

**Introduced by Senator Wright**January 23, 2013

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An act to amend Section 2881 of the Public Utilities Code, relating to telecommunications, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 129, as introduced, Wright. Deaf and disabled telecommunications program.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to oversee administration of the state's telecommunications universal service programs, including the deaf and disabled programs, which are funded through the Deaf and Disabled Telecommunications Program Administrative Committee Fund. Existing law, until January 1, 2014, requires the commission to establish a surcharge, not to exceed 0.5 %, that is uniformly applied to a subscriber's intrastate telephone service charges to allow providers of the equipment and service provided pursuant to the deaf and disabled programs to recover their costs. Existing law, until January 1, 2016, requires the commission to report specified information relative to the fiscal status of the programs to the Legislature on or before December 31 of each year.

This bill would extend imposition of the surcharge until January 1, 2024. The bill would extend the reporting requirements until January 1, 2025.

Under the Public Utilities Act a violation of any order, decision, rule, direction, demand, or requirement of the commission by a public utility is a crime.

Because the bill would require an order or decision of the commission to extend the surcharge funding the deaf and disabled programs and because a violation of these requirements would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2881 of the Public Utilities Code is  
2 amended to read:

3 2881. (a) The commission shall design and implement a  
4 program to provide a telecommunications device capable of serving  
5 the needs of individuals who are deaf or hearing impaired, together  
6 with a single party line, at no charge additional to the basic  
7 exchange rate, to a subscriber who is certified as an individual  
8 who is deaf or hearing impaired by a licensed physician and  
9 surgeon, audiologist, or a qualified state or federal agency, as  
10 determined by the commission, and to a subscriber that is an  
11 organization representing individuals who are deaf or hearing  
12 impaired, as determined and specified by the commission pursuant  
13 to subdivision (h). A licensed hearing aid dispenser may certify  
14 the need of an individual to participate in the program if that  
15 individual has been previously fitted with an amplified device by  
16 the dispenser and the dispenser has the individual's hearing records  
17 on file prior to certification. In addition, a physician assistant may  
18 certify the needs of an individual who has been diagnosed by a  
19 physician and surgeon as being deaf or hearing impaired to  
20 participate in the program after reviewing the medical records or  
21 copies of the medical records containing that diagnosis.

22 (b) The commission shall also design and implement a program  
23 to provide a dual-party relay system, using third-party intervention

1 to connect individuals who are deaf or hearing impaired and offices  
2 of organizations representing individuals who are deaf or hearing  
3 impaired, as determined and specified by the commission pursuant  
4 to subdivision (h), with persons of normal hearing by way of  
5 intercommunications devices for individuals who are deaf or  
6 hearing impaired and the telephone system, making available  
7 reasonable access of all phases of public telephone service to  
8 telephone subscribers who are deaf or hearing impaired. In order  
9 to make a dual-party relay system that will meet the requirements  
10 of individuals who are deaf or hearing impaired available at a  
11 reasonable cost, the commission shall initiate an investigation,  
12 conduct public hearings to determine the most cost-effective  
13 method of providing dual-party relay service to the deaf or hearing  
14 impaired when using a telecommunications device, and solicit the  
15 advice, counsel, and physical assistance of statewide nonprofit  
16 consumer organizations of the deaf, during the development and  
17 implementation of the system. The commission shall apply for  
18 certification of this program under rules adopted by the Federal  
19 Communications Commission pursuant to Section 401 of the  
20 federal Americans with Disabilities Act of 1990 (Public Law  
21 101-336).

22 (c) The commission shall also design and implement a program  
23 whereby specialized or supplemental telephone communications  
24 equipment may be provided to subscribers who are certified to be  
25 disabled at no charge additional to the basic exchange rate. The  
26 certification, including a statement of visual or medical need for  
27 specialized telecommunications equipment, shall be provided by  
28 a licensed optometrist, physician and surgeon, or physician  
29 assistant, acting within the scope of practice of his or her license,  
30 or by a qualified state or federal agency as determined by the  
31 commission. The commission shall, in this connection, study the  
32 feasibility of, and implement, if determined to be feasible, personal  
33 income criteria, in addition to the certification of disability, for  
34 determining a subscriber's eligibility under this subdivision.

35 (d) (1) The commission shall also design and implement a  
36 program to provide access to a speech-generating device to any  
37 subscriber who is certified as having a speech disability at no  
38 charge additional to the basic exchange rate. The certification shall  
39 be provided by a licensed physician, licensed speech-language  
40 pathologist, or qualified state or federal agency. The commission

1 shall provide to a certified subscriber access to a speech-generating  
2 device that is all of the following:

3 (A) A telecommunications device or a device that includes a  
4 telecommunications component.

5 (B) Appropriate to meet the subscriber's needs for access to,  
6 and use of, the telephone network, based on the recommendation  
7 of a licensed speech-language pathologist.

8 (C) Consistent with the quality of speech-generating devices  
9 available for purchase in the state.

10 (2) The commission shall adopt rules to implement this  
11 subdivision and subdivision (e) by January 1, 2014.

12 (e) All of the following apply to any device or equipment  
13 described in this section that is classified as durable medical  
14 equipment under guidelines established by the United States  
15 Department of Health and Human Services:

16 (1) It is the intent of the Legislature that the commission be the  
17 provider of last resort and that eligible subscribers first obtain  
18 coverage from any available public or private insurance.

19 (2) The commission may require the subscriber to provide  
20 information about coverage for any or all of the cost of the device  
21 or equipment that is available from any public or private insurance,  
22 the cost to the subscriber of any deductible, copayment, or other  
23 relevant expense, and any related benefit cap information.

24 (3) The total cost of any device or equipment provided to a  
25 subscriber under this section shall not exceed the rate of  
26 reimbursement provided by Medi-Cal for that device or equipment.

27 (f) Nothing in this section requires the commission to provide  
28 training to a subscriber on the use of a speech-generating device.

29 (g) The commission shall establish a rate recovery mechanism  
30 through a surcharge not to exceed one-half of 1 percent uniformly  
31 applied to a subscriber's intrastate telephone service, other than  
32 one-way radio paging service and universal telephone service,  
33 both within a service area and between service areas, to allow  
34 providers of the equipment and service specified in subdivisions  
35 (a), (b), (c), and (i), to recover costs as they are incurred under this  
36 section. The surcharge shall be in effect until January 1, ~~2014~~ 2024.

37 The commission shall require that the programs implemented under  
38 this section be identified on subscribers' bills, and shall establish  
39 a fund and require separate accounting for each of the programs  
40 implemented under this section.

1 (h) The commission shall determine and specify those statewide  
2 organizations representing the deaf or hearing impaired that shall  
3 receive a telecommunications device pursuant to subdivision (a)  
4 or a dual-party relay system pursuant to subdivision (b), or both,  
5 and in which offices the equipment shall be installed in the case  
6 of an organization having more than one office.

7 (i) (1) The commission shall expand the program created by  
8 this section to include assistance to individuals with speech  
9 disabilities that impair the individual's access to, and use of, the  
10 telephone network. The commission shall ensure that  
11 speech-generating devices, accessories, and mounting systems,  
12 and specialized telecommunications equipment, including infrared  
13 telephones, speaker phones, and telephone interface devices, are  
14 funded through the program.

15 (2) The commission shall ensure that only individuals who are  
16 both residents of the state and speech impaired as certified by a  
17 licensed physician, licensed speech-language pathologist, or  
18 qualified state or federal agency are eligible.

19 (3) The commission shall provide to each eligible applicant the  
20 appropriate equipment consistent with the recommendation of a  
21 licensed speech-language pathologist.

22 (4) The commission shall ensure that the equipment provided  
23 pursuant to this subdivision is consistent with the economy,  
24 efficiency, and quality of equipment that is available for purchase  
25 in the state.

26 (j) The commission may direct a telephone corporation subject  
27 to its jurisdiction to comply with its determinations and  
28 specifications pursuant to this section.

29 (k) The commission shall annually review the surcharge level  
30 and the balances in the funds established pursuant to subdivision  
31 (g). Until January 1, ~~2014~~2024, the commission may make, within  
32 the limits set by subdivision (g), any necessary adjustments to the  
33 surcharge to ensure that the programs supported thereby are  
34 adequately funded and that the fund balances are not excessive. A  
35 fund balance that is projected to exceed six months' worth of  
36 projected expenses at the end of the fiscal year is excessive.

37 (l) The commission shall prepare and submit to the Legislature,  
38 on or before December 31 of each year, a report on the fiscal status  
39 of the programs established and funded pursuant to this section  
40 and Sections 2881.1 and 2881.2. The report shall include a

1 statement of the surcharge level established pursuant to subdivision  
2 (g) and revenues produced by the surcharge, an accounting of  
3 program expenses, and an evaluation of options for controlling  
4 those expenses and increasing program efficiency, including, but  
5 not limited to, all of the following proposals:

6 (1) The establishment of a means test for persons to qualify for  
7 program equipment or free or reduced charges for the use of  
8 telecommunication services.

9 (2) If and to the extent not prohibited under Section 401 of the  
10 federal Americans with Disabilities Act of 1990 (Public Law  
11 101-336), the imposition of limits or other restrictions on maximum  
12 usage levels for the relay service, which shall include the  
13 development of a program to provide basic communications  
14 requirements to all relay users at discounted rates, including  
15 discounted toll-call rates, and, for usage in excess of those basic  
16 requirements, at rates that recover the full costs of service.

17 (3) More efficient means for obtaining and distributing  
18 equipment to qualified subscribers.

19 (4) The establishment of quality standards for increasing the  
20 efficiency of the relay system.

21 (m) The report described in subdivision (l) that is due no later  
22 than December 31, 2013, shall evaluate options for controlling the  
23 program costs of providing speech-generating devices and include  
24 information on any barriers to participation in the program by  
25 eligible subscribers.

26 (n) In order to continue to meet the access needs of individuals  
27 with functional limitations of hearing, vision, movement,  
28 manipulation, speech, and interpretation of information, the  
29 commission shall perform ongoing assessment of, and if  
30 appropriate, expand the scope of the program to allow for  
31 additional access capability consistent with evolving  
32 telecommunications technology.

33 (o) The commission shall structure the programs required by  
34 this section so that a charge imposed to promote the goals of  
35 universal service reasonably equals the value of the benefits of  
36 universal service to contributing entities and their subscribers.

37 (p) (1) The requirement for submitting a report imposed under  
38 subdivision (l) is inoperative on January 1, ~~2016~~ 2025, pursuant  
39 to Section 10231.5 of the Government Code.

1 (2) A report submitted pursuant to subdivision (l) shall be  
2 submitted in compliance with Section 9795 of the Government  
3 Code.

4 SEC. 2. No reimbursement is required by this act pursuant to  
5 Section 6 of Article XIII B of the California Constitution because  
6 the only costs that may be incurred by a local agency or school  
7 district will be incurred because this act creates a new crime or  
8 infraction, eliminates a crime or infraction, or changes the penalty  
9 for a crime or infraction, within the meaning of Section 17556 of  
10 the Government Code, or changes the definition of a crime within  
11 the meaning of Section 6 of Article XIII B of the California  
12 Constitution.

13 SEC. 3. This act is an urgency statute necessary for the  
14 immediate preservation of the public peace, health, or safety within  
15 the meaning of Article IV of the Constitution and shall go into  
16 immediate effect. The facts constituting the necessity are:

17 In order to avoid administrative and reporting disruptions with  
18 respect to the state's deaf and disabled telecommunications  
19 universal service programs, to maintain compliance with federal  
20 telecommunications universal service program requirements, and  
21 to encourage continued investments in the development and  
22 manufacture of technology and software that advances the  
23 communications capabilities of the deaf and disabled, it is  
24 necessary for this act to take effect immediately.