

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 08-1029.01 Duane Gall

SENATE BILL 08-215

SENATE SPONSORSHIP

Schwartz,

HOUSE SPONSORSHIP

Riesberg,

Senate Committees

Business, Labor and Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING BROADBAND TELECOMMUNICATIONS SERVICE, AND, IN**
102 **CONNECTION THEREWITH, DIRECTING THE STATE'S CHIEF**
103 **INFORMATION OFFICER TO CREATE AN INVENTORY OF**
104 **BROADBAND SERVICE AREAS, AUTHORIZING THE PUBLIC**
105 **UTILITIES COMMISSION TO ESTABLISH A FUNDING MECHANISM**
106 **TO HELP DEFRAY THE COST OF PREPARING THE INVENTORY, AND**
107 **MAKING AN APPROPRIATION IN THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
April 18, 2008

Directs the chief information officer of the office of information technology, in consultation with the public utilities commission (commission) and the governor's innovation council, to identify broadband telecommunications service areas and information service areas within Colorado and to develop a map of such areas, with the goal of using the map to help plan the deployment of broadband service to unserved areas of the state. Uses the map as the basis for an inventory of existing and potential service areas and makes a report available to the general assembly containing this information.

Requires the chief information officer to hold at least 4 public meetings and consider comments submitted by members of the public in preparing the inventory. Allows the chief information officer to solicit gifts, grants, and donations to pay for the meetings and the preparation of the inventory and report.

Exempts from disclosure under the Colorado open records act any proprietary information submitted by telecommunications providers and information service providers in connection with the inventory.

Clarifies that the existing high cost support mechanism administered by the commission is established only for the financial support of providing basic local exchange service in rural areas. Authorizes the commission to draw upon the high cost administration fund to help defray the cost of preparing the inventory if the cost of preparing the inventory exceeds the amount available from gifts, grants, and donations as of September 1, 2008.

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

2 **SECTION 1. 24-37.5-106, Colorado Revised Statutes, is amended**

3 **BY THE ADDITION OF A NEW SUBSECTION to read:**

4 **24-37.5-106. Chief information officer - duties and**
5 **responsibilities - broadband inventory fund created - repeal.**

6 **(3) Broadband service areas - planning documents - statewide map.**

7 **(a) (I) THE CHIEF INFORMATION OFFICER, WORKING IN CONSULTATION**
8 **WITH THE GOVERNOR'S INNOVATION COUNCIL AND OTHER PUBLIC AND**
9 **PRIVATE ENTITIES, SHALL IDENTIFY BROADBAND SERVICE AREAS WITHIN**
10 **COLORADO, WITH THE GOAL OF CREATING AND MAINTAINING A**
11 **GEOGRAPHICALLY BASED STATEWIDE INVENTORY OF AVAILABLE**

1 BROADBAND SERVICES.

2 (II) Scope of inquiry. THE INVENTORY SHALL INCLUDE, BUT IS
3 NOT LIMITED TO:

4 (A) AN ILLUSTRATIVE STATEWIDE MAP TO HELP BROADBAND
5 PROVIDERS AND POLICYMAKERS BETTER UNDERSTAND THE CURRENT
6 AVAILABILITY OF BROADBAND SERVICE THROUGHOUT THE STATE. THE MAP
7 SHALL INCLUDE ALL AVAILABLE BROADBAND TECHNOLOGIES, INCLUDING
8 WIRED, WIRELESS, AND SATELLITE-DELIVERED SERVICES.

9 (B) THE POTENTIAL USE OF ENTERPRISE ZONES IN THE
10 DEVELOPMENT OF RURAL BROADBAND SERVICE;

11 (C) THE NEED FOR ADDITIONAL INFRASTRUCTURE TO REACH
12 LOCATIONS IN WHICH POTENTIAL BROADBAND CUSTOMERS ARE FOUND;
13 AND

14 (D) NONPROPRIETARY DEMOGRAPHIC INFORMATION.

15 (b) Confidentiality. THE INVENTORY SHALL NOT DISCLOSE
16 PROPRIETARY INFORMATION. PRIVATE ENTITIES SUBMITTING DATA IN
17 CONNECTION WITH PREPARATION OF THE INVENTORY SHALL BE REQUIRED
18 TO PROVIDE ONLY INFORMATION THAT IS RELEVANT TO THE INVENTORY
19 AND MAINTAINED IN THE NORMAL COURSE OF BUSINESS. ANY
20 INFORMATION DESIGNATED BY THE PROVIDING ENTITY AS CONFIDENTIAL OR
21 PROPRIETARY SHALL BE TREATED AS SUCH UNDER SECTION 24-72-204 (3)
22 AND, UPON REQUEST, THE CHIEF INFORMATION OFFICER SHALL ENTER INTO
23 APPROPRIATE NONDISCLOSURE AGREEMENTS REGARDING SUCH
24 INFORMATION.

25 (c) THE CHIEF INFORMATION OFFICER OR HIS OR HER DESIGNEE
26 SHALL HOLD AT LEAST FOUR PUBLIC MEETINGS TO SOLICIT AND RECEIVE
27 COMMENTS, INCLUDING WRITTEN COMMENTS, FROM MEMBERS OF THE

1 PUBLIC. THE CHIEF INFORMATION OFFICER MAY DETERMINE THE MANNER
2 IN WHICH SUCH COMMENTS ARE RECEIVED.

3 (d) IN PREPARING THE INVENTORY PURSUANT TO THIS SUBSECTION
4 (3), THE CHIEF INFORMATION OFFICER:

5 (I) SHALL CONSIDER ANY COMMENTS RECEIVED FROM THE GENERAL
6 PUBLIC AS WELL AS WRITTEN COMMENTS FROM AFFECTED COUNTIES,
7 CITIES, PROVIDERS OF BROADBAND SERVICE AND THEIR CUSTOMERS,
8 ENVIRONMENTAL GROUPS, AND OTHER INTERESTED STAKEHOLDERS;

9 (II) MAY EMPLOY OR CONTRACT WITH ONE OR MORE PRIVATE
10 CONTRACTORS OR CONSULTANTS FOR RESEARCH, COMPILATION,
11 PUBLICATION, DISTRIBUTION, OR OTHER DUTIES; AND

12 (III) SHALL EMPLOY OR CONTRACT WITH ONE OR MORE PRIVATE
13 CONTRACTORS OR CONSULTANTS FOR THE PURPOSE OF COLLECTING
14 INVENTORY INFORMATION AND OTHER PROPRIETARY INFORMATION,
15 SUBJECT TO APPROPRIATE NONDISCLOSURE AGREEMENTS, AND
16 COLLABORATING WITH THE CHIEF INFORMATION OFFICER AND HIS OR HER
17 DESIGNEES IN PREPARATION OF THE INVENTORY.

18 (e) THE INVENTORY SHALL BE COMPLETED ON OR BEFORE APRIL 1,
19 2009, AND MADE AVAILABLE TO THE GENERAL ASSEMBLY IN ACCORDANCE
20 WITH SECTION 24-1-136 (9). IN ADDITION, THE CHIEF INFORMATION
21 OFFICER SHALL PUBLISH, ON A PUBLICLY AVAILABLE WEB SITE, THE
22 AGGREGATE DATA ON WHICH THE INVENTORY IS BASED.

23 (f) **Funding.** (I) THE OFFICE OF INFORMATION TECHNOLOGY MAY
24 ACCEPT ALLOCATIONS FROM THE HIGH COST SUPPORT MECHANISM CREATED
25 PURSUANT TO SECTION 40-15-208, C.R.S., IF NECESSARY, AS WELL AS
26 PRIVATE GIFTS, GRANTS, AND DONATIONS, FOR THE PURPOSE OF
27 IMPLEMENTING THIS SUBSECTION (3). ANY SUCH GIFTS, GRANTS, AND

1 DONATIONS SHALL BE HELD IN THE BROADBAND INVENTORY FUND, ALSO
2 REFERRED TO IN THIS SECTION AS THE "FUND", WHICH FUND IS HEREBY
3 CREATED IN THE STATE TREASURY. THE FUND SHALL ALSO CONSIST OF
4 MONEYS APPROPRIATED AND TRANSFERRED TO THE FUND. EARNINGS FROM
5 INVESTMENT OF MONEYS IN THE FUND SHALL BE CREDITED TO THE FUND.
6 MONEYS IN THE FUND SHALL BE ANNUALLY APPROPRIATED TO THE CHIEF
7 INFORMATION OFFICER FOR THE PURPOSE OF IMPLEMENTING THIS
8 SUBSECTION (3).

9 (II) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
10 OFFICE OF INFORMATION TECHNOLOGY SOLICIT GIFTS, GRANTS, AND
11 DONATIONS FROM ALL AVAILABLE SOURCES FOR THE PURPOSES OF THIS
12 SECTION, ONLY DRAWING UPON THE HIGH COST SUPPORT MECHANISM
13 PURSUANT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH (f) AS A LAST
14 RESORT, AND THAT NO GENERAL FUND MONEYS BE USED TO PAY FOR THE
15 IMPLEMENTATION OF THIS SUBSECTION (3).

16 (III) ON OR BEFORE SEPTEMBER 1, 2008, THE CHIEF INFORMATION
17 OFFICER SHALL ESTIMATE THE AMOUNT NECESSARY TO FINANCE THE
18 IMPLEMENTATION OF THIS SUBSECTION (3). IF, BY THAT TIME, MONEYS IN
19 THE FUND CREATED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH
20 (f) DO NOT EQUAL OR EXCEED THAT AMOUNT, THE PUBLIC UTILITIES
21 COMMISSION SHALL DIRECT PAYMENTS OF UP TO ONE HUNDRED THOUSAND
22 DOLLARS INTO THE FUND FROM THE HIGH COST SUPPORT MECHANISM
23 CREATED IN SECTION 40-15-208 (3), C.R.S.

24 (g) **Repeal.** THIS SUBSECTION (3) IS REPEALED, EFFECTIVE JULY 1,
25 2009.

26 **SECTION 2.** 24-72-204 (3) (a), Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

1 24-72-204. Allowance or denial of inspection - grounds -
2 procedure - appeal - definitions. (3) (a) The custodian shall deny the
3 right of inspection of the following records, unless otherwise provided by
4 law; except that any of the following records, other than letters of
5 reference concerning employment, licensing, or issuance of permits, shall
6 be available to the person in interest under this subsection (3):

7 (XX) ALL PROPRIETARY INFORMATION SUBMITTED BY A PROVIDER
8 OF BROADBAND SERVICE IN CONNECTION WITH THE BROADBAND
9 INVENTORY AUTHORIZED BY SECTION 24-37.5-106 (3).

10 SECTION 3. 40-15-208 (1) and (2) (a), Colorado Revised
11 Statutes, are amended to read:

12 40-15-208. High cost support mechanism - Colorado high cost
13 administration fund - creation - purpose - operation. (1) All moneys
14 remaining in the Colorado high cost fund as of July 1, 1998, and not
15 previously encumbered by the commission for payment to providers of
16 telecommunications service shall be transferred to the Colorado high cost
17 administration fund created in subsection (3) of this section.

18 (2) (a) (I) The commission is hereby authorized to establish a
19 mechanism for the support of universal service, also referred to in this
20 section as the "high cost support mechanism", which shall operate in
21 accordance with rules adopted by the commission. The PRIMARY purpose
22 of the high cost support mechanism is to provide financial assistance to
23 local exchange providers to help make basic local exchange service
24 affordable and allow such providers to be fully reimbursed for the
25 difference between the reasonable costs incurred in making basic service
26 available to their customers within a rural, high cost geographic support
27 area and the price charged for such service, after taking into account any

1 amounts received by such providers under price support mechanisms
2 established by the federal government and by this state. THE HIGH COST
3 SUPPORT MECHANISM MAY ALSO BE USED, TO THE EXTENT NECESSARY, TO
4 SUPPLEMENT ANY GIFTS, GRANTS, AND DONATIONS RECEIVED PURSUANT TO
5 SECTION 24-37.5-106 (3) (f), C.R.S., IN ASSISTING THE OFFICE OF
6 INFORMATION TECHNOLOGY IN PREPARING THE STATEWIDE INVENTORY OF
7 AVAILABLE BROADBAND SERVICES AS PROVIDED IN SECTION 24-37.5-106
8 (3), C.R.S.

9 (II) The commission shall ensure that no local exchange provider
10 is receiving funds from this or any other source that, together with local
11 exchange service revenues, exceeds the cost of providing local exchange
12 service to customers of such provider. The high cost support mechanism
13 shall be supported and distributed equitably and on a nondiscriminatory,
14 competitively neutral basis through a rate element assessed on all
15 telecommunications service providers in Colorado.

16 **SECTION 4. Appropriation.** In addition to any other
17 appropriation, there is hereby appropriated, out of any moneys in the
18 broadband inventory fund created in section 24-37.5-106 (3) (f) (I),
19 Colorado Revised Statutes, not otherwise appropriated, to the office of the
20 governor, for allocation to the office of information technology, to create
21 an inventory of broadband service areas within the state, for the fiscal year
22 beginning July 1, 2008, the sum of twenty-one thousand dollars (\$21,000)
23 and 0.1 FTE, or so much thereof as may be necessary, for the
24 implementation of this act.

25 **SECTION 5. Safety clause.** The general assembly hereby finds,
26 determines, and declares that this act is necessary for the immediate
27 preservation of the public peace, health, and safety.