

Second Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0642.01 Jennifer Berman x3286

SENATE BILL 18-104

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SENATE SPONSORSHIP

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

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**Willett**, Becker J., Roberts

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**Senate Committees**

Business, Labor, & Technology

**House Committees**

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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.**

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**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.

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.

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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 GRANTS THE BOARD'S PETITION:

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

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

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

26 (c) AS USED IN THIS SUBSECTION (10.5):

27 (I) "AUCTION RULES" REFERS TO THE FCC'S RULES IN 47 CFR

1 54.309 TO 54.316, WHICH RULES CONCERN THE IMPLEMENTATION OF THE  
2 CONNECT AMERICA FUND PHASE II AUCTION.

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

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

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

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

21 **SECTION 3. Act subject to petition - effective date.** This act  
22 takes effect at 12:01 a.m. on the day following the expiration of the  
23 ninety-day period after final adjournment of the general assembly (August  
24 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a  
25 referendum petition is filed pursuant to section 1 (3) of article V of the  
26 state constitution against this act or an item, section, or part of this act  
27 within such period, then the act, item, section, or part will not take effect

1 unless approved by the people at the general election to be held in  
2 November 2018 and, in such case, will take effect on the date of the  
3 official declaration of the vote thereon by the governor.