 (III) THE AMOUNT OF FUNDING RECEIVED FOR EACH APPROVED  
9 PROJECT; AND
- 10 (IV) A DESCRIPTION OF EACH APPROVED PROJECT.

11 (b) NOTWITHSTANDING SECTION 24-1-136 (11), THE REPORT  
12 REQUIRED UNDER THIS SUBSECTION (6) CONTINUES INDEFINITELY.

13 (7) LOCAL ENTITIES ARE ENCOURAGED TO COOPERATE WITH  
14 RESPECT TO TIMELINES AND PERMIT FEES CONCERNING PROJECTS IN THEIR  
15 GEOGRAPHIC AREA.

16 (8) (a) NOTWITHSTANDING SUBSECTION (5)(a) OF THIS SECTION,  
17 THE BOARD, ON OR BEFORE SEPTEMBER 1, 2018, SHALL IMPLEMENT A  
18 REVERSE AUCTION PROCESS FOR DISTRIBUTING BROADBAND DEPLOYMENT  
19 GRANTS IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION. TO  
20 EFFECTUATE THIS SUBSECTION (8), THE BOARD MAY IMPOSE ADDITIONAL  
21 OR DISTINCT REQUIREMENTS ON REVERSE AUCTION APPLICANTS AND ON  
22 WINNING BIDDERS THAN THE REQUIREMENTS SET FORTH IN THIS SECTION.

23 (b) THE BOARD SHALL PROVIDE AT LEAST THIRTY DAYS' NOTICE ON  
24 ITS WEBSITE OF THE REVERSE AUCTION PROCESS BEFORE THE PROCESS IS  
25 IMPLEMENTED AND SHALL PROVIDE LINKS TO ANY MAPS AND FORMS THAT  
26 THE BOARD DEVELOPS TO FACILITATE THE PROCESS.

27 (c) ANY APPLICATION RECEIVED BY THE BOARD BEFORE THE

1 REVERSE AUCTION PROCESS IS IMPLEMENTED THAT IS STILL PENDING AT  
2 THE TIME THAT THE REVERSE AUCTION PROCESS IS IMPLEMENTED SHALL  
3 NOT BE DENIED SOLELY ON THE BASIS THAT THE APPLICATION DOES NOT  
4 MEET THE REQUIREMENTS THE BOARD ESTABLISHES FOR THE REVERSE  
5 AUCTION PROCESS. RATHER, THE BOARD MAY ASK THE APPLICANT TO  
6 SUPPLEMENT THE APPLICANT'S APPLICATION IN ACCORDANCE WITH THE  
7 REQUIREMENTS THE BOARD ESTABLISHES FOR THE REVERSE AUCTION  
8 PROCESS.

9 (9) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024.  
10 BEFORE ITS REPEAL, THE POWERS, DUTIES, AND FUNCTIONS OF THE BOARD  
11 REGARDING THE DEPLOYMENT OF BROADBAND SERVICES INTO UNSERVED  
12 AREAS ARE SCHEDULED FOR REVIEW IN ACCORDANCE WITH SECTION  
13 24-34-104.

14 **SECTION 7.** In Colorado Revised Statutes, 40-15-502, **amend**  
15 (5)(a) as follows:

16 **40-15-502. Expressions of state policy. (5) Universal service**  
17 **support mechanisms.** (a) In order to accomplish the goals of universal  
18 basic service, universal access to advanced service under section  
19 ~~40-15-509.5~~ 24-48.5-403, and any revision of the definition of basic  
20 service under subsection (2) of this section, the commission shall create  
21 a system of support mechanisms to assist in the provision of basic service  
22 in high-cost areas that are without effective competition for basic service,  
23 applying the factors stated in section 40-15-207; except that support  
24 provided in a particular geographic support area is not affected until the  
25 commission makes a finding applying the factors listed in section  
26 40-15-207. The commission shall fund these support mechanisms  
27 equitably and on a nondiscriminatory, competitively neutral basis through

1 assessments, which may include a rate element, on all  
2 telecommunications service providers in Colorado, and the commission  
3 shall distribute the funds equitably and on a nondiscriminatory,  
4 competitively neutral basis. For purposes of administering the support  
5 mechanisms, the commission shall divide the state into reasonably  
6 compact, competitively neutral geographic support areas. A provider's  
7 eligibility to receive support under the support mechanisms is conditioned  
8 upon the provider's offering basic service throughout an entire support  
9 area. The commission shall review the costs of basic service and shall  
10 administer the support mechanisms.

11 **SECTION 8. Appropriation.** For the 2018-19 state fiscal year,  
12 \$8,000,000 is appropriated to the office of economic development in the  
13 office of the governor for use by the broadband deployment board. This  
14 appropriation is from the general fund. To implement this act, the  
15 broadband deployment board may use this appropriation for the purpose  
16 of making broadband deployment grant awards.

17 **SECTION 9. Safety clause.** The general assembly hereby finds,  
18 determines, and declares that this act is necessary for the immediate  
19 preservation of the public peace, health, and safety.



# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Joint Budget Committee  
FROM Tom Dermody, JBC Staff (303-866-4963)  
DATE February 19, 2018  
SUBJECT Potential Legislation #30 – Stationary Sources Control Fund fee adjustment

**Staff withdraws its recommendation that the JBC consider legislation (Potential Bill #30)** adjusting the statutory fee caps set in Sections 25-7-114.1 and 25-7-114.7 (2)(a)(I-III), C.R.S., due to updated expenditure forecasts provided by the Department for FY 2017-18 and FY 2018-19. However, according to staff's projections detailed below, the Stationary Sources Control Fund (SSCF), created in Section 25-7-114.7 (2)(b)(I), C.R.S., will not have sufficient revenue and fund balance to cover current programmatic expenditure levels starting in FY 2019-20. The Stationary Sources Control Fund (SSCF) supports the Air Pollution Control Division's (APCD's) efforts to ensure the state meets its obligations under the federal Clean Air Act and the Colorado Air Pollution Prevention and Control Act (Article 7 of Title 25, C.R.S.).

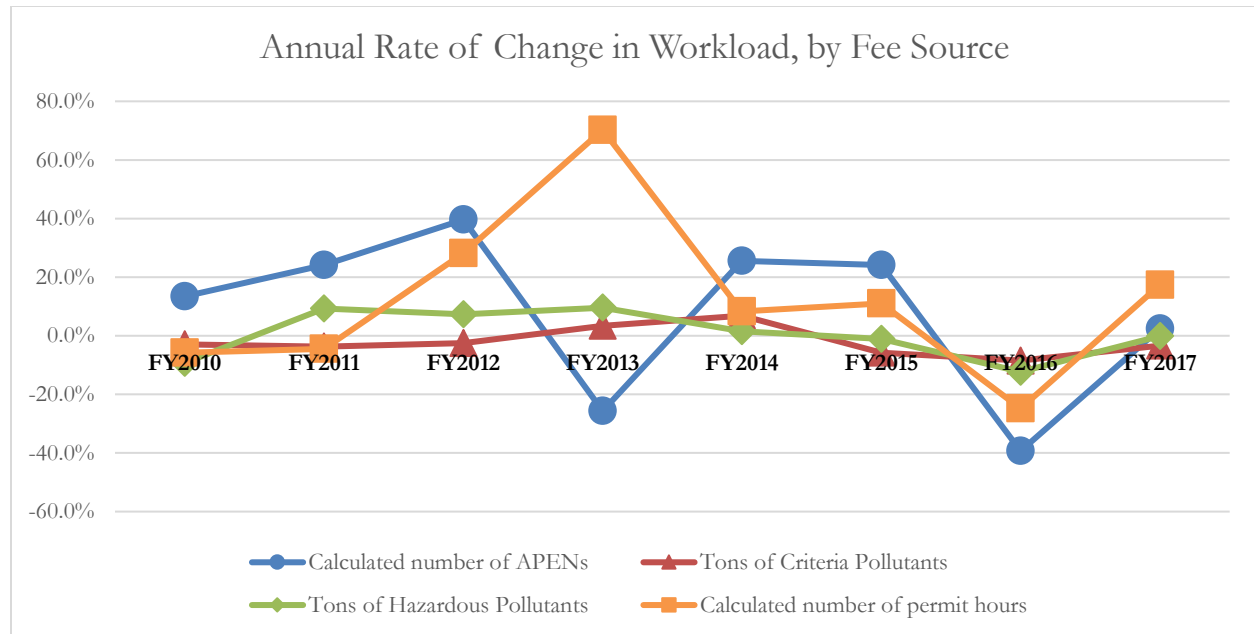
The Department provided JBC staff with updated revenue and expenditure projections for the current fiscal year, as well as its methodology for projecting revenue generation in out years. The Department and APCD are projecting programmatic expenditures of \$13.4 million and revenues of \$12.4 million in FY 2017-18. The Department's out year projection methodology uses FY 2016-17 Actual data as a base for permit processing hours, tons of pollutants emitted, and revenue generated. This methodology is used by the Department to project the revenue impacts of a potential fee increase. Using this methodology and the updated expenditure data, staff was able to project the anticipated FY 2018-19 and FY 2019-20 year-beginning balance of the SSCF, anticipated revenue, and anticipated expenditures.

ESTIMATED REVENUE AND EXPENDITURES FOR THE STATIONARY SOURCES CONTROL FUND			
	FY 2017-18*	FY 2018-19	FY 2019-20
Year-beginning Fund balance	\$1,742,331	\$716,692	\$147,816
Projected revenue	12,366,799	12,421,232	12,421,232
Projected expenditures	(13,392,438)	(12,990,108)	(12,990,108)
Annual surplus/(deficit)	(1,025,639)	(568,876)	(568,876)
<b>Net year-end position of SSCF</b>	<b>\$716,692</b>	<b>\$147,816</b>	<b>(\$421,061)</b>

\*Year-beginning fund balance taken from SSCF's Schedule 9 delivered on November 1, 2017.

### PROJECTIONS AND METHODOLOGY ASSUMPTIONS

In its revenue projections for fee cap increases provided to staff, the Department assumes flat growth in workload and emissions data in subsequent fiscal years. This assumption was made because of the high variability in workload from year to year. As the following chart shows, the number of APENs processed and the number of hours spend processing permits fluctuate on an annual basis. These fluctuations are mainly a response to applications from industry, which has a cyclical and variable nature, but can also be attributed to staffing levels and available resources.



As previously mentioned, the Department used FY 2016-17 Actual data to establish their baseline data, so staff is using the same data to ensure accuracy of comparisons. Using the following sets of assumptions, staff is able to estimate FY 2018-19 revenue generated by the Stationary Sources program. The Department reports that in FY 2016-17, the APCD:

- Spent an estimated 44,570 hours processing permit applications;
- Processed approximately 6,356 Air Pollution Emissions Notices (APENs);
- Recorded 189,222 tons of Criteria pollutant emissions; and
- Recorded 6,858 tons of Hazardous Air Pollutant (HAP) emissions.

Staff’s projections assume no change to current law and the fee caps set in statute by Sections 25-7-114.1 and 25-7-114.7 (2)(a)(I-III), C.R.S. Current law caps the:

- Permit application processing hourly rate at \$76.45;
- APEN filing fee at \$152.90;
- Criteria pollutant emissions fee at \$22.90 per ton per year; and
- HAP emissions fee at \$152.90 per ton per year.

The table below details the projected revenue from each fee source for FY 2018-19. The “other revenues” category includes such things as asbestos revenues, credit card fees, and interest. Historically, these revenues have helped subsidize Stationary Sources program activities. The APCD and Department plan to address asbestos fee issues in a subsequent process once the Stationary Sources fee adjustment efforts have been resolved.

STATIONARY SOURCES CONTROL FUND ESTIMATED REVENUE			
	FY 2016-17 WORKLOAD DATA	STATUTORY FEE	FY 2018-19 ESTIMATED
Permit processing	44,570 hours	\$76.45	\$3,407,377
APEN permits	6,356 permits	152.90	971,832
Criteria pollutant emissions	189,222 tons	22.90	4,333,184

STATIONARY SOURCES CONTROL FUND ESTIMATED REVENUE			
	FY 2016-17 WORKLOAD DATA	STATUTORY FEE	FY 2018-19 ESTIMATED
HAP emissions	6,858 tons	\$152.90	1,048,588
Other revenues*	n/a	n/a	2,660,251
<b>Total Revenue</b>			<b>\$12,421,232</b>

\*Other revenues include asbestos revenues, credit card fees, interest, etc.

Staff assumes that the APCD holds flat expenditures of \$13.0 million from the SSCF for FY 2018-19 and FY 2019-20. This expenditure level is equal to FY 2017-18 estimated expenditures minus \$402,330 for oil and gas health activities in the Disease Control and Environmental Epidemiology Division (DCEED). This amount was reappropriated from the APCD to the DCEED as a result of a budget action in FY 2016-17 to fund the data analysis of oil and gas data collected through the Air Quality Dispersion Study and Garfield County Study. Beginning in FY 2018-19, this expenditure no longer occurs, reducing future spending from the Fund. This annualization is included in the Department’s base budget request for FY 2018-19 and is captured in the “Other Divisions” row in the table below.

STATIONARY SOURCES CONTROL FUND ESTIMATED EXPENDITURES			
	FY 2017-18	FY 2018-19	FY 2019-20
APCD, Administration Program	\$3,049,277	\$3,049,277	\$3,049,277
APCD, Technical Services	1,445,557	1,445,557	1,445,557
APCD, Stationary Sources	8,328,815	8,328,815	8,328,815
Other Divisions	568,789	166,459	166,459
<b>Total</b>	<b>\$13,392,438</b>	<b>\$12,990,108</b>	<b>\$12,990,108</b>

As shown by these projections, assuming no change in current workload, expenditures, and revenue, the SSCF will continue to experience an annual operating deficit for the foreseeable future.

**FIGURE SETTING CONSIDERATIONS**

Staff will make a recommendation during figure setting for the APCD to true-up spending authority from the Stationary Sources Control Fund with anticipated available funds. In FY 2017-18, the General Assembly appropriated \$15.1 million in cash fund spending authority. This spending authority is included in program lines, centrally appropriated line items, and indirect cost assessments. Staff will work with the Department to determine the appropriate proportional reductions necessary to align cash fund spending authority from the SSCF with available funds, which includes both revenue generated and the anticipated Fund’s year-beginning balance for FY 2018-19.

**LEGISLATIVE CONSIDERATIONS**

While staff no longer deems it appropriate for the Committee to sponsor legislation (Potential Bill #30) at this time, there are several legislative suggestions staff feels obliged to discuss. In order to prevent an annual operating deficit from occurring in the future, any legislation adjusting these fee caps should consider the following:

- 1 The fee caps should be adjusted for the rate of inflation since 2008, the year the caps were last adjusted. Using the Denver-Boulder-Greeley consumer price index, from 2008 through 2017 inflation rose by approximately 21.5 percent. Making this adjustment would have the immediate effect of removing the anticipated annual deficit. The table below shows how this 10-year inflation adjustment would affect FY 2018-19 revenue, assuming the fee adjustments went into effect July 1, 2018.

STATIONARY SOURCES CONTROL FUND ESTIMATED REVENUE WITH 10-YEAR INFLATION ADJUSTMENT BASED ON DENVER-BOULDER-GREELY CPI			
	FY 2016-17 WORKLOAD DATA	STATUTORY FEES ADJUSTED FOR INFLATION (21.5%)	FY 2018-19 ESTIMATED
Permit processing	44,570 hours	\$92.87	\$4,139,216
APEN permits	6,356 permits	185.75	1,180,627
Criteria pollutant emissions	189,222 tons	27.82	5,264,156
HAP emissions	6,858 tons	\$185.75	1,273,874
Other Revenues*	n/a	n/a	2,660,251
<b>Total Revenue</b>			<b>\$14,518,123</b>

- 2 Staff believes that some or all of the statutory fee caps should have an inflation adjustment mechanism described in statute. This mechanism could allow the Air Quality Control Commission, create in Section 25-7-104, C.R.S., and vested with the authority to set the relevant fees, to adjust these fees every five years using the average rate of inflation over that period of time. This would ensure that fee levels increase at approximately the same rate as inflation while providing some fee stability to industry.
- 3 The fees should be structured to ensure the Stationary Sources program has sufficient funds to meet both its federal and state obligations in the long term. The addition of any new federal or state statutory program requirements should trigger a fee cap reassessment to ensure the program has the ability to generate sufficient revenue to implement such requirements.
- 4 The purpose of each fee should be considered in the context of the entire program. For instance, about 47.0 percent of the SSCF’s revenue comes from emissions fees. However, since 2008 total tonnage of emissions has decreased by 15.5 percent. Being so reliant on a diminishing source of revenue is not financially sustainable.

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Rep Rankin  
FROM JBC Staff  
DATE February 15, 2018  
SUBJECT Bill Concept for JBC Potential Bill #58

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JBC Potential Bill #58 addresses the definition of evidence based.

Option:

- 1 Repeal the statute regarding the EPIC Resource Center
- 2 Require the Colorado Action Lab (located at the University of Denver) to develop a definition of:
  - a. Evidence-based
  - b. Randomized control
  - c. Quasi-experimental
  - d. Promising practice
- 3 Establish a process by which members/committees of the General Assembly can request the Colorado Action Lab performance analysis/evaluation of programs to determine how effective the program is.
- 4 Use the funds currently funding the EPIC Resource Center for #3.
- 5 Use Marijuana Tax Cash Funds requested for Pay for Performance (DHS/GOV) for #3.

*EPIC RESOURCE CENTER*

The EPIC (Evidence-based Practices Implementation for Capacity) Resource Center helps agencies serving juvenile and adult offenders develop, implement, and sustain evidence-based practices. The Center was developed in 2009 as an initiative of the Colorado Commission on Criminal and Juvenile Justice and was initially funded with federal Justice Assistance Grant funds, which ended in 2013. House Bill 13-1129 (Evidence-based Practices for Offender Services) which placed EPIC within the Division of Criminal Justice. Section 24-33.5-514 (1), C.R.S. outlines the purpose of the EPIC Resource Center to assist agencies serving juvenile and adult populations to develop and sustain effective implementation frameworks to support the use of evidence-based practices. Statute directs the Center to be a collaborative effort among the Departments of Public Safety, Corrections, Human Services, and Judicial. The goal is to increase the efficacy of individuals who work with various offender and victim populations by establishing an educational, skill-building, and consultation resource center to support practitioners in the implementation of evidence-based practices. Funding is approximately \$880,000 General Fund.

\*It is staff's understanding the Department of Corrections has decided to no longer contract with EPIC and is now contracting with the Colorado Evaluation and Action Lab\*

*COLORADO EVALUATION AND ACTION LAB*

<https://www.du.edu/bartoninstitute/programs/evaluationlab.html>

The Colorado Evaluation and Action Lab was established in summer 2017 with philanthropic funding as a partnership with the office of Colorado's Governor. The Colorado Lab's mission is to improve

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services to the residents of the state, through research supporting the efficacy and efficiency of programs and translating that research into action. Much of our initial work is with state government agencies. Agency partnerships are voluntary and the Colorado Lab does not perform an auditing function. Rather, the Colorado Lab serves as a strategic partner to support good government. Although this work is initially guided by [priorities set forth by the Governor's Office](#), the Colorado Lab is not an arm of government and it is not political — it is a resource and a partner. The Colorado Lab aims to:

- Engage in reciprocal partnerships lasting as long as they are helpful to the agency
- Meet agencies where they are and help them get to where they want to go
- Support the use of rigorous research methods to answer questions identified by agency leaders
- Collaborate with agency partners to implement judicious changes based on findings
- Facilitate communications that help relevant audiences understand findings in context