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SB 18-002

FINAL  
FISCAL NOTE

<b>Drafting Number:</b>	LLS 18-0060	<b>Date:</b>	August 24, 2018
<b>Prime Sponsors:</b>	Sen. Coram; Sonnenberg Rep. Becker K.; Duran	<b>Bill Status:</b>	Signed into Law
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**Bill Topic:** FINANCING RURAL BROADBAND DEPLOYMENT

<b>Summary of Fiscal Impact:</b>	<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure ( <i>minimal</i> )	<input checked="" type="checkbox"/> Local Government ( <i>potential</i> )
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

This bill phases in additional funding from the High Cost Support Mechanism (HCSM) to support broadband deployment grants and makes changes to the Broadband Deployment Board's membership and grant application process. It also repeals the Public Utilities Commission's oversight of the HCSM on September 1, 2024, subject to a sunset review. The bill creates a minimal one-time state workload increase, and may increase revenue to local governments on an ongoing basis.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** This fiscal note reflects the enacted bill.

**Summary of Legislation**

**Background.** Under current law, the Public Utilities Commission (PUC) in the Department of Regulatory Agencies (DORA) provides financial assistance to telecommunications companies that provide basic landline service in rural areas. This assistance is funded through a provider surcharge assessed on voice service which is allocated to the High Cost Support Mechanism (HCSM), a TABOR-exempt fund administered by the PUC and held outside state government. Per House Bill 14-1328, if a portion of HCSM funds were determined to be unnecessary to support basic landline service, the PUC may reallocate those funds toward broadband deployment. Per Senate Bill 17-306, the PUC, in addition to determining the HCSM funding available for broadband deployment, is required to determine the funding required for the administration of the Broadband Deployment Board (board), to be withdrawn from the HCSM.

**Reallocation of HCSM funds.** This bill phases in a reallocation of HSCM funds, away from reimbursing providers of high cost landline infrastructure to reimbursing providers of high cost broadband infrastructure. The PUC is required to distribute certain percentages of HCSM funds (as shown in Table 1 below) for broadband deployment grantmaking from January 1, 2019, to January 1, 2023. These funds come from the portion of HCSM previously distributed to the state's nonrural local exchange carrier, which will have its distribution reduced by the same percentage. During this period, the bill maintains the distribution to rural telecommunications providers for basic

service at the level of support they received on January 1, 2017. The PUC is prohibited from making effective competition determinations or distributing HCSM funds in any other way than as required under the bill.

In addition, the HCSM surcharge amount that existed on January 1, 2018 (the surcharge has been 2.6 percent since April 2013), is maintained until July 1, 2023. On or after this date, the PUC may reduce the surcharge to ensure that collections do not exceed \$25 million in calendar year 2024.

**HCSM Distributions.** Table 1 shows projected HCSM distributions under the bill using the following data and assumptions.

- The fiscal note estimates future HCSM contributions using the PUC's 2017 projected contribution amount as a base and factoring in a declining growth rate of -3.3 percent. The fiscal note determined the -3.3 percent rate using the ten-year average of actual HCSM contributions from 2007 to 2016.
- The fiscal note assumes that "rural telecommunications providers" includes rural local exchange carriers (RLECs, of which there are 10) and wireless carriers in high-cost areas (Viaero and NNTC Wireless, LLC). Actual January 1, 2017, distribution amounts were \$1,384,032 to RLECs and \$1,524,893 to wireless carriers in high-cost areas.
- The fiscal note assumes that the distribution amount to rural telecommunication providers as well as the amount necessary to fund HCSM administration (board expenses, an employee at the PUC, and the third-party fund administrator, estimated at approximately \$400,000 per year) will be distributed from the fund before a calculation on broadband deployment grants and non-rural local exchange carrier (CenturyLink) distribution amounts is made. The actual non-rural carrier distribution will be determined by the PUC based on previous effective competition area determinations later this year if the bill is enacted.
- The HCSM currently has a reserve amount of approximately \$12.5 million as of writing, which has not been included in any distribution amount shown in Table 1.

**Table 1**  
**Estimated HCSM Funding Available for Broadband Deployment Grants Under SB 18-002\***

<b>CY</b>	<b>Projected HCSM Contributions**</b>	<b>Fixed HCSM Distributions***</b>	<b>Remaining HCSM Funds</b>	<b>SB18-002 Broadband Distribution %</b>	<b>Funds Available for Broadband Grants</b>	<b>Funds Available to Non-Rural Carrier****</b>
2019	\$34,538,518	\$3,308,925	\$31,229,593	60%	\$18,737,756	\$12,491,837
2020	\$33,398,747	\$3,308,925	\$30,089,822	70%	\$21,062,875	\$9,026,947
2021	\$32,296,589	\$3,308,925	\$28,987,664	80%	\$23,190,131	\$5,797,533
2022	\$31,230,801	\$3,308,925	\$27,921,876	90%	\$25,129,688	\$2,792,188
2023	\$30,200,185	\$3,308,925	\$26,891,260	100%	\$26,891,260	-
<b>TOTALS</b>	<b>\$161,664,840</b>	<b>\$16,544,625</b>	<b>\$145,120,215</b>		<b>\$115,011,710</b>	<b>\$30,108,505</b>

\* Totals may not sum due to rounding.

\*\* Projected HCSM contributions based on PUC's 2017 HCSM contribution estimate, grown annually using a ten-year average fund change: -3.3%. HCSM reserve balance not included in this amount.

\*\*\* Fixed HCSM distributions include an assumed \$2.9 million for rural and wireless carriers (RLECs, Viaero, and NNTC Wireless, LLC) at 2017 distribution levels, plus \$400,000 for board administration, third-party fund administration costs, and PUC support.

\*\*\*\* CenturyLink is currently the only non-rural carrier eligible for HCSM funding.

**Broadband Deployment Board.** The bill modifies the membership of the Broadband Deployment Board in DORA by adding 1 voting member that represent the broadband industry as a representative of a cable provider serving rural areas. The bill also makes adjustments to other members and appointment authorities.

The bill also clarifies the board's conflict-of-interest procedures, specifically that a board member may not vote on applications filed by an entity represented by the board member, but may participate in discussions. The bill also clarifies that any matter before the board fails on a tie vote.

**Broadband deployment grants.** The bill specifies certain procedures related to the board's grant application process, including that:

- applicants must submit their application to the board, applicable local governments, and all providers of broadband in the area when applying for a grant;
- the board must deny funding for applications that overbuild;
- the board must ensure the fastest broadband speed, as defined in the bill;
- applicants may apply for and the board may approve more than one project in a year; and
- all parties have access to an appeals process.

**Basic service.** On or before December 31, 2018, the PUC must establish a plan to eliminate basic service requirements consistent with the reductions in the HCSM.

**Definitions.** The bill modifies broadband-related definitions, so that "broadband network" means downstream broadband internet service operating at a minimum of 10 megabits per second downstream and 1 megabit per second upstream or at speeds at least equal to the Federal Communications Commission's definition, whichever is faster. "Unserved area" means an area that is unincorporated or within a city with a population of fewer than 7,500 inhabitants that consists of households lacking access to at least one provider using satellite technology and at least one provider using non-satellite technology.

**Repeal.** Finally, the bill repeals the PUC's administration of the HCSM on September 1, 2024, subject to a sunset review.

## **Background**

**Broadband deployment grants.** The board considers applications for new broadband projects in high cost, "last mile" 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.

**Broadband Deployment Board.** House Bill 14-1328 created the 16-member Broadband Deployment Board in DORA. The board administers the Broadband Administrative Fund, which is set up to receive surcharges in the HCSM to be awarded for broadband deployment in high cost 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.

**State Expenditures**

The PUC in DORA will have a minimal workload increase to establish a plan in FY 2018-19 to eliminate basic service requirements. It may also have workload related to additional rulemaking performed to implement the bill. These activities will take place during the normal course of PUC business and no change in appropriations is required.

**Local Government and School District Impact**

Certain local governments may receive new revenue from grants or property taxes, as discussed below.

**Local government internet providers.** Local governments that provide internet service (the City of Longmont and, as of 2018, the municipalities of Firestone, Frisco, Lake City, Limon, Lyons, and Severance) may see an increase in revenue and workload if they receive new grant funding. Local governments that do not act as internet service providers are not eligible for grant money under the bill.

**Property tax collections.** If grants available under this bill increase the construction of broadband facilities, property tax collections will increase in that jurisdiction. A portion of property taxes go toward the local share of school finance. Increases in property tax collections decrease the state share under the School Finance Act. Property tax impacts have not been estimated.

**Effective Date**

The bill was signed into law by the Governor on April 2, 2018, and it took effect August 8, 2018.

**State and Local Government Contacts**

Counties	Economic Development
Information Technology	Law
Local Affairs	Municipalities
Regulatory Agencies	