

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0283.01 Nicole Myers x4326

SENATE BILL 24-091

SENATE SPONSORSHIP

Pelton B. and Mullica,

HOUSE SPONSORSHIP

Martinez and Catlin,

Senate Committees
Transportation & Energy

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF AN ADDITIONAL PROCESS BY WHICH**
102 **ENTITIES MAY GAIN ACCESS TO PUBLIC RIGHTS-OF-WAY FOR THE**
103 **DEPLOYMENT OF BROADBAND.**

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>.)

Current law allows an entity that wants to access public rights-of-way (rights-of-way) for the deployment of broadband to enter into a public-private initiative agreement with the department of transportation (department) for the entity's access to the rights-of-way. The bill creates an alternative method for entities that want to access

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

rights-of-way for the deployment of broadband, whereby the department may issue a permit and impose a permit fee for access to rights-of-way for the deployment of broadband. The bill specifies that an entity that wants to access rights-of-way for the deployment of broadband may pursue either the permit application and fee process created in the bill or the existing public-private initiative agreement process.

In issuing permits that grant access to rights-of-way, the bill:

- Requires the department to allow competitively neutral and nondiscriminatory access to broadband providers seeking to use rights-of-way for the deployment of broadband;
- Requires the department to determine the form and manner of the permit application process and to approve or deny a permit application within 30 days;
- Specifies that the term of any permit issued pursuant to the bill is 30 years and that the department cannot assert ownership of broadband infrastructure except for when a permit recipient abandons the broadband infrastructure;
- Prohibits the department from requiring the permit recipient to lay additional fiber for use by the department or any third party;
- Prohibits the department from requiring the permit recipient to provide any in-kind goods or services as a condition of granting access to rights-of way; and
- Requires the department to produce an anticipated annual budget for the costs associated with the permit application process and an anticipated annual forecast of the revenue that the department will generate from the permit fees.

The department may impose a one-time permit processing fee in connection with an application to gain access to rights-of-way for the deployment of broadband (permit processing fee) so long as the fee does not exceed the department's actual costs in connection with granting or administering the permits. The department is prohibited from imposing any other fee or charge for access to rights-of-way for the deployment of broadband.

The department is also prohibited from including any charge in the permit processing fee to receive compensation for the fair market value of rights-of-way or access to rights-of-way; except that if the attorney general certifies in writing to the transportation commission that excluding fair market value in the permit processing fee violates federal law and that the violation will result in the loss of federal money apportioned to the state, the department is required to include fair market value in the permit processing fee. In such case, the department is required to set the rate of fair market value at a level that does not exceed the lowest rate of fair market value established by any other state for access to that state's rights-of-way for the deployment of broadband.

1 RIGHTS-OF-WAY FOR BROADBAND DEPLOYMENT. THE DEPARTMENT SHALL
2 EITHER APPROVE OR DENY A PERMIT APPLICATION THAT IT RECEIVES
3 PURSUANT TO THIS PART 2 WITHIN THIRTY DAYS OF RECEIPT OF THE
4 APPLICATION.

5 (b) THE DEPARTMENT SHALL PROVIDE AN ACCEPTANCE OR DENIAL
6 OF A PERMIT PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION TO THE
7 PERMIT APPLICANT IN WRITING AND SHALL IDENTIFY SPECIFIC REASONS
8 FOR THE APPROVAL OR THE DENIAL OF THE PERMIT APPLICATION. THE
9 DEPARTMENT SHALL ALSO MAKE AVAILABLE TO THE PUBLIC THE WRITTEN
10 APPROVAL OR DENIAL REQUIRED BY THIS SUBSECTION (2)(b) IN AN ONLINE
11 ELECTRONIC FORMAT.

12 (3) THE TERM OF A PERMIT ISSUED BY THE DEPARTMENT FOR
13 ACCESS TO PUBLIC RIGHTS-OF-WAY FOR THE DEPLOYMENT OF BROADBAND
14 PURSUANT TO THIS PART 2 IS THIRTY YEARS. THE DEPARTMENT SHALL NOT
15 ASSERT OWNERSHIP OF ANY BROADBAND INFRASTRUCTURE DURING OR
16 AFTER THE TERM OF THE PERMIT EXCEPT IN THE CASE THAT A PERMIT
17 RECIPIENT ABANDONS THE BROADBAND INFRASTRUCTURE.

18 (4) (a) WHEN ISSUING A PERMIT FOR ACCESS TO PUBLIC
19 RIGHTS-OF-WAY FOR BROADBAND DEPLOYMENT PURSUANT TO THIS PART
20 2, THE DEPARTMENT SHALL NOT REQUIRE THE PERMIT RECIPIENT TO LAY
21 ADDITIONAL FIBER FOR USE BY THE DEPARTMENT OR ANY THIRD PARTY.

22 (b) THE DEPARTMENT SHALL NOT REQUIRE THE PERMIT RECIPIENT
23 TO PROVIDE ANY IN-KIND GOODS OR SERVICES AS A CONDITION OF
24 GRANTING ACCESS TO PUBLIC RIGHTS-OF WAY FOR BROADBAND
25 DEPLOYMENT.

26 (5) THE DEPARTMENT SHALL PRODUCE AN ANTICIPATED ANNUAL
27 BUDGET FOR THE COSTS ASSOCIATED WITH THE PERMIT APPLICATION

1 PROCESS PURSUANT TO THIS PART 2 AND AN ANTICIPATED ANNUAL
2 FORECAST OF THE REVENUE THAT THE PERMIT FEE IMPOSED PURSUANT TO
3 SECTION 38-5.5-203 WILL GENERATE.

4 (6) THE TERMS OF ALL PERMITS THAT THE DEPARTMENT ISSUES
5 FOR THE USE OF PUBLIC RIGHTS-OF-WAY ARE MATTERS OF PUBLIC RECORD
6 AND SHALL BE MADE AVAILABLE UPON REQUEST PURSUANT TO THE
7 "COLORADO OPEN RECORDS ACT", PART 2 OF ARTICLE 72 OF TITLE 24.

8 **38-5.5-203. Permit fees - public rights-of-way - use for**
9 **deployment of broadband.** (1) THE DEPARTMENT MAY IMPOSE A
10 ONE-TIME PERMIT PROCESSING FEE IN CONNECTION WITH AN APPLICATION
11 TO GAIN ACCESS TO PUBLIC RIGHTS-OF-WAY FOR THE DEPLOYMENT OF
12 BROADBAND PURSUANT TO THIS PART 2. OTHER THAN THE PERMIT
13 PROCESSING FEE AUTHORIZED IN THIS SUBSECTION (1), THE DEPARTMENT
14 SHALL NOT IMPOSE ANY OTHER FEE OR CHARGE FOR ACCESS TO PUBLIC
15 RIGHTS-OF-WAY FOR THE DEPLOYMENT OF BROADBAND.

16 (2) A PERMIT PROCESSING FEE IMPOSED BY THE DEPARTMENT
17 PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST BE REASONABLY
18 RELATED TO THE COSTS DIRECTLY INCURRED BY THE DEPARTMENT IN
19 PROVIDING SERVICES RELATING TO THE GRANTING OR ADMINISTRATION OF
20 PERMITS AND, NOTWITHSTANDING ANY OTHER PROVISION OF LAW, MUST
21 NOT EXCEED THE DEPARTMENT'S ACTUAL COSTS IN CONNECTION WITH
22 GRANTING OR ADMINISTERING THE PERMITS. THE FEE MUST ALSO BE
23 REASONABLY RELATED IN TIME TO THE OCCURRENCE OF THE
24 DEPARTMENT'S COSTS.

25 (3) IF THE DEPARTMENT DERIVES ANY REVENUE FROM PERMIT FEES
26 THAT EXCEED THE DEPARTMENT'S COSTS IN PROCESSING SERVICES
27 RELATING TO THE GRANTING OR ADMINISTRATION OF PERMITS PURSUANT

1 TO THIS PART 2, THE DEPARTMENT SHALL REDUCE THE AMOUNT OF THE
2 FEE TO ENSURE THAT THE REVENUE FROM THE FEE DOES NOT EXCEED THE
3 DEPARTMENT'S COSTS FOR PROCESSING SERVICES RELATING TO THE
4 GRANTING OR ADMINISTRATION OF PERMITS PURSUANT TO THIS PART 2.

5 (4) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4)(b) OF
6 THIS SECTION, THE PERMIT FEE FOR ACCESS TO PUBLIC RIGHTS-OF-WAY FOR
7 THE DEPLOYMENT OF BROADBAND AS AUTHORIZED IN SUBSECTION (1) OF
8 THIS SECTION MUST NOT INCLUDE ANY CHARGE OR ELEMENT TO
9 RECAPTURE OR RECEIVE COMPENSATION FOR THE FAIR MARKET VALUE OF
10 PUBLIC RIGHTS-OF-WAY OR ACCESS TO PUBLIC RIGHTS-OF-WAY.

11 (b) (I) THE PERMIT FEE RESTRICTION SPECIFIED IN SUBSECTION
12 (4)(a) OF THIS SECTION DOES NOT APPLY IF THE ATTORNEY GENERAL
13 CERTIFIES IN WRITING TO THE TRANSPORTATION COMMISSION CREATED IN
14 SECTION 43-1-106 THAT EXCLUDING FAIR MARKET VALUE IN THE PERMIT
15 FEE STRUCTURE FOR ACCESS TO PUBLIC RIGHTS-OF-WAY FOR THE
16 DEPLOYMENT OF BROADBAND VIOLATES FEDERAL LAW AND THAT SUCH A
17 VIOLATION WILL RESULT IN THE LOSS OF FEDERAL MONEY, IN WHOLE OR IN
18 PART, APPORTIONED TO THE STATE.

19 (II) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (2) AND
20 (3) OF THIS SECTION, IF THE ATTORNEY GENERAL MAKES THE
21 CERTIFICATION SPECIFIED IN SUBSECTION (4)(b)(I) OF THIS SECTION, THE
22 DEPARTMENT SHALL SET THE RATE OF FAIR MARKET VALUE AT A LEVEL
23 THAT DOES NOT EXCEED THE LOWEST RATE OF FAIR MARKET VALUE
24 ESTABLISHED BY ANY OTHER STATE FOR ACCESS TO THAT STATE'S PUBLIC
25 RIGHTS-OF-WAY FOR THE DEPLOYMENT OF BROADBAND.

26 (5) IN ANY CONTROVERSY CONCERNING THE APPROPRIATENESS OF
27 A FEE IMPOSED PURSUANT TO THIS SECTION, THE DEPARTMENT HAS THE

1 BURDEN OF PROVING THAT:

2 (a) THE FEE DOES NOT EXCEED THE DIRECT COSTS INCURRED BY
3 THE DEPARTMENT IN CONNECTION WITH GRANTING OR ADMINISTERING THE
4 PERMITS FOR ACCESS TO PUBLIC RIGHTS-OF-WAY; AND

5 (b) THE RATE OF FAIR MARKET VALUE, IF APPLICABLE, IS SET AT A
6 LEVEL THAT DOES NOT EXCEED THE LOWEST RATE OF FAIR MARKET VALUE
7 ESTABLISHED BY ANY OTHER STATE FOR ACCESS TO THAT STATE'S PUBLIC
8 RIGHTS-OF-WAY FOR THE DEPLOYMENT OF BROADBAND.

9 **SECTION 2.** In Colorado Revised Statutes, 43-1-1204, **add** (6)
10 as follows:

11 **43-1-1204. Public-private initiative agreement - definition.**

12 (6) (a) AN ENTITY THAT INTENDS TO GAIN ACCESS TO PUBLIC
13 RIGHTS-OF-WAY FOR THE DEPLOYMENT OF BROADBAND MAY CHOOSE TO
14 USE EITHER THE PUBLIC-PRIVATE INITIATIVE AGREEMENT PROCESS
15 SPECIFIED IN THIS PART 12 OR THE PERMIT AND FEE STRUCTURE PROCESS
16 SPECIFIED IN PART 2 OF ARTICLE 5.5 OF TITLE 38.

17 (b) THE PROVISIONS OF PART 2 OF ARTICLE 5.5 OF TITLE 38 DO NOT
18 APPLY TO ANY PUBLIC-PRIVATE INITIATIVE AGREEMENT TO GAIN ACCESS
19 TO PUBLIC RIGHTS-OF-WAY ENTERED INTO PURSUANT TO THIS PART 12.

20 **SECTION 3. Safety clause.** The general assembly finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, or safety or for appropriations for
23 the support and maintenance of the departments of the state and state
24 institutions.