A BILL FOR AN ACT

CONCERNING THE INSTALLATION OF BROADBAND INTERNET SERVICE INFRASTRUCTURE.

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

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

PART 6

ELECTRIC UTILITY EASEMENTS

40-15-601. Definitions. As used in this part 6:

1. "BROADBAND INTERNET SERVICE PROVIDER" OR "PROVIDER":

(a) Means an existing provider of broadband internet service, a person who intends to provide broadband internet service, or a person who sells or leases, or intends to sell or lease, infrastructure used for another person's provision of broadband internet service;
(b) INCLUDES A LOCAL GOVERNMENT THAT PROVIDES BROADBAND
internet service or sells or leases, or intends to sell or lease,
infrastructure used for another person's provision of
broadband internet service.

(2) "ELECTRIC EASEMENT" MEANS A RECORDED OR UNRECORDED
easement held by an electric utility or other electricity
supplier for the siting of electric facilities, regardless of
whether:

(a) The easement is for the exclusive benefit of the
electric utility or other electricity supplier or for use in
connection with other utility services; and

(b) The electric utility or other electricity supplier
provides the other utility services.

(3) (a) "ELECTRIC UTILITY" MEANS ANY PROVIDER OF RETAIL
electric service in the state of Colorado.

(b) "ELECTRIC UTILITY" INCLUDES AN INVESTOR-OWNED UTILITY,
a cooperative electric association, and a municipally owned
utility.

(4) "LOCAL GOVERNMENT" MEANS A COUNTY, CITY AND COUNTY,
or municipality.


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

(a) INSTALL AND MAINTAIN ABOVE-GROUND BROADBAND
INTERNET SERVICE INFRASTRUCTURE FOR USE BY THE ELECTRIC UTILITY
OR OTHER ELECTRICITY SUPPLIER:
(I) For internal use connected to the electric utility's or
other electric supplier's provision of electricity; or

(II) Subject to the limitations set forth in section
40-15-106, for external use in providing broadband internet
service;

(b) Lease to a broadband internet service provider any
excess capacity of above-ground broadband internet service
infrastructure installed within the electric easement.

40-15-603. Broadband internet service provider's access to an
electric utility's easement - definitions. (1) A broadband internet
service provider may enter into a contract with a landowner to
access an existing easement that the landowner has granted to
an electric utility on the landowner's private property if:

(a) The provider seeks to access the existing easement for
the purpose of constructing or maintaining above-ground
infrastructure to be used for the provision of broadband
internet service;

(b) The provider's access will not violate an exclusivity
term in the electric utility's contract with the landowner; and

(c) The provider has obtained written authorization from
the electric utility pursuant to subsection (2)(a) of this section.

(2) (a) A broadband internet service provider seeking to
access an electric utility's existing easement on private
property pursuant to subsection (1) of this section shall first
obtain written authorization from the electric utility
indicating that the provider's access to the easement would not
likely interfere with the electric utility's construction,
MAINTENANCE, OR USE OF ANY ELECTRIC UTILITY INFRASTRUCTURE
PLACED ON THE PROPERTY.

(b) An electric utility shall not unreasonably withhold
authorization or delay its decision whether to provide written
authorization. If the electric utility withholds authorization,
it shall notify the provider in writing of its reasons for
withholding authorization.

(c) Notwithstanding an electric utility’s written
authorization, the electric utility may seek reimbursement from
the provider for the actual and reasonable costs the electric
utility incurs as a result of sharing the easement with the
provider.

(3) (a) The commission shall, upon complaint or upon its
own motion, seek to restrain a violation of this section pursuant
to section 40-7-104 if the commission has reason to believe that
a broadband internet service provider or an electric utility has
violated this section.

(b) For purposes of enforcing this section, the commission
has jurisdiction over a provider regardless of whether the
provider qualifies as a telecommunications provider.

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

38-4-103. Electric power companies. (1) Any foreign or
domestic corporation organized or chartered for the purpose, among other
things, of conducting and maintaining electric power transmission lines
for providing power or light by means of electricity for hire shall have
has a right-of-way for the construction, operation, and maintenance of
such electric power transmission lines through any patented or unpatented mine or mining claim or other land without the consent of the owner thereof of the patented or unpatented mine or mining claim or other land, if such the right-of-way is necessary for the purposes proposed.

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

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

38-5-103. Power of companies to contract. (1) Such an electric light power, gas, or pipeline company, or such a city or town shall have power to MAY contract with any person or corporation, the owner of any lands land or any franchise, easement, or interest therein on the land over or under which the line of electric light wire power or pipeline is proposed to be laid or created for the right-of-way for the construction, maintenance, and operation of its electric light wires, pipes, poles, regulator stations, substations, or other property and for the erection, maintenance, occupation, and operation of offices at suitable distances for the public accommodation.

(2) A COMPANY, CITY, OR TOWN EXERCISING ITS RIGHTS UNDER SUBSECTION (1) OF THIS SECTION MAY, IN ACCORDANCE WITH PART 6 OF ARTICLE 15 OF TITLE 40, INSTALL OR ALLOW THE INSTALLATION OF ABOVE-GROUND INFRASTRUCTURE FOR BROADBAND INTERNET SERVICE, AS THAT TERM IS DEFINED IN SECTION 40-15-102 (3.5).
SECTION 4. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.