

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2130

Introduced by Assembly Member Quirk

February 17, 2016

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~~^{2/3}. Appropriation: no. Fiscal committee: ~~no~~^{yes}. State-mandated local program: ~~no~~^{yes}.

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