

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 6, 2015

AMENDED IN ASSEMBLY FEBRUARY 24, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 238

Introduced by Assembly Member Mark Stone

February 5, 2015

An act to amend Section 281 ~~of~~ *of*, and to add Section 281.1 to, the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as amended, Mark Stone. Telecommunications: California Advanced Services ~~Fund~~ *Fund*.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law establishes, among other funds related to telecommunications, the California Advanced Services Fund (CASF) in the State Treasury. Existing law requires the commission to develop, implement, and administer the CASF to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and substantial social benefits of advanced information and communications technologies, as provided in specified decisions of the commission and in the CASF statute. Existing law requires the commission to give priority to projects that provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider. *Existing law establishes that the goal of the program is, no later than December 31, 2015, to approve funding for infrastructure projects that will provide broadband access*

to no less than 98% of California households. Existing law authorizes the commission to collect a surcharge for deposit into the CASF not to exceed \$315,000,000 in total and authorizes the surcharge until 2020.

~~This bill would define “broadband” for purposes of these provisions as advanced telecommunication services with specified advertised speeds and would authorize the commission to revise the definition, as specified. The bill would state the intent of the Legislature that the commission give additional priority to projects providing broadband access to unserved or underserved households.~~

~~Existing law provides that entities that are not telephone corporations are eligible to apply for funding from the CASF for projects to provide last-mile broadband access to households that are unserved. Existing law provides that local government entities may be eligible for infrastructure grants only if the infrastructure projects are for unserved households or businesses.~~

~~This bill would make projects that provide last-mile broadband access solely to households that are underserved also eligible for funding. For entities that are local governments, the bill would eliminate the requirement that the infrastructure projects be for unserved households or businesses.~~

This bill would extend to December 31, 2020, the time period for meeting the program goal and would specify the threshold speeds to be met in achieving the goal. The bill would require the commission to give priority to projects that provide advanced communication services at those threshold speeds to unserved and underserved households until the goal is achieved. The bill would authorize the commission, once that goal is achieved, to prioritize funding for other specified projects. The bill would require the commission and the California Broadband Council, in consultation with relevant state agencies, to develop a plan to implement these provisions in a manner that fosters public-private collaboration. The bill would authorize the commission to allocate up to \$10 million from the Broadband Infrastructure Grant Account in the CASF to a specified nonprofit organization for specified purposes. The bill would make various legislative findings, including findings regarding deployment of broadband speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream. The bill would remove the restrictions on the surcharge for the CASF. By removing those restrictions, the bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus

would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

Because the provisions of this bill are within the Public Utilities Act, a violation of which is a crime, this bill would impose a state-mandated local program by extending 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.

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

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

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The availability of high-speed Internet access, referred to
4 generically as “broadband” and including both wired and wireless
5 technologies, is essential 21st century infrastructure for economic
6 competitiveness and quality of life. Economic studies confirm that
7 the use of broadband technologies increases economic productivity
8 as a foundation for increased efficiency in organizational
9 operations and enhanced profitability in business.

10 (2) Broadband infrastructure is also vital to the operation and
11 management of other critical infrastructure, such as energy
12 generation systems and the power grid, water supply systems, and
13 public safety and emergency response networks. There is a need
14 for world-class broadband infrastructure throughout California
15 to support these major infrastructure investments to protect lives,
16 property, and the environment.

17 (3) The California Advanced Services Fund (CASF) is a vital
18 resource for California to be a national leader and globally
19 competitive in broadband infrastructure.

20 (b) It is the intent of the Legislature that the Public Utilities
21 Commission, after ensuring the development of last-mile
22 infrastructure to provide at least 6 megabits per second (Mbps)
23 downstream and 1.5 Mbps upstream service for 98 percent of

1 *unserved or underserved households in each region of the state,*
2 *do all of the following:*

3 *(1) Establish the goal for threshold broadband speeds in future*
4 *plans and programs of not less than 25 Mbps downstream and 3*
5 *Mbps upstream. In establishing the threshold broadband speeds,*
6 *the commission should ensure California remains a national leader*
7 *and globally competitive on broadband infrastructure while taking*
8 *into account all cost-effective strategies.*

9 *(2) Analyze and publish public data regarding the availability*
10 *of broadband service at speeds specified in paragraph (1)*
11 *throughout the state.*

12 *(3) Prepare and submit to the Legislature a plan for achieving*
13 *broadband service at speeds specified in paragraph (1) that*
14 *includes the following:*

15 *(A) An analysis of the availability of those threshold speeds for*
16 *all consumers.*

17 *(B) An assessment of the implications of the implementation of*
18 *paragraph (1) for the CASF and the required funding needed to*
19 *achieve that goal in unserved and underserved areas.*

20 *(C) A delineation of the strategies and policies that would*
21 *achieve that goal in the most cost-effective manner possible,*
22 *including whether or not it should be the policy of the state to*
23 *encourage fiber deployment for middle-mile projects.*

24 *SEC. 2. Section 281 of the Public Utilities Code is amended*
25 *to read:*

26 *281. (a) (1) The commission shall develop, implement, and*
27 *administer the California Advanced Services Fund program to*
28 *encourage deployment of high-quality advanced communications*
29 *services to all Californians that will promote economic growth,*
30 *job creation, and the substantial social benefits of advanced*
31 *information and communications technologies, consistent with*
32 *this ~~section~~ section and Section 281.1.*

33 *(2) Recognizing that in addition to residential households, there*
34 *are other types of consumers, including anchor institutions, such*
35 *as schools, libraries, community centers, and health and medical*
36 *facilities; small businesses and large employers; and research*
37 *organizations all with a range of needs for broadband access*
38 *threshold speeds in exceed of those specified in Section 281.1, the*
39 *commission, in administering the program, shall consider approve*
40 *funding for last-mile infrastructure projects to reach unserved and*

1 *underserved households that exceed those threshold speeds, that*
2 *also provide improvements to those other types of consumers, and*
3 *that the commission deems to be in the public interest and a*
4 *cost-effective use of the moneys in the California Advanced*
5 *Services Fund.*

6 (b) (1) ~~The~~ A goal of the program is, no later than December
7 31, ~~2015,~~ 2020, to approve funding for infrastructure projects that
8 will provide broadband access *at advertised speeds of 6 megabits*
9 *per second (Mbps) downstream and 1.5 Mbps upstream* to no less
10 than 98 percent of California households.

11 (2) In approving infrastructure projects, the commission shall
12 give priority to projects ~~that provide last-mile broadband access~~
13 ~~to households that are unserved by an existing facilities-based~~
14 ~~broadband provider.~~ *pursuant to Section 281.1.* The commission
15 shall provide each applicant, and any party challenging an
16 application, the opportunity to demonstrate actual levels of
17 broadband service in the project area, which the commission shall
18 consider in reviewing the application.

19 (c) The commission shall establish the following accounts within
20 the fund:

21 (1) The Broadband Infrastructure Grant Account.

22 (2) The Rural and Urban Regional Broadband Consortia Grant
23 Account.

24 (3) The Broadband Infrastructure Revolving Loan Account.

25 (4) The Broadband Public Housing Account.

26 (d) (1) All moneys collected by the surcharge authorized by
27 the commission pursuant to Decision 07-12-054 shall be
28 transmitted to the commission pursuant to a schedule established
29 by the commission. The commission shall transfer the moneys
30 received to the Controller for deposit in the California Advanced
31 Services Fund. ~~Moneys~~ *The first two hundred fifteen million dollars*
32 *(\$215,000,000) of the moneys* collected on and after January 1,
33 2011, shall be deposited in the following amounts in the following
34 accounts:

35 (A) One hundred ninety million dollars (\$190,000,000) into the
36 Broadband Infrastructure Grant Account.

37 (B) Fifteen million dollars (\$15,000,000) into the Rural and
38 Urban Regional Broadband Consortia Grant Account.

39 (C) Ten million dollars (\$10,000,000) into the Broadband
40 Infrastructure Revolving Loan Account.

1 (2) *Of the moneys collected above the first two hundred fifteen*
2 *million dollars (\$215,000,000), the Controller shall deposit those*
3 *moneys into the three accounts specified in paragraph (1) in*
4 *amounts the commission deems appropriate.*

5 (2)

6 (3) All interest earned on moneys in the fund shall be deposited
7 in the fund.

8 ~~(3) The commission shall not collect moneys, by imposing the~~
9 ~~surcharge described in paragraph (1) for deposit in the fund, in an~~
10 ~~amount that exceeds one hundred million dollars (\$100,000,000)~~
11 ~~before January 1, 2011. On and after January 1, 2011, the~~
12 ~~commission may collect an additional sum not to exceed two~~
13 ~~hundred fifteen million dollars (\$215,000,000), for a sum total of~~
14 ~~moneys collected by imposing the surcharge described in paragraph~~
15 ~~(1) not to exceed three hundred fifteen million dollars~~
16 ~~(\$315,000,000). The commission may collect the additional sum~~
17 ~~beginning with the calendar year starting on January 1, 2011, and~~
18 ~~continuing through the 2020 calendar year, in an amount not to~~
19 ~~exceed twenty-five million dollars (\$25,000,000) per year, unless~~
20 ~~the commission determines that collecting a higher amount in any~~
21 ~~year will not result in an increase in the total amount of all~~
22 ~~surcharges collected from telephone customers that year.~~

23 (e) (1) All moneys in the California Advanced Services Fund
24 shall be available, upon appropriation by the Legislature, to the
25 commission for the program administered by the commission
26 pursuant to this section, *section and Section 281.1*, including the
27 costs incurred by the commission in developing, implementing,
28 and administering the program and the fund.

29 (2) Notwithstanding any other law and for the sole purpose of
30 providing matching funds pursuant to the federal American
31 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any
32 entity eligible for funding pursuant to that act shall be eligible to
33 apply to participate in the program administered by the commission
34 pursuant to this section, *section and Section 281.1*, if that entity
35 otherwise satisfies the eligibility requirements under that program.
36 Nothing in this section shall impede the ability of an incumbent
37 local exchange carrier, as defined by subsection (h) of Section 251
38 of Title 47 of the United States Code, that is regulated under a rate
39 of return regulatory structure, to recover, in rate base, California
40 infrastructure investment not provided through federal or state

1 grant funds for facilities that provide broadband service and
2 California intrastate voice service.

3 (3) Notwithstanding subdivision (b) of Section 270, an entity
4 that is not a telephone corporation shall be eligible to apply to
5 participate in the program administered by the commission pursuant
6 to ~~this section~~ *section and Section 281.1* to provide access to
7 broadband to an unserved or underserved household, as defined
8 in commission Decision 12-02-015, if the entity otherwise meets
9 the eligibility requirements and complies with program
10 requirements established by the commission. These requirements
11 shall include all of the following:

12 (A) That projects under this paragraph provide last-mile
13 broadband access to households that are unserved by an existing
14 facilities-based broadband provider and only receive funding to
15 provide broadband access to households that are unserved or
16 underserved, as defined in commission Decision 12-02-015.

17 (B) That funding for a project providing broadband access to
18 an underserved household shall not be approved until after any
19 existing facilities-based provider has an opportunity to demonstrate
20 to the commission that it will, within a reasonable timeframe,
21 upgrade existing service. An existing facilities-based provider
22 may, but is not required to, apply for funding under this section to
23 make that upgrade.

24 (C) That the commission shall provide each applicant, and any
25 party challenging an application, the opportunity to demonstrate
26 actual levels of broadband service in the project area, which the
27 commission shall consider in reviewing the application.

28 (D) That a local governmental agency may be eligible for an
29 infrastructure grant only if the infrastructure project is for an
30 unserved household or business, the commission has conducted
31 an open application process, and no other eligible entity applied.

32 (E) That the commission shall establish a service list of
33 interested parties to be notified of California Advanced Services
34 Fund applications.

35 (4) *Notwithstanding subdivision (b) of Section 270, up to ten*
36 *million dollars (\$10,000,000) from the Broadband Infrastructure*
37 *Grant Account shall be available for allocation to the California*
38 *Telehealth Network, a 501(c)(3) nonprofit organization, for*
39 *purposes of leveraging that organization's utilization of the Federal*

1 *Communications Commission's Healthcare Connect Fund for*
2 *California's medically underserved communities.*

3 (f) Moneys in the Rural and Urban Regional Broadband
4 Consortia Grant Account shall be available for grants to eligible
5 consortia to fund the cost of broadband deployment activities other
6 than the capital cost of facilities, as specified by the commission.
7 An eligible consortium may include, as specified by the
8 commission, representatives of organizations, including, but not
9 limited to, local and regional government, public safety, elementary
10 and secondary education, health care, libraries, postsecondary
11 education, community-based organizations, tourism, parks and
12 recreation, agricultural, and business, and is not required to have
13 as its lead fiscal agent an entity with a certificate of public
14 convenience and necessity.

15 (g) Moneys in the Broadband Infrastructure Revolving Loan
16 Account shall be available to finance capital costs of broadband
17 facilities not funded by a grant from the Broadband Infrastructure
18 Grant Account. The commission shall periodically set interest rates
19 on the loans based on surveys of existing financial markets.

20 (h) (1) For purposes of this subdivision, the following terms
21 have the following meanings:

22 (A) "Publicly subsidized" means either that the housing
23 development receives financial assistance from the United States
24 Department of Housing and Urban Development pursuant to an
25 annual contribution contract or is financed with low-income
26 housing tax credits, tax-exempt mortgage revenue bonds, general
27 obligation bonds, or local, state, or federal loans or grants and the
28 rents of the occupants, who are lower income households, do not
29 exceed those prescribed by deed restrictions or regulatory
30 agreements pursuant to the terms of the financing or financial
31 assistance.

32 (B) "Publicly supported community" means a publicly
33 subsidized multifamily housing development that is wholly owned
34 by either of the following:

35 (i) A public housing agency that has been chartered by the state,
36 or by any city or county in the state, and has been determined to
37 be an eligible public housing agency by the United States
38 Department of Housing and Urban Development.

39 (ii) An incorporated nonprofit organization as described in
40 Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec.

1 501(c)(3)) that is exempt from taxation under Section 501(a) of
2 that code (16 U.S.C. Sec. 501(a)), and that has received public
3 funding to subsidize the construction or maintenance of housing
4 occupied by residents whose annual income qualifies as “low” or
5 “very low” income according to federal poverty guidelines.

6 (2) Notwithstanding subdivision (b) of Section 270, moneys in
7 the Broadband Public Housing Account shall be available for the
8 commission to award grants and loans pursuant to this subdivision
9 to an eligible publicly supported community if that entity otherwise
10 meets eligibility requirements and complies with program
11 requirements established by the commission.

12 (3) Not more than twenty million dollars (\$20,000,000) shall
13 be available for grants and loans to a publicly supported community
14 to finance a project to connect a broadband network to that publicly
15 supported community. A publicly supported community may be
16 an eligible applicant only if the publicly supported community can
17 verify to the commission that the publicly supported community
18 has not denied a right of access to any broadband provider that is
19 willing to connect a broadband network to the facility for which
20 the grant or loan is sought.

21 (4) (A) Not more than five million dollars (\$5,000,000) shall
22 be available for grants and loans to a publicly supported community
23 to support programs designed to increase adoption rates for
24 broadband services for residents of that publicly supported
25 community. A publicly supported community may be eligible for
26 funding for a broadband adoption program only if the residential
27 units in the facility to be served have access to broadband services
28 or will have access to broadband services at the time the funding
29 for adoption is implemented.

30 (B) A publicly supported community may contract with other
31 nonprofit or public agencies to assist in implementation of a
32 broadband adoption program.

33 (5) To the extent feasible, the commission shall approve projects
34 for funding from the Broadband Public Housing Account in a
35 manner that reflects the statewide distribution of publicly supported
36 communities.

37 (6) In reviewing a project application under this subdivision,
38 the commission shall consider the availability of other funding
39 sources for that project, any financial contribution from the
40 broadband service provider to the project, the availability of any

1 other public or private broadband adoption or deployment program,
 2 including tax credits and other incentives, and whether the applicant
 3 has sought funding from, or participated in, any reasonably
 4 available program. The commission may require an applicant to
 5 provide match funding, and shall not deny funding for a project
 6 solely because the applicant is receiving funding from another
 7 source.

8 (7) ~~(A)~~ To provide funding for the purposes of this subdivision,
 9 the commission shall transfer to the Broadband Public Housing
 10 Account twenty million dollars (\$20,000,000) from the Broadband
 11 Infrastructure Grant Account and five million dollars (\$5,000,000)
 12 from the Broadband Revolving Loan Account. Any moneys in the
 13 Broadband Public Housing Account that have not been awarded
 14 pursuant to this subdivision by December 31, 2016, shall be
 15 transferred back to the Broadband Infrastructure Grant Account
 16 and Broadband Infrastructure Revolving Loan Account in
 17 proportion to the amount transferred from the respective accounts.

18 ~~(B) The commission shall transfer funds pursuant to~~
 19 ~~subparagraph (A) only if the commission is otherwise authorized~~
 20 ~~to collect funds for purposes of this section in excess of the total~~
 21 ~~amount authorized pursuant to paragraph (3) of subdivision (d).~~

22 (i) (1) The commission shall conduct two interim financial
 23 audits and a final financial audit and two interim performance
 24 audits and a final performance audit of the implementation and
 25 effectiveness of the California Advanced Services Fund to ensure
 26 that funds have been expended in accordance with the approved
 27 terms of the grant awards and loan agreements and this section.
 28 ~~agreements, this section, and Section 281.1.~~ The commission shall
 29 report its interim findings to the Legislature by April 1, 2011, and
 30 April 1, 2017. The commission shall report its final findings to the
 31 Legislature by April 1, 2021. The reports shall also include an
 32 update to the maps in the final report of the California Broadband
 33 Task Force and data on the types and numbers of jobs created as
 34 a result of the program administered by the commission pursuant
 35 to this section. ~~section and Section 281.1.~~

36 (2) (A) The requirement for submitting a report imposed under
 37 paragraph (1) is inoperative on January 1, 2022, pursuant to Section
 38 10231.5 of the Government Code.

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

4 (j) (1) Beginning on January 1, 2012, and annually thereafter,
5 the commission shall provide a report to the Legislature that
6 includes all of the following information:

7 (A) The amount of funds expended from the California
8 Advanced Services Fund in the prior year.

9 (B) The recipients of funds expended from the California
10 Advanced Services Fund in the prior year.

11 (C) The geographic regions of the state affected by funds
12 expended from the California Advanced Services Fund in the prior
13 year.

14 (D) The expected benefits to be derived from the funds expended
15 from the California Advanced Services Fund in the prior year.

16 (E) Actual broadband adoption levels from the funds expended
17 from the California Advanced Services Fund in the prior year.

18 (F) The amount of funds expended from the California
19 Advanced Services Fund used to match federal funds.

20 (G) An update on the expenditures from California Advanced
21 Services Fund and broadband adoption levels, and an accounting
22 of remaining unserved and underserved households and areas of
23 the state.

24 (H) The status of the California Advanced Services Fund balance
25 and the projected amount to be collected in each year ~~through 2020~~
26 to fund approved projects.

27 (2) (A) The requirement for submitting a report imposed under
28 paragraph (1) is inoperative on January 1, 2021, pursuant to Section
29 10231.5 of the Government Code.

30 (B) A report to be submitted pursuant to paragraph (1) shall be
31 submitted in compliance with Section 9795 of the Government
32 Code.

33 *SEC. 3. Section 281.1 is added to the Public Utilities Code, to*
34 *read:*

35 *281.1. (a) For the purposes of this section, the following terms*
36 *mean the following:*

37 *(1) "Last-mile infrastructure" means the segment of the Internet*
38 *infrastructure that provides Internet connectivity to end users,*
39 *such as residential households, anchor institutions, and local*
40 *businesses.*

1 (2) “Middle-mile backhaul infrastructure” means the segment
2 of the Internet infrastructure that connects the last-mile
3 infrastructure to the backbone infrastructure of the Internet.

4 (3) “Program” means the California Advanced Services Fund
5 program.

6 (4) “Unserved households” and “underserved households”
7 have the same meanings as in commission Decision 12-02-015.

8 (b) (1) Until the goal specified in paragraph (1) of subdivision
9 (b) of Section 281 is achieved, the commission, in administering
10 the program, shall give priority to last-mile infrastructure projects
11 that provide advanced communication services at or above the
12 advertised speeds required under the goal to unserved or
13 underserved households if the projects have access to cost-effective
14 and affordable middle-mile backhaul infrastructure.

15 (2) The commission shall give additional priority to applicants
16 that are incumbents with existing middle-mile backhaul
17 infrastructure proposing to deploy last-mile infrastructure to
18 provide services to unserved and underserved households.

19 (3) In applying for funding for the program, an applicant shall
20 demonstrate the cost-effectiveness of the last-mile infrastructure
21 at the threshold speeds specified in paragraph (1) of subdivision
22 (b) of Section 281.

23 (c) Once the goal specified in paragraph (1) of subdivision (b)
24 of Section 281 is reached, the commission may prioritize funding
25 pursuant to the program for any of the following:

26 (1) Last-mile infrastructure projects providing advanced
27 communication services at advertised speeds of at least 25 Mbps
28 downstream and 3 Mbps upstream to unserved and underserved
29 households and at appropriate speeds to anchor institutions and
30 other customers in the vicinity of those households.

31 (2) Upgrades to broadband connectivity for other critical
32 infrastructure systems not in the vicinity of residences.

33 (3) Last-mile infrastructure projects of statewide public
34 significance, including projects related to public safety and
35 emergency response, such as providing broadband connectivity
36 to and among county fairgrounds as staging areas for emergency
37 responses, wildfire fighting, and disaster evacuations.

38 (d) It is the intent of the Legislature to enact legislation to
39 establish a transparent public process to analyze and designate a

1 *project as having statewide significance for purposes of paragraph*
2 *(3) of subdivision (c).*

3 *(e) The commission and the California Broadband Council*
4 *shall, in consultation with relevant state agencies, develop a plan*
5 *to implement this section in a manner that fosters public-private*
6 *partnership collaboration in an open and transparent process.*

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

16 ~~SECTION 1. (a) The Legislature finds and declares all of the~~
17 ~~following:~~

18 ~~(1) In the Broadband Availability in America report, released~~
19 ~~on January 30, 2015, the Federal Communications Commission~~
20 ~~(FCC) found that the rate of deployment of advanced~~
21 ~~telecommunications services is failing to keep up with today's~~
22 ~~advanced, high-quality voice, data, graphics, and video offerings.~~

23 ~~(2) After evaluating advances in technology, market offerings~~
24 ~~by broadband providers, and consumer demand, the FCC updated~~
25 ~~the definition of broadband to mean 25 megabits per second (Mbps)~~
26 ~~downstream and three Mbps upstream speed.~~

27 ~~(3) In California, home to the development of much of the~~
28 ~~world's most advanced telecommunications technology, 2.6 million~~
29 ~~people do not have access to any services offering wireline 25~~
30 ~~Mbps/3 Mbps broadband speeds. The lack of access especially~~
31 ~~affects people living in rural counties.~~

32 ~~(4) In today's digital landscape, access to proper broadband~~
33 ~~service is a necessity for the workplace, education, civic~~
34 ~~engagement, and economic competitiveness. California cannot fall~~
35 ~~behind in securing access to robust broadband for all of its~~
36 ~~residents, and it must continue to be a leader in developing~~
37 ~~advanced telecommunications infrastructure for all.~~

38 ~~(b) It is the intent of the Legislature to enact legislation to pursue~~
39 ~~the deployment of advanced telecommunications services with~~

1 broadband speeds of at least 25 Mbps downstream and 3 Mbps
2 upstream in all areas of the state.

3 (e) It is the intent of the Legislature that the Public Utilities
4 Commission encourage the deployment of broadband access
5 pursuant to Section 706(a) of the Telecommunications Act of 1996
6 (47 U.S.C. Sec. 1302(a)).

7 SEC. 2. Section 281 of the Public Utilities Code is amended
8 to read:

9 281. (a) The commission shall develop, implement, and
10 administer the California Advanced Services Fund program to
11 encourage deployment of high-quality advanced communications
12 services to all Californians that will promote economic growth,
13 job creation, and the substantial social benefits of advanced
14 information and communications technologies, consistent with
15 this section.

16 (b) (1) The goal of the program is to approve funding for
17 infrastructure projects that will provide broadband access to no
18 less than 98 percent of California households.

19 (2) (A) In approving infrastructure projects, the commission
20 shall give priority to projects that provide last-mile broadband
21 access to households that are unserved by an existing
22 facilities-based broadband provider. The commission shall provide
23 each applicant, and any party challenging an application, the
24 opportunity to demonstrate actual levels of broadband service in
25 the project area, which the commission shall consider in reviewing
26 the application.

27 (B) It is the intent of the Legislature that the commission give
28 additional priority to projects providing broadband access to
29 unserved or underserved households, as defined in commission
30 Decision 12-02-015.

31 (3) (A) For purposes of this section, “broadband” means
32 advanced communication services at advertised speeds of at least
33 25 megabits per second (Mbps) downstream and three Mbps
34 upstream.

35 (B) If the Federal Communications Commission adopts a
36 definition for “advanced telecommunication capability” that
37 provides for a faster speed than that specified in subparagraph (A);
38 the commission may revise the definition of “broadband” to be
39 consistent with that federal definition.

1 ~~(e) The commission shall establish the following accounts within~~
2 ~~the fund:~~
3 ~~(1) The Broadband Infrastructure Grant Account.~~
4 ~~(2) The Rural and Urban Regional Broadband Consortia Grant~~
5 ~~Account.~~
6 ~~(3) The Broadband Infrastructure Revolving Loan Account.~~
7 ~~(4) The Broadband Public Housing Account.~~
8 ~~(d) (1) All moneys collected by the surcharge authorized by~~
9 ~~the commission pursuant to commission Decision 07-12-054 shall~~
10 ~~be transmitted to the commission pursuant to a schedule established~~
11 ~~by the commission. The commission shall transfer the moneys~~
12 ~~received to the Controller for deposit in the California Advanced~~
13 ~~Services Fund. Moneys collected on and after January 1, 2011,~~
14 ~~shall be deposited in the following amounts in the following~~
15 ~~accounts:~~
16 ~~(A) One hundred ninety million dollars (\$190,000,000) into the~~
17 ~~Broadband Infrastructure Grant Account.~~
18 ~~(B) Ten million dollars (\$10,000,000) into the Rural and Urban~~
19 ~~Regional Broadband Consortia Grant Account.~~
20 ~~(C) Fifteen million dollars (\$15,000,000) into the Broadband~~
21 ~~Infrastructure Revolving Loan Account.~~
22 ~~(2) All interest earned on moneys in the fund shall be deposited~~
23 ~~in the fund.~~
24 ~~(3) The commission shall not collect moneys, by imposing the~~
25 ~~surcharge described in paragraph (1) for deposit in the fund, in an~~
26 ~~amount that exceeds one hundred million dollars (\$100,000,000)~~
27 ~~before January 1, 2011. On and after January 1, 2011, the~~
28 ~~commission may collect an additional sum not to exceed two~~
29 ~~hundred fifteen million dollars (\$215,000,000), for a sum total of~~
30 ~~moneys collected by imposing the surcharge described in paragraph~~
31 ~~(1) not to exceed three hundred fifteen million dollars~~
32 ~~(\$315,000,000). The commission may collect the additional sum~~
33 ~~beginning with the calendar year starting on January 1, 2011, and~~
34 ~~continuing through the 2020 calendar year, in an amount not to~~
35 ~~exceed twenty-five million dollars (\$25,000,000) per year, unless~~
36 ~~the commission determines that collecting a higher amount in any~~
37 ~~year will not result in an increase in the total amount of all~~
38 ~~surcharges collected from telephone customers that year.~~
39 ~~(e) (1) All moneys in the California Advanced Services Fund~~
40 ~~shall be available, upon appropriation by the Legislature, to the~~

1 ~~commission for the program administered by the commission~~
2 ~~pursuant to this section, including the costs incurred by the~~
3 ~~commission in developing, implementing, and administering the~~
4 ~~program and the fund.~~

5 ~~(2) Notwithstanding any other law and for the sole purpose of~~
6 ~~providing matching funds pursuant to the federal American~~
7 ~~Recovery and Reinvestment Act of 2009 (Public Law 111-5), any~~
8 ~~entity eligible for funding pursuant to that act shall be eligible to~~
9 ~~apply to participate in the program administered by the commission~~
10 ~~pursuant to this section, if that entity otherwise satisfies the~~
11 ~~eligibility requirements under that program. This section does not~~
12 ~~impede the ability of an incumbent local exchange carrier, as~~
13 ~~defined by subsection (h) of Section 251 of Title 47 of the United~~
14 ~~States Code, that is regulated under a rate of return regulatory~~
15 ~~structure, to recover, in rate base, California infrastructure~~
16 ~~investment not provided through federal or state grant funds for~~
17 ~~facilities that provide broadband service and California intrastate~~
18 ~~voice service.~~

19 ~~(3) Notwithstanding subdivision (b) of Section 270, an entity~~
20 ~~that is not a telephone corporation shall be eligible to apply to~~
21 ~~participate in the program administered by the commission pursuant~~
22 ~~to this section to provide access to broadband to an unserved or~~
23 ~~underserved household, if the entity otherwise meets the eligibility~~
24 ~~requirements and complies with program requirements established~~
25 ~~by the commission. These requirements shall include all of the~~
26 ~~following:~~

27 ~~(A) That projects under this paragraph provide last-mile~~
28 ~~broadband access to households that are unserved or underserved~~
29 ~~by an existing facilities-based broadband provider and only receive~~
30 ~~funding to provide broadband access to those households.~~

31 ~~(B) That funding for a project providing broadband access to~~
32 ~~an underserved household shall not be approved until after any~~
33 ~~existing facilities-based provider has an opportunity to demonstrate~~
34 ~~to the commission that it will, within a reasonable timeframe,~~
35 ~~upgrade existing service. An existing facilities-based provider~~
36 ~~may, but is not required to, apply for funding under this section to~~
37 ~~make that upgrade.~~

38 ~~(C) That the commission shall provide each applicant, and any~~
39 ~~party challenging an application, the opportunity to demonstrate~~

1 actual levels of broadband service in the project area, which the
2 commission shall consider in reviewing the application:

3 ~~(D) That a local governmental agency may be eligible for an~~
4 ~~infrastructure grant only if the commission has conducted an open~~
5 ~~application process, and no other eligible entity applied.~~

6 ~~(E) That the commission shall establish a service list of~~
7 ~~interested parties to be notified of California Advanced Services~~
8 ~~Fund applications.~~

9 ~~(f) Moneys in the Rural and Urban Regional Broadband~~
10 ~~Consortia Grant Account shall be available for grants to eligible~~
11 ~~consortia to fund the cost of broadband deployment activities other~~
12 ~~than the capital cost of facilities, as specified by the commission.~~
13 ~~An eligible consortium may include, as specified by the~~
14 ~~commission, representatives of organizations, including, but not~~
15 ~~limited to, local and regional government, public safety, elementary~~
16 ~~and secondary education, health care, libraries, postsecondary~~
17 ~~education, community-based organizations, tourism, parks and~~
18 ~~recreation, agricultural, and business, and is not required to have~~
19 ~~as its lead fiscal agent an entity with a certificate of public~~
20 ~~convenience and necessity.~~

21 ~~(g) Moneys in the Broadband Infrastructure Revolving Loan~~
22 ~~Account shall be available to finance capital costs of broadband~~
23 ~~facilities not funded by a grant from the Broadband Infrastructure~~
24 ~~Grant Account. The commission shall periodically set interest rates~~
25 ~~on the loans based on surveys of existing financial markets.~~

26 ~~(h) (1) For purposes of this subdivision, the following terms~~
27 ~~have the following meanings:~~

28 ~~(A) “Publicly subsidized” means either that the housing~~
29 ~~development receives financial assistance from the United States~~
30 ~~Department of Housing and Urban Development pursuant to an~~
31 ~~annual contribution contract or is financed with low-income~~
32 ~~housing tax credits, tax-exempt mortgage revenue bonds, general~~
33 ~~obligation bonds, or local, state, or federal loans or grants and the~~
34 ~~rents of the occupants, who are lower income households, do not~~
35 ~~exceed those prescribed by deed restrictions or regulatory~~
36 ~~agreements pursuant to the terms of the financing or financial~~
37 ~~assistance.~~

38 ~~(B) “Publicly supported community” means a publicly~~
39 ~~subsidized multifamily housing development that is wholly owned~~
40 ~~by either of the following:~~

1 (i) ~~A public housing agency that has been chartered by the state,~~
2 ~~or by any city or county in the state, and has been determined to~~
3 ~~be an eligible public housing agency by the United States~~
4 ~~Department of Housing and Urban Development.~~

5 (ii) ~~An incorporated nonprofit organization as described in~~
6 ~~Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec.~~
7 ~~501(c)(3)) that is exempt from taxation under Section 501(a) of~~
8 ~~that code (16 U.S.C. Sec. 501(a)), and that has received public~~
9 ~~funding to subsidize the construction or maintenance of housing~~
10 ~~occupied by residents whose annual income qualifies as “low” or~~
11 ~~“very low” income according to federal poverty guidelines.~~

12 (2) ~~Notwithstanding subdivision (b) of Section 270, moneys in~~
13 ~~the Broadband Public Housing Account shall be available for the~~
14 ~~commission to award grants and loans pursuant to this subdivision~~
15 ~~to an eligible publicly supported community if that entity otherwise~~
16 ~~meets eligibility requirements and complies with program~~
17 ~~requirements established by the commission.~~

18 (3) ~~Not more than twenty million dollars (\$20,000,000) shall~~
19 ~~be available for grants and loans to a publicly supported community~~
20 ~~to finance a project to connect a broadband network to that publicly~~
21 ~~supported community. A publicly supported community may be~~
22 ~~an eligible applicant only if the publicly supported community can~~
23 ~~verify to the commission that the publicly supported community~~
24 ~~has not denied a right of access to any broadband provider that is~~
25 ~~willing to connect a broadband network to the facility for which~~
26 ~~the grant or loan is sought.~~

27 (4) (A) ~~Not more than five million dollars (\$5,000,000) shall~~
28 ~~be available for grants and loans to a publicly supported community~~
29 ~~to support programs designed to increase adoption rates for~~
30 ~~broadband services for residents of that publicly supported~~
31 ~~community. A publicly supported community may be eligible for~~
32 ~~funding for a broadband adoption program only if the residential~~
33 ~~units in the facility to be served have access to broadband services~~
34 ~~or will have access to broadband services at the time the funding~~
35 ~~for adoption is implemented.~~

36 (B) ~~A publicly supported community may contract with other~~
37 ~~nonprofit or public agencies to assist in implementation of a~~
38 ~~broadband adoption program.~~

39 (5) ~~To the extent feasible, the commission shall approve projects~~
40 ~~for funding from the Broadband Public Housing Account in a~~

1 manner that reflects the statewide distribution of publicly supported
2 communities:

3 ~~(6) In reviewing a project application under this subdivision,~~
4 ~~the commission shall consider the availability of other funding~~
5 ~~sources for that project, any financial contribution from the~~
6 ~~broadband service provider to the project, the availability of any~~
7 ~~other public or private broadband adoption or deployment program,~~
8 ~~including tax credits and other incentives, and whether the applicant~~
9 ~~has sought funding from, or participated in, any reasonably~~
10 ~~available program. The commission may require an applicant to~~
11 ~~provide match funding, and shall not deny funding for a project~~
12 ~~solely because the applicant is receiving funding from another~~
13 ~~source.~~

14 ~~(7) (A) To provide funding for the purposes of this subdivision,~~
15 ~~the commission shall transfer to the Broadband Public Housing~~
16 ~~Account twenty million dollars (\$20,000,000) from the Broadband~~
17 ~~Infrastructure Grant Account and five million dollars (\$5,000,000)~~
18 ~~from the Broadband Revolving Loan Account. Any moneys in the~~
19 ~~Broadband Public Housing Account that have not been awarded~~
20 ~~pursuant to this subdivision by December 31, 2016, shall be~~
21 ~~transferred back to the Broadband Infrastructure Grant Account~~
22 ~~and Broadband Infrastructure Revolving Loan Account in~~
23 ~~proportion to the amount transferred from the respective accounts.~~

24 ~~(B) The commission shall transfer funds pursuant to~~
25 ~~subparagraph (A) only if the commission is otherwise authorized~~
26 ~~to collect funds for purposes of this section in excess of the total~~
27 ~~amount authorized pursuant to paragraph (3) of subdivision (d).~~

28 ~~(i) (1) The commission shall conduct two interim financial~~
29 ~~audits and a final financial audit and two interim performance~~
30 ~~audits and a final performance audit of the implementation and~~
31 ~~effectiveness of the California Advanced Services Fund to ensure~~
32 ~~that funds have been expended in accordance with the approved~~
33 ~~terms of the grant awards and loan agreements and this section.~~
34 ~~The commission shall report its interim findings to the Legislature~~
35 ~~by April 1, 2011, and April 1, 2017. The commission shall report~~
36 ~~its final findings to the Legislature by April 1, 2021. The reports~~
37 ~~shall also include an update to the maps in the final report of the~~
38 ~~California Broadband Task Force and data on the types and~~
39 ~~numbers of jobs created as a result of the program administered~~
40 ~~by the commission pursuant to this section.~~

1 ~~(2) (A) The requirement for submitting a report imposed under~~
2 ~~paragraph (1) is inoperative on January 1, 2022, pursuant to Section~~
3 ~~10231.5 of the Government Code.~~

4 ~~(B) A report to be submitted pursuant to paragraph (1) shall be~~
5 ~~submitted in compliance with Section 9795 of the Government~~
6 ~~Code.~~

7 ~~(j) (1) Beginning on January 1, 2012, and annually thereafter,~~
8 ~~the commission shall provide a report to the Legislature that~~
9 ~~includes all of the following information:~~

10 ~~(A) The amount of funds expended from the California~~
11 ~~Advanced Services Fund in the prior year.~~

12 ~~(B) The recipients of funds expended from the California~~
13 ~~Advanced Services Fund in the prior year.~~

14 ~~(C) The geographic regions of the state affected by funds~~
15 ~~expended from the California Advanced Services Fund in the prior~~
16 ~~year.~~

17 ~~(D) The expected benefits to be derived from the funds expended~~
18 ~~from the California Advanced Services Fund in the prior year.~~

19 ~~(E) Actual broadband adoption levels from the funds expended~~
20 ~~from the California Advanced Services Fund in the prior year.~~

21 ~~(F) The amount of funds expended from the California~~
22 ~~Advanced Services Fund used to match federal funds.~~

23 ~~(G) An update on the expenditures from California Advanced~~
24 ~~Services Fund and broadband adoption levels, and an accounting~~
25 ~~of remaining unserved and underserved households and areas of~~
26 ~~the state.~~

27 ~~(H) The status of the California Advanced Services Fund balance~~
28 ~~and the projected amount to be collected in each year through 2020~~
29 ~~to fund approved projects.~~

30 ~~(2) (A) The requirement for submitting a report imposed under~~
31 ~~paragraph (1) is inoperative on January 1, 2021, pursuant to Section~~
32 ~~10231.5 of the Government Code.~~

33 ~~(B) A report to be submitted pursuant to paragraph (1) shall be~~
34 ~~submitted in compliance with Section 9795 of the Government~~
35 ~~Code.~~