

**First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 19-0393.01 Jennifer Berman x3286

**SENATE BILL 19-107**

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**SENATE SPONSORSHIP**

**Donovan,**

**HOUSE SPONSORSHIP**

**(None),**

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**Senate Committees**

Business, Labor, & Technology  
Local Government

**House Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE INSTALLATION OF BROADBAND INTERNET SERVICE**  
102 **INFRASTRUCTURE.**

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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>.)*

**Section 1** of the bill authorizes an electric utility or other electricity supplier to install and maintain above-ground broadband internet service infrastructure for internal use, for external use in providing broadband internet service, or for lease of any excess capacity to a broadband internet service provider (provider).

Section 1 also authorizes a provider to enter into a contract with a

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.

landowner to access an electric utility's existing easement on the landowner's private property if:

- ! The provider seeks to access the easement to construct or maintain infrastructure to be used in providing broadband internet service;
- ! The provider's access will not violate an exclusivity term in the electric utility's contract with the landowner; and
- ! The electric utility has previously determined that the provider's access would not likely interfere with the electric utility's construction, maintenance, or use of any infrastructure placed on the property.

A provider seeking access to an electric utility's existing easement on private property is required to seek written authorization from the electric utility, which authorization the electric utility shall not unreasonably withhold or delay.

An electric utility authorizing a provider's access to its existing easement on private property may seek reimbursement from the provider for actual and reasonable costs the electric utility incurs as a result of sharing the easement.

The public utilities commission may enforce the requirements set forth in the bill by directing the attorney general to commence an action or proceeding in district court seeking to stop or prevent the violations.

**Sections 2 and 3** make conforming amendments.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 6 to article  
3 15 of title 40 as follows:

4 **PART 6**

5 **ELECTRIC UTILITY EASEMENTS**

6 **40-15-601. Definitions.** AS USED IN THIS PART 6:

7 (1) "BROADBAND INTERNET SERVICE PROVIDER" OR "PROVIDER":

8 (a) MEANS AN EXISTING PROVIDER OF BROADBAND INTERNET  
9 SERVICE, A PERSON WHO INTENDS TO PROVIDE BROADBAND INTERNET  
10 SERVICE, OR A PERSON WHO SELLS OR LEASES, OR INTENDS TO SELL OR  
11 LEASE, INFRASTRUCTURE USED FOR ANOTHER PERSON'S PROVISION OF  
12 BROADBAND INTERNET SERVICE;

1 (b) INCLUDES A LOCAL GOVERNMENT THAT PROVIDES BROADBAND  
2 INTERNET SERVICE OR SELLS OR LEASES, OR INTENDS TO SELL OR LEASE,  
3 INFRASTRUCTURE USED FOR ANOTHER PERSON'S PROVISION OF  
4 BROADBAND INTERNET SERVICE.

5 (2) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED  
6 EASEMENT HELD BY AN ELECTRIC UTILITY OR OTHER ELECTRICITY  
7 SUPPLIER FOR THE SITING OF ELECTRIC FACILITIES, REGARDLESS OF  
8 WHETHER:

9 (a) THE EASEMENT IS FOR THE EXCLUSIVE BENEFIT OF THE  
10 ELECTRIC UTILITY OR OTHER ELECTRICITY SUPPLIER OR FOR USE IN  
11 CONNECTION WITH OTHER UTILITY SERVICES; AND

12 (b) THE ELECTRIC UTILITY OR OTHER ELECTRICITY SUPPLIER  
13 PROVIDES THE OTHER UTILITY SERVICES.

14 (3) (a) "ELECTRIC UTILITY" MEANS ANY PROVIDER OF RETAIL  
15 ELECTRIC SERVICE IN THE STATE OF COLORADO.

16 (b) "ELECTRIC UTILITY" INCLUDES AN INVESTOR-OWNED UTILITY,  
17 A COOPERATIVE ELECTRIC ASSOCIATION, AND A MUNICIPALLY OWNED  
18 UTILITY.

19 (4) "LOCAL GOVERNMENT" MEANS A COUNTY, CITY AND COUNTY,  
20 OR MUNICIPALITY.

21 **40-15-602. Electric easements - broadband internet service.**

22 (1) WITHIN AN ELECTRIC EASEMENT HELD BY AN ELECTRIC UTILITY OR  
23 OTHER ELECTRICITY SUPPLIER, THE ELECTRIC UTILITY OR OTHER  
24 ELECTRICITY SUPPLIER MAY:

25 (a) INSTALL AND MAINTAIN ABOVE-GROUND BROADBAND  
26 INTERNET SERVICE INFRASTRUCTURE FOR USE BY THE ELECTRIC UTILITY  
27 OR OTHER ELECTRICITY SUPPLIER:

1 (I) FOR INTERNAL USE CONNECTED TO THE ELECTRIC UTILITY'S OR  
2 OTHER ELECTRIC SUPPLIER'S PROVISION OF ELECTRICITY; OR

3 (II) SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION  
4 40-15-106, FOR EXTERNAL USE IN PROVIDING BROADBAND INTERNET  
5 SERVICE;

6 (b) LEASE TO A BROADBAND INTERNET SERVICE PROVIDER ANY  
7 EXCESS CAPACITY OF ABOVE-GROUND BROADBAND INTERNET SERVICE  
8 INFRASTRUCTURE INSTALLED WITHIN THE ELECTRIC EASEMENT.

9 **40-15-603. Broadband internet service provider's access to an**  
10 **electric utility's easement - definitions.** (1) A BROADBAND INTERNET  
11 SERVICE PROVIDER MAY ENTER INTO A CONTRACT WITH A LANDOWNER TO  
12 ACCESS AN EXISTING EASEMENT THAT THE LANDOWNER HAS GRANTED TO  
13 AN ELECTRIC UTILITY ON THE LANDOWNER'S PRIVATE PROPERTY IF:

14 (a) THE PROVIDER SEEKS TO ACCESS THE EXISTING EASEMENT FOR  
15 THE PURPOSE OF CONSTRUCTING OR MAINTAINING ABOVE-GROUND  
16 INFRASTRUCTURE TO BE USED FOR THE PROVISION OF BROADBAND  
17 INTERNET SERVICE;

18 (b) THE PROVIDER'S ACCESS WILL NOT VIOLATE AN EXCLUSIVITY  
19 TERM IN THE ELECTRIC UTILITY'S CONTRACT WITH THE LANDOWNER; AND

20 (c) THE PROVIDER HAS OBTAINED WRITTEN AUTHORIZATION FROM  
21 THE ELECTRIC UTILITY PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION.

22 (2) (a) A BROADBAND INTERNET SERVICE PROVIDER SEEKING TO  
23 ACCESS AN ELECTRIC UTILITY'S EXISTING EASEMENT ON PRIVATE  
24 PROPERTY PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL FIRST  
25 OBTAIN WRITTEN AUTHORIZATION FROM THE ELECTRIC UTILITY  
26 INDICATING THAT THE PROVIDER'S ACCESS TO THE EASEMENT WOULD NOT  
27 LIKELY INTERFERE WITH THE ELECTRIC UTILITY'S CONSTRUCTION,

1 MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY INFRASTRUCTURE  
2 PLACED ON THE PROPERTY.

3 (b) AN ELECTRIC UTILITY SHALL NOT UNREASONABLY WITHHOLD  
4 AUTHORIZATION OR DELAY ITS DECISION WHETHER TO PROVIDE WRITTEN  
5 AUTHORIZATION. IF THE ELECTRIC UTILITY WITHHOLDS AUTHORIZATION,  
6 IT SHALL NOTIFY THE PROVIDER IN WRITING OF ITS REASONS FOR  
7 WITHHOLDING AUTHORIZATION.

8 (c) NOTWITHSTANDING AN ELECTRIC UTILITY'S WRITTEN  
9 AUTHORIZATION, THE ELECTRIC UTILITY MAY SEEK REIMBURSEMENT FROM  
10 THE PROVIDER FOR THE ACTUAL AND REASONABLE COSTS THE ELECTRIC  
11 UTILITY INCURS AS A RESULT OF SHARING THE EASEMENT WITH THE  
12 PROVIDER.

13 (3) (a) THE COMMISSION SHALL, UPON COMPLAINT OR UPON ITS  
14 OWN MOTION, SEEK TO RESTRAIN A VIOLATION OF THIS SECTION PURSUANT  
15 TO SECTION 40-7-104 IF THE COMMISSION HAS REASON TO BELIEVE THAT  
16 A BROADBAND INTERNET SERVICE PROVIDER OR AN ELECTRIC UTILITY HAS  
17 VIOLATED THIS SECTION.

18 (b) FOR PURPOSES OF ENFORCING THIS SECTION, THE COMMISSION  
19 HAS JURISDICTION OVER A PROVIDER REGARDLESS OF WHETHER THE  
20 PROVIDER QUALIFIES AS A TELECOMMUNICATIONS PROVIDER.

21 **SECTION 2.** In Colorado Revised Statutes, **amend** 38-4-103 as  
22 follows:

23 **38-4-103. Electric power companies.** (1) Any foreign or  
24 domestic corporation organized or chartered for the purpose, among other  
25 things, of conducting and maintaining electric power transmission lines  
26 for providing power or light by means of electricity for hire ~~shall have~~  
27 HAS a right-of-way for the construction, operation, and maintenance of

1 ~~such~~ electric power transmission lines through any patented or unpatented  
2 mine or mining claim or other land without the consent of the owner  
3 ~~thereof~~ OF THE PATENTED OR UNPATENTED MINE OR MINING CLAIM OR  
4 OTHER LAND, if ~~such~~ THE right-of-way is necessary for the purposes  
5 proposed.

6 (2) A CORPORATION EXERCISING ITS RIGHTS UNDER SUBSECTION  
7 (1) OF THIS SECTION MAY, IN ACCORDANCE WITH PART 6 OF ARTICLE 15 OF  
8 TITLE 40, INSTALL OR ALLOW THE INSTALLATION OF ABOVE-GROUND  
9 INFRASTRUCTURE FOR BROADBAND INTERNET SERVICE, AS THAT TERM IS  
10 DEFINED IN SECTION 40-15-102 (3.5).

11 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-5-103 as  
12 follows:

13 **38-5-103. Power of companies to contract.** (1) ~~Such~~ AN electric  
14 light power, gas, or pipeline company, or ~~such~~ A city or town ~~shall have~~  
15 ~~power to~~ MAY contract with any person or corporation, the owner of any  
16 ~~lands~~ LAND or any franchise, easement, or interest ~~therein~~ ON THE LAND  
17 over or under which the line of electric light wire power or pipeline is  
18 proposed to be laid or created for the right-of-way for the construction,  
19 maintenance, and operation of its electric light wires, pipes, poles,  
20 regulator stations, substations, or other property and for the erection,  
21 maintenance, occupation, and operation of offices at suitable distances for  
22 the public accommodation.

23 (2) A COMPANY, CITY, OR TOWN EXERCISING ITS RIGHTS UNDER  
24 SUBSECTION (1) OF THIS SECTION MAY, IN ACCORDANCE WITH PART 6 OF  
25 ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW THE INSTALLATION OF  
26 ABOVE-GROUND INFRASTRUCTURE FOR BROADBAND INTERNET SERVICE,  
27 AS THAT TERM IS DEFINED IN SECTION 40-15-102 (3.5).

1           **SECTION 4. Act subject to petition - effective date.** This act  
2 takes effect at 12:01 a.m. on the day following the expiration of the  
3 ninety-day period after final adjournment of the general assembly (August  
4 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a  
5 referendum petition is filed pursuant to section 1 (3) of article V of the  
6 state constitution against this act or an item, section, or part of this act  
7 within such period, then the act, item, section, or part will not take effect  
8 unless approved by the people at the general election to be held in  
9 November 2020 and, in such case, will take effect on the date of the  
10 official declaration of the vote thereon by the governor.