

**ASSEMBLY BILL**

**No. 238**

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**Introduced by Assembly Member Mark Stone**

February 5, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as introduced, Mark Stone. Telecommunications: California Advanced Services 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.

This bill would make nonsubstantive changes to that provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*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:

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

8 (b) (1) The goal of the program is, no later than December 31,  
9 2015, to approve funding for infrastructure projects that will  
10 provide broadband access to no less than 98 percent of California  
11 households.

12 (2) In approving infrastructure projects, the commission shall  
13 give priority to projects that provide last-mile broadband access  
14 to households that are unserved by an existing facilities-based  
15 broadband provider. The commission shall provide each applicant,  
16 and any party challenging an application, the opportunity to  
17 demonstrate actual levels of broadband service in the project area,  
18 which the commission shall 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 *commission* Decision 07-12-054 shall  
28 be 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 collected on and after January 1, 2011,  
32 shall be deposited in the following amounts in the following  
33 accounts:

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

36 (B) Ten million dollars (\$10,000,000) into the Rural and Urban  
37 Regional Broadband Consortia Grant Account.

38 (C) Fifteen million dollars (\$15,000,000) into the Broadband  
39 Infrastructure Revolving Loan Account.

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

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

18 (e) (1) All moneys in the California Advanced Services Fund  
19 shall be available, upon appropriation by the Legislature, to the  
20 commission for the program administered by the commission  
21 pursuant to this section, including the costs incurred by the  
22 commission in developing, implementing, and administering the  
23 program and the fund.

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

38 (3) Notwithstanding subdivision (b) of Section 270, an entity  
39 that is not a telephone corporation shall be eligible to apply to  
40 participate in the program administered by the commission pursuant

1 to this section to provide access to broadband to an unserved or  
2 underserved household, as defined in commission Decision  
3 12-02-015, if the entity otherwise meets the eligibility requirements  
4 and complies with program requirements established by the  
5 commission. These requirements shall include all of the following:  
6 (A) That projects under this paragraph provide last-mile  
7 broadband access to households that are unserved by an existing  
8 facilities-based broadband provider and only receive funding to  
9 provide broadband access to households that are unserved or  
10 underserved, as defined in commission Decision 12-02-015.  
11 (B) That funding for a project providing broadband access to  
12 an underserved household shall not be approved until after any  
13 existing facilities-based provider has an opportunity to demonstrate  
14 to the commission that it will, within a reasonable timeframe,  
15 upgrade existing service. An existing facilities-based provider  
16 may, but is not required to, apply for funding under this section to  
17 make that upgrade.  
18 (C) That the commission shall provide each applicant, and any  
19 party challenging an application, the opportunity to demonstrate  
20 actual levels of broadband service in the project area, which the  
21 commission shall consider in reviewing the application.  
22 (D) That a local governmental agency may be eligible for an  
23 infrastructure grant only if the infrastructure project is for an  
24 unserved household or business, the commission has conducted  
25 an open application process, and no other eligible entity applied.  
26 (E) That the commission shall establish a service list of  
27 interested parties to be notified of California Advanced Services  
28 Fund applications.  
29 (f) Moneys in the Rural and Urban Regional Broadband  
30 Consortia Grant Account shall be available for grants to eligible  
31 consortia to fund the cost of broadband deployment activities other  
32 than the capital cost of facilities, as specified by the commission.  
33 An eligible consortium may include, as specified by the  
34 commission, representatives of organizations, including, but not  
35 limited to, local and regional government, public safety, elementary  
36 and secondary education, health care, libraries, postsecondary  
37 education, community-based organizations, tourism, parks and  
38 recreation, agricultural, and business, and is not required to have  
39 as its lead fiscal agent an entity with a certificate of public  
40 convenience and necessity.

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

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

8 (A) “Publicly subsidized” means either that the housing  
9 development receives financial assistance from the United States  
10 Department of Housing and Urban Development pursuant to an  
11 annual contribution contract or is financed with low-income  
12 housing tax credits, tax-exempt mortgage revenue bonds, general  
13 obligation bonds, or local, state, or federal loans or grants and the  
14 rents of the occupants, who are lower income households, do not  
15 exceed those prescribed by deed restrictions or regulatory  
16 agreements pursuant to the terms of the financing or financial  
17 assistance.

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

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

25 (ii) An incorporated nonprofit organization as described in  
26 Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec.  
27 501(c)(3)) that is exempt from taxation under Section 501(a) of  
28 that code (16 U.S.C. Sec. 501(a)), and that has received public  
29 funding to subsidize the construction or maintenance of housing  
30 occupied by residents whose annual income qualifies as “low” or  
31 “very low” income according to federal poverty guidelines.

32 (2) Notwithstanding subdivision (b) of Section 270, moneys in  
33 the Broadband Public Housing Account shall be available for the  
34 commission to award grants and loans pursuant to this subdivision  
35 to an eligible publicly supported community if that entity otherwise  
36 meets eligibility requirements and complies with program  
37 requirements established by the commission.

38 (3) Not more than twenty million dollars (\$20,000,000) shall  
39 be available for grants and loans to a publicly supported community  
40 to finance a project to connect a broadband network to that publicly

1 supported community. A publicly supported community may be  
2 an eligible applicant only if the publicly supported community can  
3 verify to the commission that the publicly supported community  
4 has not denied a right of access to any broadband provider that is  
5 willing to connect a broadband network to the facility for which  
6 the grant or loan is sought.

7 (4) (A) Not more than five million dollars (\$5,000,000) shall  
8 be available for grants and loans to a publicly supported community  
9 to support programs designed to increase adoption rates for  
10 broadband services for residents of that publicly supported  
11 community. A publicly supported community may be eligible for  
12 funding for a broadband adoption program only if the residential  
13 units in the facility to be served have access to broadband services  
14 or will have access to broadband services at the time the funding  
15 for adoption is implemented.

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

19 (5) To the extent feasible, the commission shall approve projects  
20 for funding from the Broadband Public Housing Account in a  
21 manner that reflects the statewide distribution of publicly supported  
22 communities.

23 (6) In reviewing a project application under this subdivision,  
24 the commission shall consider the availability of other funding  
25 sources for that project, any financial contribution from the  
26 broadband service provider to the project, the availability of any  
27 other public or private broadband adoption or deployment program,  
28 including tax credits and other incentives, and whether the applicant  
29 has sought funding from, or participated in, any reasonably  
30 available program. The commission may require an applicant to  
31 provide match funding, and shall not deny funding for a project  
32 solely because the applicant is receiving funding from another  
33 source.

34 (7) (A) To provide funding for the purposes of this subdivision,  
35 the commission shall transfer to the Broadband Public Housing  
36 Account twenty million dollars (\$20,000,000) from the Broadband  
37 Infrastructure Grant Account and five million dollars (\$5,000,000)  
38 from the Broadband Revolving Loan Account. Any moneys in the  
39 Broadband Public Housing Account that have not been awarded  
40 pursuant to this subdivision by December 31, 2016, shall be

1 transferred back to the Broadband Infrastructure Grant Account  
2 and Broadband Infrastructure Revolving Loan Account in  
3 proportion to the amount transferred from the respective accounts.

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

8 (i) (1) The commission shall conduct two interim financial  
9 audits and a final financial audit and two interim performance  
10 audits and a final performance audit of the implementation and  
11 effectiveness of the California Advanced Services Fund to ensure  
12 that funds have been expended in accordance with the approved  
13 terms of the grant awards and loan agreements and this section.  
14 The commission shall report its interim findings to the Legislature  
15 by April 1, 2011, and April 1, 2017. The commission shall report  
16 its final findings to the Legislature by April 1, 2021. The reports  
17 shall also include an update to the maps in the final report of the  
18 California Broadband Task Force and data on the types and  
19 numbers of jobs created as a result of the program administered  
20 by the commission pursuant to this section.

21 (2) (A) The requirement for submitting a report imposed under  
22 paragraph (1) is inoperative on January 1, 2022, pursuant to Section  
23 10231.5 of the Government Code.

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

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

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

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

34 (C) The geographic regions of the state affected by funds  
35 expended from the California Advanced Services Fund in the prior  
36 year.

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

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

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

3 (G) An update on the expenditures from California Advanced  
4 Services Fund and broadband adoption levels, and an accounting  
5 of remaining unserved and underserved households and areas of  
6 the state.

7 (H) The status of the California Advanced Services Fund balance  
8 and the projected amount to be collected in each year through 2020  
9 to fund approved projects.

10 (2) (A) The requirement for submitting a report imposed under  
11 paragraph (1) is inoperative on January 1, 2021, pursuant to Section  
12 10231.5 of the Government Code.

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