

SENATE THIRD READING
SB 1130 (Lena Gonzalez)
As Amended August 24, 2020
Majority vote

SUMMARY:

Makes numerous changes to the California Advanced Services Fund (CASF) – the state program to encourage deployment of broadband technology to all areas of the state.

Major Provisions

Revises the CASF program goal, so that the program is to, by the end of 2024, approve funding for infrastructure projects that will provide "high-capacity, future-proof infrastructure to no less than 98% of California households in each consortia region."

Directs the California Public Utilities Commission (CPUC), in approving CASF program infrastructure projects, to approve certain infrastructure projects in "unserved areas and unserved high-poverty areas," each as defined in the bill, and to prioritize projects in such areas where internet connectivity is available but only below certain technical downstream, upstream and latency standards.

Prohibits the CPUC from collecting more than the \$330 million that was previously authorized and repeals the CPUC's authority to collect more than \$66 million per year from a surcharge on telephone customers.

Allows an existing facility-based broadband provider to apply for certain CASF program grants only if the provider can demonstrate it is financially incapable of self-financing the upgrades.

Limits eligibility of "middle mile" infrastructure projects for certain CASF program grants to only those projects that are "open access" projects and tasks the CPUC with ensuring the rates charged by an open access project are just and reasonable, and prohibits an open access project from selling its own broadband service.

COMMENTS:

CASF: SB 1193 (Padilla), Chapter 393, Statutes of 2008, established the CASF and gave the CPUC authority to assess a surcharge on communication service ratepayers receiving intrastate telecommunication services. As of February 2019, the CASF surcharge rate is set at 0.56%. The purpose of the program is to fund the deployment of broadband infrastructure in unserved areas of the state.

Subsequently, the Legislature passed AB 1665 (E. Garcia), Chapter 851, Statutes of 2017. The bill authorized the CPUC to collect an additional \$330 million over five years for CASF. The legislation also established a new program goal of providing broadband access to no less than 98% of California households in each "consortium" (regional umbrella organizations made up of public, private and community-based organizations that coordinate efforts to promote deployment, access and adoption of broadband technology.)

Digital Divide: When CASF was first created, the intent of the program was to ensure that funds were available to served households where internet connectivity was available only through dial-

up service or for households with no internet connectivity at all. As technology evolved, so too did the demand for greater speeds in order to access the many tools necessary to promote economic growth in today's society. Yet the rural and urban divide continues to persist and the Legislature must consider if the priorities of the program is to continue to serve the remaining unserved population that still do not have access to even the most basic internet connectivity that we all expect, or to upgrade existing broadband infrastructure to a level more reflective of what is expected of today's economy.

This bill seeks to expand the areas of the state eligible for CASF program funding and to increase the technical standards applicable to projects eligible for funding, both of which seem very much in keeping with California's existing policy goal of encouraging deployment of high-quality advanced communications to all Californians. Arguably, achievement of the goals and requirements of this bill will require even more money, not less.

Funding: It is estimated that California's broadband infrastructure needs on the scale of \$2.5 to 4.6 billion in capital from all sources to fully close the digital divide. Currently, there is over \$300 million available, collectively, in the various CASF program accounts. However, the CPUC reports the program is actually oversubscribed, noting that, on May 4 of this year, the CPUC received 54 applications requesting approximately \$533 million in total funding from the Infrastructure Grant Account, an amount well beyond the remaining funds available currently and have yet to be collected.

In addition, the surcharge collected for the program is levied on a shrinking base of intrastate telecommunication services, as more people switch altogether to wireless telephone service, which is less often an intrastate service. As a result, the CPUC expects to collect well short of the \$66 million annual cap currently in statute. To collect the full \$330 million by 2022, the CPUC would need to collect substantially more than \$66 million in each of the coming years. Current law provides CPUC the option to do so. This bill, however, does not. This bill prohibits the CPUC from collecting more than the \$330 million that was previously authorized and repeals the CPUC's authority to collect more than \$66 million per year from a surcharge on telephone customers. These provisions, individually and together, severely hinder the ability of the program to achieve the bill's goals.

Participation: The bill imposes a number of additional project criteria's including prohibiting an existing facility based broadband provider from applying unless it can demonstrate that they are financially incapable of self-financing the necessary upgrades; requiring middle mile projects to be open access; requiring wholesale access; eliminating the line extension program, and requiring the CPUC to oversee rates charged by the approved open access projects. Arguably such provisions would stunt the number of existing providers willing to participate in the program and reduce the number of potential applications. This may have an adverse effect on the program especially for areas that currently already find it difficult to attract investments from providers even with CASF funds. While some means testing may be a good way to ensure appropriate use of public funds, arguably the program would benefit from more provider participation, not less; while the CPUC would still have the ability to ensure public funds are used to its maximum benefit.

According to the Author:

We need to smartly invest in long-term, 21st century ready broadband technologies, rather than continue to spend state dollars on outdated internet infrastructure. SB 1130 will require that new

broadband projects built with existing CASF funds are future-proof, will make those funds more accessible to local governments and small [internet service providers] to work in their communities, and will encourage open-access projects that will break monopolies and drive down costs to consumers.

Arguments in Support:

According to the Electronic Frontier Foundation and Common Sense, the co-sponsors of the bill, "CASF must be converted into a fiber infrastructure fund, focused on unserved low income and rural communities, in order to permanently end the digital divide. Inaction by the state has forced more and more Californians to fall further behind as those without access are joined by those with deteriorating outdated networks that do not qualify as broadband service under federal law."

Arguments in Opposition:

According to the California Cable & Telecommunications Association, "SB 1130 would completely upend the Legislature's direction that the CASF program fund infrastructure in areas that still lack any internet connectivity, which is almost entirely in remote rural California. It would change the definition of "unserved" to allow CASF grants for upgrading networks that already provide service at speeds up to 25/25 mbps, even though parts of rural California still have no service. Oddly, it would allow CASF grants to fund networks that do not serve *any* households and would even *prohibit* a grant recipient from providing service to households."

FISCAL COMMENTS:

According to the Assembly Appropriations Committee, this bill would have the following costs:

- 1) According to the CPUC, this bill will result in one-time costs of approximately \$1.51 million to contract for audits required by the bill. The CPUC attributes approximately \$860,000 of this amount to a performance audit and approximately \$650,000 to a financial audit. These estimates are in line with the costs of an ongoing interim CASF program audit, which statute requires be completed.
- 2) Additionally, the bill includes two fiscal provisions of note. First, the bill directs the CPUC to ensure all approved projects can be completed with existing program resources without increasing the surcharge on telephone consumers. Second, the bill repeals the CPUC's authority to collect more than \$66 million per year from a surcharge on telephone customers. These provisions, individually and together, severely hinder the ability of the program to achieve the bill's goals.

VOTES:**SENATE FLOOR: 30-9-1**

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Moorlach, Morrell, Nielsen

ABS, ABST OR NV: Wilk

ASM COMMUNICATIONS AND CONVEYANCE: 9-3-1

YES: Santiago, Boerner Horvath, Bonta, Chiu, Eduardo Garcia, Holden, Kamlager, Low, Rodriguez

NO: Obernolte, Flora, Patterson

ABS, ABST OR NV: Quirk-Silva

ASM APPROPRIATIONS: 13-5-0

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Eggman, Gabriel, Eduardo Garcia, Petrie-Norris, Quirk, Robert Rivas

NO: Bigelow, Megan Dahle, Diep, Fong, Voepel

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