

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2130**

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**Introduced by Assembly Member Quirk**

February 17, 2016

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An act to amend Section 281 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2130, as amended, Quirk. Telecommunications: universal service: California Advanced Services Fund.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law establishes the California Advanced Services Fund, referred to as the CASF, in the State ~~Treasury~~. *Treasury, with 4 accounts. Existing law requires that a surcharge imposed by the commission pursuant to a specified decision of the commission be deposited in the fund. Existing law prohibits the commission from collecting more than \$100,000,000 before January 1, 2011, and authorizes the commission to collect an additional sum not to exceed \$215,000,000, through the surcharge for the period beginning January 1, 2011, and continuing through the 2020 calendar year, for a total cost limitation of \$315,000,000.* Existing law requires the commission to develop, implement, and administer the CASF *program* to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications ~~technologies, as provided in certain decisions of the commission and in statute~~. *technologies. Existing law states that the goal of the California Advanced Services Fund 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 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 and requires the commission to provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, as prescribed.

~~This bill would make nonsubstantive changes to the CASF statute.~~

This bill would establish the Broadband Build-Out Completion Account within the CASF and would authorize the commission to collect an additional sum not to exceed \$100,000,000, on or after January 1, 2017, for deposit in the Broadband Build-Out Completion Account. The bill would require that moneys in the account be disbursed pursuant to a multiple-round, fair and open competitive bidding process for infrastructure projects to provide broadband access to unserved areas of California consistent with specified requirements and objectives.

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

Because the program that is extended under the provisions of this bill are within the act and a decision or order of the commission implements the program requirements, a violation of these provisions 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.

By authorizing the charge to fund the new account, this bill would include 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.

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: ~~no~~<sup>yes</sup>.

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

1 SECTION 1. Section 281 of the Public Utilities Code is  
2 amended to read:

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

10 (b) (1) The goal of the program is, no later than December 31,  
11 2015, to approve funding for infrastructure projects that will  
12 provide broadband access to no less than 98 percent of the state's  
13 households.

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

21 (c) The commission shall establish the following accounts within  
22 the fund:

23 (1) The Broadband Infrastructure Grant Account.

24 (2) The Rural and Urban Regional Broadband Consortia Grant  
25 Account.

26 (3) The Broadband Infrastructure Revolving Loan Account.

27 (4) The Broadband Public Housing Account.

28 (5) *The Broadband Build-Out Completion Account.*

29 (d) (1) All moneys collected by the surcharge authorized by  
30 the commission pursuant to Decision 07-12-054 shall be  
31 transmitted to the commission pursuant to a schedule established  
32 by the commission. The commission shall transfer the moneys  
33 received to the Controller for deposit in the California Advanced  
34 Services Fund. Moneys collected on and after January 1, 2011,  
35 shall be deposited in the following amounts in the following  
36 accounts:

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

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

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

5 (2) All interest earned on moneys in the fund shall be deposited  
6 in the fund.

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

22 (e) *Notwithstanding subdivision (d), on or after January 1, 2017,*  
23 *the commission may collect an additional sum not to exceed one*  
24 *hundred million dollars (\$100,000,000), for deposit in the*  
25 *Broadband Build-Out Completion Account. The commission may*  
26 *collect the additional sum beginning with the calendar year 2017*  
27 *and continuing through the 2020 calendar year, in an amount not*  
28 *to exceed twenty-five million dollars (\$25,000,000) per year, unless*  
29 *the commission determines that collecting a higher amount in any*  
30 *year will not result in an increase in the total amount of all*  
31 *surcharges collected from telephone customers that year.*

32 (e)  
33 (f) (1) All moneys in the California Advanced Services Fund  
34 shall be available, upon appropriation by the Legislature, to the  
35 commission for the program administered by the commission  
36 pursuant to this section, including the costs incurred by the  
37 commission in developing, implementing, and administering the  
38 program and the fund.

39 (2) Notwithstanding any other law and for the sole purpose of  
40 providing matching funds pursuant to the federal American

1 Recovery and Reinvestment Act of 2009 (Public Law 111-5), any  
2 entity eligible for funding pursuant to that act shall be eligible to  
3 apply to participate in the program administered by the commission  
4 pursuant to this section, if that entity otherwise satisfies the  
5 eligibility requirements under that program. Nothing in this section  
6 shall impede the ability of an incumbent local exchange carrier,  
7 as defined by subsection (h) of Section 251 of Title 47 of the  
8 United States Code, that is regulated under a rate of return  
9 regulatory structure, to recover, in rate base, California  
10 infrastructure investment not provided through federal or state  
11 grant funds for facilities that provide broadband service and  
12 California intrastate voice service.

13 (3) An entity that is not a telephone corporation shall be eligible  
14 to apply to participate in the program administered by the  
15 commission pursuant to this section to provide access to broadband  
16 to an unserved or underserved household, as defined in commission  
17 Decision 12-02-015, if the entity otherwise meets the eligibility  
18 requirements and complies with program requirements established  
19 by the commission. These requirements shall include all of the  
20 following:

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

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

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

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

1 (E) That the commission shall establish a service list of  
2 interested parties to be notified of California Advanced Services  
3 Fund applications.

4 ~~(F)~~

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

17 ~~(g)~~

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

23 ~~(h)~~

24 (i) (1) For purposes of this subdivision, the following terms  
25 have the following meanings:

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

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

39 (i) A public housing agency that has been chartered by the state,  
40 or by any city or county in the state, and has been determined to

1 be an eligible public housing agency by the United States  
2 Department of Housing and Urban Development.

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

10 (2) Moneys in the Broadband Public Housing Account shall be  
11 available for the commission to award grants and loans pursuant  
12 to this subdivision to an eligible publicly supported community if  
13 that entity otherwise meets eligibility requirements and complies  
14 with program requirements established by the commission.

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

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

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

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

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

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

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

26 (j) *(1) Moneys in the Broadband Build-Out Completion Account*  
27 *shall be disbursed pursuant to a multiple-round, fair and open*  
28 *competitive bidding process for infrastructure projects to provide*  
29 *broadband access to unserved areas of California. The bidding*  
30 *process shall include all of the following:*

31 (A) *Criteria for determining eligible areas for Broadband*  
32 *Build-Out Completion Account funding by utilizing available*  
33 *information as to those areas that are unserved and that are not*  
34 *eligible for funding pursuant to Phase II of the Connect America*  
35 *Fund, because of the limitations in Section 54.310 of Title 47 of*  
36 *the Code of Federal Regulations, or similar programs distributing*  
37 *federal Connect America Fund support.*

38 (B) *Publicizing and making publicly available material program*  
39 *requirements in advance of the deadline for bid submission,*  
40 *including terms for the service commitments described in*

1 *paragraph (2). Program requirements shall be technologically*  
2 *neutral.*

3 *(C) Establishing a reserve price for each eligible area after*  
4 *considering the model used for the distribution of Phase II of the*  
5 *Connect America Fund or similar programs for distributing federal*  
6 *Connect America Fund support.*

7 *(D) Awarding funds with the objective of serving the maximum*  
8 *number of unserved households. Bidders shall be allowed to*  
9 *determine the amount of capital and operating expenses to include*  
10 *in the bid and shall not be required to share this information with*  
11 *the commission.*

12 *(2) Recipients of Broadband Build-Out Completion Account*  
13 *support shall offer access to the Internet at speeds of at least 10*  
14 *megabits per second (Mbps) downstream and 1 Mbps upstream*  
15 *and shall offer a voice service that meets all of the following*  
16 *requirements for the term specified by the commission:*

17 *(A) It provides voice grade access to the public switched*  
18 *telephone network or its replacement voice communications*  
19 *network.*

20 *(B) It enables real time, two-way voice communications.*

21 *(C) It provides the ability to call and connect to the local*  
22 *emergency telephone systems described in the*  
23 *Warren-911-Emergency Assistance Act (Article 6 (commencing*  
24 *with Section 53100) of Chapter 1 of Part 1 of Division 2 of Title*  
25 *5 of the Government Code).*

26 *(3) The commission shall conduct a fair and open competitive*  
27 *bidding process and shall award funds from the Broadband*  
28 *Build-Out Completion Account no later than January 1, 2020.*

29 *(4) If funds remain in the Broadband Build-Out Completion*  
30 *Account after the first award of funds, the commission shall*  
31 *promptly conduct additional competitive bidding rounds to*  
32 *distribute the balance of available funds in the account.*

33 *SEC. 2. No reimbursement is required by this act pursuant to*  
34 *Section 6 of Article XIII B of the California Constitution because*  
35 *the only costs that may be incurred by a local agency or school*  
36 *district will be incurred because this act creates a new crime or*  
37 *infraction, eliminates a crime or infraction, or changes the penalty*  
38 *for a crime or infraction, within the meaning of Section 17556 of*  
39 *the Government Code, or changes the definition of a crime within*

- 1 *the meaning of Section 6 of Article XIII B of the California*
- 2 *Constitution.*

O