

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-0642.01 Jennifer Berman x3286

SENATE BILL 18-104

SENATE SPONSORSHIP

Donovan, Court, Fenberg, Jones, Kagan, Kerr, Merrifield, Todd, Zenzinger

HOUSE SPONSORSHIP

Willett and McLachlan, Becker J., Roberts

Senate Committees

Business, Labor, & Technology

House Committees

Finance

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT THE BROADBAND DEPLOYMENT**
102 **BOARD FILE A PETITION WITH THE FEDERAL COMMUNICATIONS**
103 **COMMISSION TO SEEK A WAIVER FROM THE COMMISSION'S**
104 **RULES PROHIBITING A STATE ENTITY FROM APPLYING FOR**
105 **CERTAIN FEDERAL MONEY EARMARKED FOR FINANCING**
106 **BROADBAND DEPLOYMENT IN REMOTE AREAS OF THE NATION.**

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>.)

The bill requires the broadband deployment board, on or before

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.

HOUSE
3rd Reading Unamended
March 21, 2018

HOUSE
2nd Reading Unamended
March 20, 2018

SENATE
3rd Reading Unamended
February 9, 2018

SENATE
Amended 2nd Reading
February 8, 2018

January 1, 2019, to petition the federal communications commission (FCC) for a waiver from the FCC's rules prohibiting a state entity from applying for federal money earmarked for broadband deployment in remote areas of the nation through the remote areas fund created as part of the connect America fund established by the FCC.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and determines that:

4 (a) In 2011, the FCC created the connect America fund to help
5 fund broadband deployment in high-cost census blocks throughout the
6 nation;

7 (b) As part of the connect America fund, the FCC developed a
8 connect America fund phase II auction in which the FCC, beginning in
9 2018 and through a competitive bidding process, will award up to one
10 hundred ninety-eight million dollars annually for ten years to
11 telecommunications service providers that provide both voice and
12 broadband service in high-cost areas of the nation;

13 (c) In May 2016, the FCC adopted a framework for the auction
14 that allows only telecommunications service providers to apply for
15 financial support through the auction;

16 (d) In October 2016, the state of New York filed a petition for
17 expedited waiver from the FCC's auction rules to allow the state's
18 statewide broadband program to allocate auction money through the
19 competitive bidding process that the state developed for the broadband
20 program;

21 (e) In January 2017, the FCC granted the state of New York's
22 petition, finding that:

23 (I) The statewide broadband program's project award criteria were

1 already sufficiently aligned with the auction's minimum speed
2 requirement of at least ten megabits per second downstream and one
3 megabit per second upstream and latency requirement of one hundred
4 milliseconds or faster;

5 (II) The expedited timeline of deployment under New York's
6 statewide broadband program warranted early release of auction money
7 to the state of New York for allocation by the state to eligible providers;
8 and

9 (III) New York could leverage significant state funds to further
10 support broadband deployment because it had already budgeted five
11 hundred million dollars for its broadband program;

12 (f) Colorado has not applied for a waiver from the FCC's auction
13 rules and, given the projection that the FCC will start accepting auction
14 bids in early 2018, there is unlikely to be sufficient time for Colorado to
15 apply for and receive a waiver from the auction rules. Furthermore,
16 Colorado does not have similar circumstances to the unique timeline,
17 funding, and project eligibility requirements of New York's broadband
18 program, which circumstances the FCC relied upon in granting New
19 York's petition.

20 (g) However, after the FCC completes the process of awarding
21 bids through the auction, it will provide further financial support from the
22 connect America fund by providing at least one hundred million dollars
23 annually from a remote areas fund created as part of the connect America
24 fund to eligible telecommunications service providers that will commit to
25 providing both voice and broadband service in extremely high-cost areas
26 of the nation;

27 (h) The FCC has not yet finalized a framework for providing

1 financial support through its remote areas fund, but the FCC has proposed
2 that only telecommunications service providers may apply for the money;
3 and

4 (i) Colorado's model of providing broadband deployment to
5 unserved areas of the state through the broadband deployment board's
6 competitive bidding process appears to be aligned with the financial
7 support envisioned for allocating federal money from the remote areas
8 fund.

9 (2) Therefore, the general assembly hereby declares that, if
10 Colorado petitioned for a waiver from the FCC's rules concerning the
11 remote areas fund and the FCC granted the petition, Colorado could
12 leverage its state funding and the broadband deployment board's existing
13 process and expertise to allocate the federal financial support to
14 broadband deployment projects throughout the state.

15 **SECTION 2.** In Colorado Revised Statutes, 40-15-509.5, **add**
16 (10.5) as follows:

17 **40-15-509.5. Broadband service - report - broadband**
18 **deployment board - broadband administrative fund - creation -**
19 **definitions - repeal.** (10.5) (a) (I) FOLLOWING THE MODEL OF NEW
20 YORK'S PETITION FOR EXPEDITED WAIVER, THE BOARD, ON OR BEFORE
21 JANUARY 1, 2019, SHALL PETITION THE FCC FOR A WAIVER FROM THE
22 FCC'S RULES CONCERNING THE REMOTE AREAS FUND TO SEEK FCC
23 AUTHORIZATION FOR THE BOARD TO ITSELF ALLOCATE REMOTE AREAS
24 FUND MONEY FOR BROADBAND DEPLOYMENT PROJECTS IN COLORADO.

25 (II) AFTER SUBMITTING THE PETITION TO THE FCC, THE BOARD
26 MAY:

27 (A) FILE ANY ADDITIONAL DOCUMENTATION THAT THE FCC

1 REQUIRES OF THE BOARD IN CONSIDERING THE BOARD'S PETITION; AND

2 (B) COORDINATE WITH THE FCC TO DEVELOP ANY CONDITIONS
3 THAT THE FCC MIGHT REQUIRE TO GRANT THE PETITION.

4 (b) IF THE FCC DENIES THE BOARD'S PETITION, THE BOARD SHALL
5 NOT FILE A NEW PETITION OR OTHERWISE SUBSEQUENTLY APPLY FOR
6 MONEY FROM THE REMOTE AREAS FUND.

7 (c) IF THE FCC GRANTS THE BOARD'S PETITION:

8 (I) THE HCSM THIRD-PARTY CONTRACTOR SHALL MAINTAIN ANY
9 FEDERAL MONEY AWARDED THROUGH THE REMOTE AREAS FUND IN A
10 SEPARATE ACCOUNT OF THE HCSM THAT IS DEDICATED TO ALLOCATING
11 THE FEDERAL MONEY IN COMPLIANCE WITH ANY CONDITIONS ESTABLISHED
12 BY THE FCC IN GRANTING THE PETITION;

13 (II) THE COMMISSION IS AUTHORIZED TO DISBURSE THE FEDERAL
14 MONEY IN THAT ACCOUNT FOR BROADBAND DEPLOYMENT GRANTS AS
15 AUTHORIZED BY THE BOARD AND IN COMPLIANCE WITH ANY CONDITIONS
16 ESTABLISHED BY THE FCC IN GRANTING THE PETITION; AND

17 (III) THE BOARD IS AUTHORIZED TO COORDINATE WITH THE FCC
18 TO COMPLY WITH ANY CONDITIONS ESTABLISHED BY THE FCC IN
19 GRANTING THE PETITION. IF ANY SUCH FCC CONDITIONS IMPOSE PROJECT
20 ELIGIBILITY, APPLICATION PROCESS, AWARD CRITERIA, OR OTHER
21 REQUIREMENTS THAT ARE DISTINCT FROM THE REQUIREMENTS SET FORTH
22 IN THIS SECTION OR ESTABLISHED BY THE BOARD PURSUANT TO THIS
23 SECTION, THE COMMISSION MAY, BY RULE AND IN CONSULTATION WITH
24 THE BOARD, ESTABLISH REQUIREMENTS THAT COMPLY WITH THE FCC'S
25 CONDITIONS; EXCEPT THAT ANY REQUIREMENTS ESTABLISHED BY THE
26 COMMISSION BY RULE PURSUANT TO THIS SUBSECTION (10.5) MUST APPLY
27 ONLY TO BROADBAND DEPLOYMENT PROJECTS THAT ARE ELIGIBLE TO

1 RECEIVE THE FEDERAL REMOTE AREAS FUND MONEY.

2 (d) AS USED IN THIS SUBSECTION (10.5):

3 (I) "AUCTION RULES" REFERS TO THE FCC'S RULES IN 47 CFR
4 54.309 TO 54.316, WHICH RULES CONCERN THE IMPLEMENTATION OF THE
5 CONNECT AMERICA FUND PHASE II AUCTION.

6 (II) "CONNECT AMERICA FUND" REFERS TO THE FEDERAL
7 UNIVERSAL SERVICE HIGH-COST PROGRAM THAT ALLOWS ELIGIBLE
8 TELECOMMUNICATIONS PROVIDERS TO RECOVER SOME OF THEIR COSTS
9 FROM THE FEDERAL GOVERNMENT FOR PROVIDING VOICE AND BROADBAND
10 SERVICE IN HIGH-COST AREAS.

11 (III) "CONNECT AMERICA PHASE II AUCTION" REFERS TO A
12 TEN-YEAR AUCTION OF FEDERAL MONEY THROUGH WHICH THE FCC WILL
13 ALLOCATE MONEY THROUGH A COMPETITIVE BIDDING PROCESS TO
14 TELECOMMUNICATIONS PROVIDERS WHO COMMIT TO PROVIDING VOICE
15 AND BROADBAND SERVICE IN HIGH-COST AREAS OF THE NATION IN
16 ACCORDANCE WITH THE FCC'S AUCTION RULES.

17 (IV) "NEW YORK'S PETITION FOR EXPEDITED WAIVER" REFERS TO
18 A PETITION THAT THE STATE OF NEW YORK FILED WITH THE FCC SEEKING
19 A WAIVER FROM THE FCC'S AUCTION RULES, WHICH WAIVER THE FCC
20 GRANTED ON JANUARY 26, 2017.

21 (V) "REMOTE AREAS FUND" REFERS TO A FUND CREATED BY THE
22 FCC AS PART OF ITS CONNECT AMERICA FUND TO FACILITATE BROADBAND
23 DEPLOYMENT IN EXTREMELY HIGH-COST AREAS OF THE NATION.

24 **SECTION 3. Act subject to petition - effective date.** This act
25 takes effect at 12:01 a.m. on the day following the expiration of the
26 ninety-day period after final adjournment of the general assembly (August
27 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within such period, then the act, item, section, or part will not take effect
4 unless approved by the people at the general election to be held in
5 November 2018 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.