Colorado Legislative Council Staff

SB17-306

REVISED FISCAL NOTE

(replaces fiscal note dated May 4, 2017)

FISCAL IMPACT: ☒ State ☐ Local ☐ Statutory Public Entity ☐ Conditional ☐ No Fiscal Impact

Drafting Number:	LLS 17-1226	**Date:**	May 10, 2017
Prime Sponsor(s):	Sen. Lambert Rep. Hamner	**Bill Status:**	First Conference Committee
		Fiscal Analyst:	Erin Reynolds (303-866-4146)

BILL TOPIC: DIRECT TRANSFER HCSM TO BROADBAND GRANT RECIPIENTS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	**at least $226,296**	**at least $178,820**
Cash Funds	226,296	178,820
State Expenditures	**at least $226,296**	**at least $178,820**
Cash Funds	226,296	178,820
TABOR Impact	at least $226,296	at least $178,820
FTE Position Change	at least 1.8 FTE	at least 1.5 FTE
Appropriation Required: $226,296 — Department of Regulatory Agencies (FY 2017-18).		
Future Year Impacts: Ongoing revenue and expenditure increases.		

Note: Not all agencies were able to respond fully within the time frames provided, therefore this fiscal note is preliminary and will be updated if more information becomes available.

Summary of Legislation

Under current law, the Public Utilities Commission (PUC) provides financial assistance to telecommunications companies that provide basic landline service in areas that lack effective competition. This assistance is funded through a provider surcharge allocated to the High Cost Support Mechanism (HCSM) in the Department of Regulatory Agencies (DORA). To the extent that additional HCSM funds have been determined by the PUC to be unnecessary to support basic landline service, the PUC may allow these funds to be used to support broadband deployment.

The ***rerevised bill*** requires the PUC to make a determination on HCSM funding available for both broadband deployment and Broadband Deployment Board administration. Funds for broadband deployment must be transferred to a separate account within the HCSM, which is maintained by the HCSM third-party contractor, while funds for board administration must be transferred to the newly renamed Broadband Administrative Fund (formerly the Broadband Fund). The PUC may not disburse money for broadband deployment grants from the HCSM unless directed to by the Broadband Deployment Board.

The bill also adds broadband-related definitions; modifies the factors that the PUC must use to make a competition determination for HCSM grants; makes a temporary exception to the competition determination for providers that currently receive HCSM funding; makes changes to HCSM applicant and grantee requirements; and, finally, specifies how PUC costs under the bill are to be funded. These changes are outlined further below.

Definitions. The bill creates the following definitions:

- *"broadband network"* means the infrastructure, hardware, and software used to provide broadband internet service at measurable speeds of at least 25 megabits per second downstream and 3 megabits per second upstream.
- *"facilities-based provider"* is defined as a telecommunications provider that provides the Federal Communications Commission (FCC) with broadband and voice data through an FCC form 477 filing. The term includes cable Voice over Internet Protocol (VoIP) service providers but excludes satellite or nomadic VoIP service providers.
- *"effective competition"* is defined as an area that lies in whole or in part outside a municipality or town with more than 5,000 inhabitants for which at least 75 percent of the households or businesses have access to at least two facilities-based providers. Areas inside a municipality or town with more than 5,000 inhabitants are deemed effectively competitive.

Competition determination for the HCSM. The bill updates how the PUC makes an effective competition determination for HCSM funding by requiring it to use:

- Census tracts as the relevant geographic areas; and
- FCC Form 477 filings, Census data, and address location information from the Office of Information Technology (OIT) to determine coverage for a specific Census tract.

On or before September 1, 2018, the PUC must issue a final order on effective competition for areas that have not already had an effective competition determination. The bill also removes a requirement that the commission reduce the amount of the HCSM surcharge by a certain percentage of the money transferred from the HCSM to the Broadband Administration Fund for the deployment of broadband into rural areas.

Providers currently supported by the HCSM. The bill requires that rural telecommunications providers receiving support from the HCSM as of January 1, 2017, receive the same level of support through September 1, 2024. Nonrural incumbent local exchange carriers receiving support from the HCSM as of January 1, 2017, are to receive the same level of support through December 31, 2018.

Applicant and grantee requirements. The bill requires an applicant for HCSM reimbursement to demonstrate that the provider's cost of providing local exchange service to its customers exceeds its revenues for providing local exchange service and any other sources of revenue for the geographic area. Approved applicants and fund recipients must also provide the PUC with actual cost information justifying the applicant's or recipient's eligibility for the money. Recipients of HCSM funding must also provide the PUC, on an annual basis, with verification that the money received was used to support the high cost areas for which the money was allocated. Applicants may apply for grants for multiple projects in a single year.

HCSM funding of the bill's requirements. The PUC's effective competition determinations and any related rulemaking required by the bill must be funded by the HCSM.

Background

High Cost Support Mechanism and the High Cost Administration Fund. The HCSM is funded by a surcharge that applies to all providers of intrastate telecommunications services. The PUC determines contributions to the HCSM based on providers' reported retail revenues, and providers may choose to integrate HCSM charges into customer access rates or as a separate line item on customer bills. Funds collected by the HCSM are distributed to eligible telecommunications service providers in both rural and nonrural areas that are determined to be high cost geographic areas. An eligible provider must provide basic local exchange service. In practice, an eligible provider is typically the owner of local telephone lines. In 2016, total HCSM distributions are currently estimated at $33.9 million. The HCSM is a fund outside of state government and TABOR-exempt. The High Cost Administration Fund in the State Treasury incurs administrative expenses required to administer the HCSM in the State Treasury. The High Cost Administration Fund is annually appropriated by the General Assembly and is subject to TABOR.

Broadband Deployment Board. The Connect Colorado Broadband Act (House Bill 14-1328) created the 16-member board in DORA. Under current law, the board administers the Broadband Fund, which is set up to receive surcharges in the HCSM, to be awarded for broadband deployment in underserved areas of the state. Members of the board are appointed by the Governor and legislative leadership, and include representatives from the PUC, the Office of Economic Development and International Trade, the Department of Local Affairs, the Office of Information Technology, local governments, the broadband industry, and the public from different geographic areas, including two unserved areas.

Broadband service grant awards. The board considers applications for new broadband projects in unserved areas. Completed applications for broadband service grant awards must be copied to the relevant local government for a 60-day notice and comment period. Thereafter, the board reviews projects in accordance with criteria developed by the board to advance the objectives of the bill, such as having multiple funding sources, providing "last-mile" broadband service, and achieving minimum broadband network speeds. Both applicants denied an award and competitors or any other party aggrieved by an award may appeal grant decisions of the board.

Senate Bill 17-254. The FY 2017-18 Long Bill includes $9.45 million to the HCSM with a footnote describing that it is the General Assembly's intent that the funds are spent in rural Colorado.

Telecommunications Utilities Fund. Proceedings to determine effective competition areas to date have been performed by PUC staff funded by the Telecommunications Utilities Fund, which is subject to a 0.2 percent cap on telecom provider intrastate revenues and is currently at its statutory limit to cover existing budget obligations.

State Revenue

Because the bill requires the HCSM to cover implementation costs, the bill will increase state cash fund revenue from the HCSM to the High Cost Administration Fund in the PUC by ***at least $226,296 in FY 2017-18 and at least $178,820 in FY 2018-19***. Implementation costs are outlined in the State Expenditures section.

TABOR Impact

While HCSM funds are typically TABOR-exempt, this bill creates a TABOR obligation by requiring HCSM funds to be expended for state government administration purposes. The bill will bring in revenue to the state from the HCSM to the High Cost Administration Fund, which will increase the amount of money required to be refunded under TABOR in FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

The bill will increase state cash fund expenditures in the PUC by ***at least $226,296 and 1.8 FTE in FY 2017-18 and at least $178,820 and 1.5 FTE in FY 2018-19*** from the High Cost Administration Fund. Workload will also increase in the Office of Information Technology. These impacts are shown in Table 1 and described below.

Table 1. Expenditures Under SB17-306

Cost Components	**FY 2017-18**	**FY 2018-19**
Personal Services	$77,285	$77,285
FTE	1.0 FTE	1.0 FTE
Operating Expenses and Capital Outlay Costs	5,653	950
Legal Services	128,318	85,545
FTE	0.8 FTE	0.5 FTE
Indirect Costs	15,040	15,040
TOTAL	**$226,296**	**$178,820**

** Centrally appropriated costs are not included in the bill's appropriation.*

Assumptions. The fiscal note assumes that the PUC will require at least 1.0 FTE to manage the bill's new competition determination requirements. The fiscal note also assumes that legal services costs will be required due to the bill's rulemaking requirements and ongoing effective competition findings process. Work is expected to begin July 1, 2017.

Public Utilities Commission. The PUC will modify rules and conduct proceedings to determine effective competition statewide using the new metrics under the bill. As discussed above, this will require at least 1.0 FTE Rate and Financial Analyst, with standard operating expenses and capital outlay costs included. It will also require legal services estimated at 1,350 hours in FY 2017-18 and 900 hours in FY 2018-19 and ongoing, at a rate of $95.05 per hour. To the extent that the PUC requires additional resources to implement the bill, these will be reimbursed by the HCSM.

Office of Information Technology. Workload in OIT will increase to provide the PUC with address locations to determine coverage for a specific census tract. The fiscal note assumes that the OIT has this information available and can accomplish this workload within existing appropriations.

Department of Law. The legal services required by the PUC will require an allocation of 0.8 FTE in FY 2017-18 and 0.5 in FY 2018-19 and ongoing to the Department of Law.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In FY 2017-18, the bill requires an appropriation of $226,296 from the High Cost Administration Fund to the Department of Regulatory Agencies and an allocation of 1.8 FTE. Of this amount, $128,318 should be reappropriated to the Department of Law with an allocation of 0.8 FTE.

State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Regulatory Agencies	Treasury