

SENATE BILL No. 224

By Committee on Commerce

2-13

AN ACT concerning telecommunications; relating to the broadband deployment loan fund; amending K.S.A. 66-2010 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in this act:

(a) "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

(b) "Commission" means the Kansas corporation commission.

(c) "Fund" means the broadband deployment loan fund established by this act.

(d) "High speed internet access service" means those services and underlying facilities that provide upstream, from customer to provider or downstream from provider to customer, transmission to or from the internet in excess of 150 kilobits per second, regardless of the technology or medium used, including, but not limited to, wireless, copper wire, fiber optic cable or coaxial cable to provide such service.

(e) "Project" means the development and acquisition of the necessary improvements in order to facilitate the establishment of broadband service or high speed internet access services.

(f) "Project costs" means all costs or expenses which are necessary or incident to a project and which are directly attributable thereto.

(g) "Provider" means a provider of broadband services or high speed internet access service.

New Sec. 2. (a) There is hereby established in the state treasury the broadband deployment loan fund.

(b) Moneys from the following sources shall be credited to the fund:

(1) Amounts received by the state from the federal government for the purposes of the fund;

(2) amounts appropriated or otherwise made available by the legislature for the purposes of the fund;

(3) amounts received by the state pursuant to section 3, and amendments thereto.

(4) amounts of repayments of loans made under this act, together with payments of interest thereon, in accordance with agreements en-

1 tered into by the borrower and the commission;

2 (5) interest attributable to investment of moneys in the fund; and

3 (6) amounts received from any public or private entity for the pur-
4 poses of the fund.

5 (c) Subject to the conditions and in accordance with requirements of
6 this act, moneys credited to the fund shall be used only:

7 (1) To make loans to a qualified provider, as determined by the com-
8 mission, for payment of all or part of project costs;

9 (2) to earn interest on moneys in the fund; and

10 (3) for the reasonable costs, as determined by the commission, of
11 administering the fund and conducting activities under this act. Such costs
12 shall be identified annually in development of the intended use plan as
13 described in section 5, and amendments thereto.

14 (d) On or before the 10th of each month, the director of accounts
15 and reports shall transfer from the state general fund to the broadband
16 deployment loan fund interest earnings based on:

17 (1) The average daily balance of moneys in the public safety loan fund
18 for the preceding month; and

19 (2) the net earnings rate of the pooled money investment portfolio
20 for the preceding month.

21 (e) All payments and disbursements from the fund shall be made in
22 accordance with appropriation acts upon warrants of the director of ac-
23 counts and reports issued pursuant to vouchers approved by the com-
24 mission or by a person or persons designated by the commission. All
25 payments and disbursements from the fund, and beginning and ending
26 balances thereof, shall be subject each year to post audit in accordance
27 with article 11 of chapter 46 of the Kansas Statutes Annotated, and
28 amendments thereto.

29 Sec. 3. K.S.A. 66-2010 is hereby amended to read as follows: 66-
30 2010. (a) The commission shall utilize a competitive bidding process to
31 select a neutral, competent and bonded third party to administer the
32 KUSF.

33 (b) The administrator shall be responsible for: (1) Collecting and au-
34 diting all relevant information from all qualifying telecommunications
35 public utilities, telecommunications carriers or wireless telecommuni-
36 cations service providers receiving funds from or providing funds to the
37 KUSF; (2) verifying, based on the calculations of each qualifying telecom-
38 munications carrier, telecommunications public utility or wireless tele-
39 communications service provider, the obligation of each such qualifying
40 carrier, utility or provider to generate the funds required by the KUSF;
41 (3) collecting all moneys due to the KUSF from all telecommunications
42 public utilities, telecommunications carriers and wireless telecommuni-
43 cations service providers in the state; and (4) distributing amounts on a

1 monthly basis due to qualifying telecommunications public utilities, wire-
2 less telecommunications service providers and telecommunications car-
3 riers receiving KUSF funding.

4 (c) Any information made available or received by the administrator
5 from carriers, utilities or providers receiving funds from or providing
6 funds to the KUSF shall not be subject to any provisions of the Kansas
7 open records act and shall be considered confidential and proprietary.

8 (d) The administrator shall be authorized to maintain an action to
9 collect any funds owed by any telecommunications carrier, public utility
10 or wireless telecommunications provider in the district court in the county
11 of the registered office of such carrier, utility or provider or, if such car-
12 rier, utility or provider does not have a registered office in the state, such
13 an action may be maintained in the county where such carrier's, utility's
14 or provider's principal office is located. If such carrier, utility or provider
15 has no principal office in the state, such an action may be maintained in
16 the district court of any county in which such carrier, utility or provider
17 provides service.

18 (e) The KUSF administrator shall be responsible to ensure that funds
19 do not fall below the level necessary to pay all amounts collectively owed
20 to all qualifying telecommunications public utilities, wireless telecom-
21 munications service providers and telecommunications carriers. The ad-
22 ministrator shall have the authority to retain and invest in a prudent and
23 reasonable manner any excess funds collected in any period to help ensure
24 that adequate funds are available to cover amounts payable in other
25 periods.

26 (f) (1) Before October 1, 2002, the chief executive officer of the state
27 board of regents shall certify to the administrator of the KUSF the
28 amount provided by appropriation acts to be expended from the KAN-
29 ED fund created by K.S.A. 2002 Supp. 75-7225, and amendments
30 thereto, for the fiscal year ending June 30, 2003. Before October 1, 2003,
31 the chief executive officer of the state board of regents shall certify to the
32 administrator of the KUSF the amount equal to twice the amount pro-
33 vided by appropriation acts to be expended from the KAN-ED fund for
34 the fiscal year ending June 30, 2003. Before July 1, 2004, and before July
35 1 of each year thereafter, the chief executive officer of the state board of
36 regents shall certify to the administrator of the KUSF the amount pro-
37 vided by appropriation acts to be expended from the KAN-ED fund for
38 the fiscal year commencing the preceding July 1. Upon receipt of the
39 certification of the chief executive officer of the state board of regents,
40 the KUSF administrator shall add the amount certified to the amount
41 annually required to fund the KUSF as determined pursuant to subsec-
42 tion (b).

43 (2) Commencing January 1, 2003, and until June 30, 2004, on or

1 before the 10th day of each month the administrator of the KUSF shall
2 pay from the KUSF to the state treasurer an amount equal to $\frac{1}{6}$ of the
3 amount certified by the chief executive officer of the state board of re-
4 gents pursuant to subsection (f)(1) for the fiscal year ending June 30,
5 2003. Commencing July 1, 2004, on or before the 10th day of each month,
6 the administrator of the KUSF shall pay from the KUSF to the state
7 treasurer $\frac{1}{12}$ of the amount certified by the chief executive officer of the
8 state board of regents pursuant to subsection (a) for the fiscal year pre-
9 ceeding the fiscal year in which the payment is made. Upon the receipt of
10 the payment, the state treasurer shall deposit the entire amount in the
11 state treasury and credit it to the KAN-ED fund. Any such payments shall
12 be made after all payments required by K.S.A. 66-2008, and amendments
13 thereto, for the month are made from the KUSF.

14 (3) Amounts appropriated to be expended from the KAN-ED fund
15 for the fiscal year ending June 30, 2003, shall be based on a budget for
16 only six-months' operations. Amounts appropriated thereafter shall be
17 based on a budget for 12-months' operations.

18 (4) Not more than \$10,000,000 shall be paid from the KUSF to the
19 state treasurer pursuant to this subsection (f) in any one fiscal year.

20 (5) The provisions of this subsection (f) shall expire on June 30, 2005.
21 Thereafter, state general fund moneys shall be used to fund the KAN-
22 ED network.

23 (g) (1) *Commencing January 1, 2004, on or before the 10th day of*
24 *each month, the commission shall certify to the administrator of the KUSF*
25 *the amount of broadband deployment loans approved by the commission*
26 *from the previous month that are to be expended from the broadband*
27 *deployment loan fund created by new section 2, and amendments thereto.*

28 (2) *Commencing January 1, 2004, on or before the 10th day of each*
29 *month the administrator of the KUSF shall pay from the KUSF to the*
30 *state treasurer the amount certified by the commission pursuant to sub-*
31 *section (g) (1) for the month preceding the month in which the payment*
32 *is made. Upon receipt of the payment, the state treasurer shall deposit the*
33 *entire amount in the state treasury and credit it to the broadband de-*
34 *ployment loan fund. Any such payments shall be made after all payments*
35 *required by K.S.A. 66-2008, and amendments thereto, for the month are*
36 *made from the KUSF.*

37 (3) *No more than \$5,000,000 shall be paid from the KUSF to the state*
38 *treasurer pursuant to this subsection (g) in any one fiscal year.*

39 (4) *The provisions of this subsection (g) shall sunset effective June 30,*
40 *2013.*

41 New Sec. 4. The commission shall administer the provisions of this
42 act and shall be responsible for administration and management of the
43 fund. The commission is hereby authorized to:

1 (a) Enter into binding commitments for the provision of loans in ac-
2 cordance with the provisions of this act;

3 (b) review applications for loans and select the projects for which
4 loans will be made available;

5 (c) provide the governor and the legislature with an annual report
6 prepared in accordance with section 7, and amendments thereto, and with
7 copies of the audit required under section 2, and amendments thereto;
8 and

9 (d) adopt rules and regulations necessary for effectuation of the pro-
10 visions of this act.

11 New Sec. 5. After providing for public comment and review each
12 year, the commission shall prepare a plan identifying the intended uses
13 of the moneys available in the fund. The intended use plan shall include,
14 but not be limited to:

15 (a) The project priority list;

16 (b) a description of the short and long-term goals and objectives of
17 the fund;

18 (c) information on the projects to be financed, including a description
19 thereof, the terms of loans to be provided and the persons or entities
20 receiving the loans; and

21 (d) the criteria and method established for the provision of loans to
22 be made from the fund.

23 New Sec. 6. (a) Providers which desire the provision of a loan under
24 this act shall submit an application therefor to the commission. Applica-
25 tions shall be in such form and shall include such information as the
26 commission shall require and shall be submitted in a manner and at a
27 time to be determined by the commission.

28 (b) The commission may enter into agreements with any provider for
29 the provision of a loan thereto for payment of all or a part of project costs.
30 The purposes of the loan to be provided, the amount thereof, the interest
31 rate thereon and the repayment terms and conditions thereof, all of which
32 may vary among providers, shall be included in the agreements. Loans
33 shall be provided at or below market interest rates. No loan to any pro-
34 vider may exceed \$500,000. Such agreements shall provide that repay-
35 ment of any loan received shall begin not later than six months after
36 completion of the project and that such loan shall be repaid in full no
37 later than five years thereafter.

38 (c) If a provider to which a loan is made available under this act fails
39 to enter into an agreement with the commission for the provision of such
40 loan in accordance with the requirements of this act, the commission may
41 make the amount of the loan available for one or more other projects on
42 the priority list.

43 (d) The commission shall provide any provider, upon request, with

1 technical advice and assistance regarding a project or an application for
2 a loan for the payment of all or part of project costs.

3 New Sec. 7. The commission shall prepare an annual report describ-
4 ing how the state has met the goals and objectives for the previous year
5 as identified in the intended use plan prepared pursuant to section 5, and
6 amendments thereto.

7 New Sec. 8. The provisions of sections 1, 2, 4, 5, 6, 7, 8, 9 and 10
8 shall expire effective June 30, 2013.

9 Sec. 9. K.S.A. 66-2010 is hereby repealed.

10 Sec. 10. This act shall take effect and be in force from and after its
11 publication in the statute book.

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