

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-0951	Date: March 24, 2014
Prime Sponsor(s): Rep. Williams; Murray Sen. Scheffel; Tochtrop	Bill Status: House Business, Labor, Economic, and Workforce Development
	Fiscal Analyst: Alex Schatz (303-866-4375)

SHORT TITLE: MEASURES EXPAND DEPLOYMENT COMMUNICATION NETWORKS

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	(\$2.01 million)	(\$2.45 million)
General Fund	(\$2.01 million)	(\$2.45 million)
State Expenditures	\$51,975	\$63,059
General Fund	43,855	51,824
Centrally Appropriated Costs**	8,120	11,235
FTE Position Change	0.9 FTE	1.2 FTE
Appropriation Required: \$43,855 - Department of Revenue (FY 2014-15)		

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

This fiscal note is a preliminary estimate of revenue and expenditure impacts on state and local agencies, based on available information. The fiscal note may be updated based on receipt of analysis by affected agencies.

Summary of Legislation

This bill sets statewide policy concerning the deployment of broadband technology. Specifically, the bill:

- exempts from state sales and use taxes all purchases of a telecommunications company to provide broadband services in Colorado;
- specifies that local jurisdictions may exempt from local sales taxes the purchase by a telecommunications company of equipment to provide broadband services;
- requires local government permitting of broadband facilities and certain wireless service facilities to adhere to new statutory deadlines, and to allow consolidation of applications for small cell networks;
- requires state and local government agencies, including coordination by the Department of Transportation, to provide notice of trenching activity to broadband providers and regulate other aspects of trenching; and
- clarifies that broadband service providers may utilize public rights-of-way for broadband facilities to the same extent as other telecommunication providers.

Background

Broadband service provider capital expenditures. On average over the five most recent fiscal years with available data, state sales and use tax revenue from the telecommunications industry averaged \$9.59 million per year. Sales taxes are charged based on the sales of goods in Colorado; use taxes are charged on goods purchased elsewhere.

The most recent U.S. Census Bureau economics data available for this analysis reports that 19.2 percent of receipts in the telecommunications industry were for broadband services. However, this calculation of broadband service market share was made in 2007, and recent trends, as well as information reported by the Federal Communications Commission indicates that broadband represents at least 24 percent of the telecommunications market.

Between 2011 and 2012, the U.S. Census Bureau reported no statistical difference in capital expenditures for the industry sector including broadband internet services providers.

Local government sales and use tax authority. Current law authorizes a local government that charges sales tax to exempt purchases of equipment by telecommunications service providers. This existing statute requires the local exemption to apply in a uniform manner to all telecommunications providers, including telephone service, cable television, broadband, and mobile telecommunications. The bill allows local taxing authorities to provide an exclusive sales tax exemption for broadband equipment. Neither existing statute nor the bill affect local use tax authority.

State Revenue

The bill results in an estimated reduction of state General Fund revenue by **\$2.01 million in FY 2014-15** and **\$2.45 million in FY 2015-16** and future fiscal years.

To calculate the loss of state revenue, the fiscal note multiplies the population-adjusted average annual total state sales and use tax collections for telecommunications equipment by the broadband market share (24 percent). Exemption of broadband equipment from state sales and use tax eliminates state revenue from 24 percent of an estimated \$8.37 million in telecommunications equipment state sales tax collections for 10 months in FY 2014-15 and 24 percent of an estimated \$10.21 million in telecommunications equipment state sales taxes in FY 2015-16.

Assumptions. Based on its effective date, the bill affects approximately 10 months of sales and use tax collections in FY 2014-15. The bill affects all sales and use taxes in FY 2015-16 and each subsequent fiscal year.

State Expenditures

The bill increases state expenditures in the Department of Revenue (DOR) by **\$51,975 and 0.9 FTE in FY 2014-15** and **\$63,059 and 1.2 FTE in FY 2015-16**. The bill also increases workload and potential expenditures in the Department of Transportation, and results in a minimal workload increase in the Department of Personnel and Administration and the Office of Information Technology. Expenditure increases in the DOR are summarized in Table 1.

Table 1. Department of Revenue Expenditures Under HB 14-1327		
Cost Components	FY 2014-15	FY 2015-16
Personal Services	\$38,012	\$50,684
FTE	0.9	1.2
Operating Expenses	1,140	1,140
Capital Outlay	4,703	0
Centrally Appropriated Costs*	8,120	11,235
TOTAL	\$51,975	\$63,059

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions. Given the potential difficulty for retailers and other suppliers to know whether sales of telecommunications equipment are taxable or exempt, companies will initially pay the tax and then submit claims for refunds to the DOR for exempt purchases. Approximately 500 new refund claims, equaling quarterly claims from 125 companies, will be submitted to the DOR.

Department of Revenue. Processing refunds is estimated to take 5 hours per claim, for a total of 2,500 hours per year. In addition, the DOR will provide 50 hours of technical support annually for taxpayers contacting the agency about the exemption. Associated costs and FTE allocations are prorated to reflect the payday shift and effective date in FY 2014-15, as reflected in Table 1.

Department of Transportation. The Colorado Department of Transportation (CDOT) must maintain a statewide list of broadband service providers that wish to receive notice of trenching activity. This list will require regular updates to ensure that broadband providers and their addresses are current. The bill also increases CDOT workload to monitor trenching requests for collocation opportunities and safety issues, and to notify broadband providers when CDOT projects will require trenching. Costs associated with this workload are not estimated but may be significant.

Other state agencies. In addition to CDOT, certain other state agencies own projects that may require trenching, such as the Department of Personnel and Administration (as manager of the Capitol Complex) or the Office of Information Technology (as manager of the state "backbone" in the Digital Trunk Radio System). Such state agencies must offer collocation to broadband providers and provide notice of pending projects. This results in a minimal workload increase and will not require new appropriations for these agencies.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under HB 14-1327*		
Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,480	\$7,307
Supplemental Employee Retirement Payments	2,640	3,928
TOTAL	\$8,120	\$11,235

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

Based on provisions concerning local sales tax exemptions, telecommunications facility permitting, and trenching activity, the bill increases local government expenditures and potentially affects local government revenue.

Local sales tax exemptions. Any change in local government revenue related to the bill's authority concerning a sales tax exemption is conditional, based on a local governing body adopting legislation to alter its existing sales tax ordinances. In the event that a local government adopts a new exemption applicable to broadband equipment, local revenue will be reduced. If a local government has an existing telecommunications equipment exemption and adopts legislation to limit this exemption to broadband equipment, local sales tax revenue will increase. The prevalence and magnitude of such legislative actions by local governments are not estimated for this analysis.

Telecommunications facility permitting. To comply with deadlines established in the bill, it may be necessary for some local governments to expedite the permitting of telecommunications facilities relative to their current process. This increased workload may require additional expenditures to, for example, hire contract planning and development consultants on a case-by-case basis. In addition, consolidation of small cell network applications may affect the calculation of permit fees under current ordinances, reducing local fee revenue unless and until fee ordinances are adjusted to account for such consolidated permits.

Trenching activity. The bill requires local governments to notify broadband providers of trenching activity and to monitor trenching requests for collocation opportunities and safety issues. Local government workload will generally increase to comply with these provisions of the bill, but such compliance is not expected to require significant new local government expenditures.

Technical Note

The fiscal note assumes that Section 2 of the bill permits a local government to create a local sales tax exemption that is identical to the state exemption. The state exemption is expressly and exclusively for the equipment of a broadband service provider and does not include an exemption for other telecommunication service providers. However, Section 5 of the bill provides that any tax, fee, or charge imposed by a local government "shall be competitively neutral among telecommunications providers and broadband providers." The fiscal note assumes that these provisions do not conflict, either because competitive neutrality is independently assessed for broadband providers only (see Section 38-5.5.-107 (2)(c)) or because this section of statute refers only to taxes, fees, and charges associated with the use of public rights-of-way, particularly franchise taxes and fees.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2014-15, the bill requires a General Fund appropriation of \$43,855 to the Department of Revenue, and an allocation of 0.9 FTE.

State and Local Government Contacts

Revenue
Counties
Municipalities
Transportation
Special Districts
Fire Chiefs
Law

Local Affairs
Regulatory Agencies
Public Safety
Property Taxation
Higher Education
Education
Military Affairs

Office of Economic Development
Office of Information Technology
Personnel and Administration
Colorado Energy Office
Regional Transportation District
Natural Resources