

GOVERNOR'S VETO
AB 2749 (Quirk-Silva)
As Enrolled August 29, 2022
2/3 vote

SUMMARY

This bill would have required the California Public Utilities Commission (CPUC) to review certain California Advanced Services Fund (CASF) grant applications within 180-days, and provided that the applications are deemed approved thereafter.

Senate Amendments

- 1) Clarify that the 180-day review timeline applies to completed applications only and begins at the same time for all applications that are submitted in the same application window.
- 2) Authorize the CPUC to adopt affordability requirements for recipients of a grant.
- 3) Clarify that wireless broadband service providers may apply for and receive funds from the CASF FFA, in addition to the Infrastructure Grant Account (IGA).

Governor's Veto Message

This bill requires the California Public Utilities Commission (CPUC) to adopt various requirements for the eligibility, implementation, and review of last-mile broadband infrastructure grant applications.

The COVID-19 pandemic underscored the important of making broadband service accessible and affordable to ALL Californians. Last year, I signed into law Senate Bill 156, which invests \$6 billion in broadband infrastructure, of which \$2 billion is allocated to a streamlined last-mile grant program to connect households and businesses with time-limited federal funds.

The goal of this last-mile grant program, administered by the CPUC, is to expeditiously connect unserved and underserved communities to future-proof broadband service, which is critical to the state's economy, education, and to the health and well-being of every Californian.

It is my expectation that the CPUC will move expeditiously to review and process applications and put this funding to work as quickly as possible. Unfortunately, this bill, while intended to bring certainty to timelines within this program, will in effect undermine the last-mile grant program by creating additional delays in its implementation.

Most concerning, this bill exacerbates the challenges of issuing grants for last-mile funding by delaying the solicitation, review, and approval of project applications that meet clear requirements designed to ensure that awarded broadband projects deliver on their promise of providing affordable, quality and reliable service.

We simply cannot afford to delay the implementation of this last-mile grant program, as investing in scalable broadband infrastructure is foundational to connecting every Californian to long-lasting economic opportunity and success.

COMMENTS

- 1) *CASF Federal Funding Account.* The CASF program consists of several different subaccounts for grants to fund broadband projects including infrastructure and adoption. The focus of this bill is primarily the Federal Funding Account (FFA). The FFA was established in 2021 pursuant to SB 156 (Committee on Budget and Fiscal Review, Chapter 112 of 2021). Pursuant to that legislation and the companion budget agreement, the FFA received \$2 billion (\$1.072 billion American Rescue Plan Act (ARP) fiscal relief funds and \$928 million General Fund) to fund grants for last-mile broadband infrastructure projects. Pursuant to state law under SB 156, the FFA must be spent corresponding with federal rules and requirements. Federal guidelines require FFA funds to be encumbered by December 31, 2024 and spent by December 31, 2026. Besides a strict spending timeline, the federal government also provides guidance on use of the funds regarding eligible projects and affordability requirements.
- 2) *This bill would have required the CPUC to review grant applications in a reasonable period.* The CPUC has no statutory obligation to review applications in a timely manner and in the past has taken up to eighteen months to reach a decision on funding applications. Although that is reason enough on its own for instituting guidelines for reviewing applications, the FFA is under particular scrutiny because the federal funds expire at the end of 2026. By requiring the CPUC to review applications within 180 days, this bill would have ensured the CPUC acts expeditiously to award federal funds before the corresponding deadlines for the funding. Some groups opposing the bill raise concerns about the length of time given to the CPUC; however, the 180-day timeline in this bill is aligned with CPUC's own program rules and guidelines for the Federal Funding Account, which set a goal of reviewing applications within 6 months. Therefore, the timelines proposed by this bill are reasonable.

The Governor, in his veto message, asserts that placing statutory requirements on the CPUC to review grant applications would have led to further delay. Although no explanation is given as to why this conclusion was reached and opponents of the bill had not previously made this argument, presumably the Governor believes that the time to implement the statutory provisions of this bill would have led to further delay.

- 3) *This bill could have deemed certain applications as approved.* The bill provided that applications for the FFA are deemed approved after 180 days, but preserves the flexibility of the CPUC to extend the deadline with mutual agreement of the applicant. Opponents of the bill have raised concerns about deeming applications as approved without proper vetting by the CPUC. Those opponents argue that the standard gives applicants undue influence over the CPUC. However, there is reason to believe their concerns might be overstated and that the CPUC could meet the 180-day deadline. As was stated previously, the CPUC has already set its own goal to review applications within 6 months, which roughly equals 180 days. Additionally, because of recent programmatic changes to the CASF, such as eliminating the right-of-first-refusal and shortening the applications protest period, the CPUC has represented to the Legislature in various forums that the application review process should be faster than in the past.

Nonetheless, taking the cautious approach and assuming the CPUC would fail to meet its own program guideline and is unable to find mutual agreement with an applicant to extend the deadline, the bill did not preclude the CPUC from denying applications due to time constraints. Instead, the bill would have required the CPUC to document the reason for

denying an application and gives applicants the right to reapply in a future round. Therefore, it is not likely that applications would be deemed approved before the CPUC could take a formal action to approve or deny an application, or work with an application on an extended deadline.

- 4) *This bill would have authorized the CPUC to require affordability commitments from grant recipients.* Consistent with applicable federal rules for using federal broadband funding, the CPUC has adopted program rules for the FFA requiring certain service affordability commitments. For example, the FFA rules require a recipient of a grant to participate in the Affordable Connectivity Program (ACP) and commit maintaining prices for their service for a period of 5 years. The CPUC's program rules reflect guidance from the federal government on use of federal funds, and current law requires the CPUC to implement the FFA consistent with federal rules. However, current state law governing the FFA does not explicitly authorize affordability requirements for grant recipients. This bill would have explicitly authorized the CPUC to require specified affordability commitments from grant recipients, thus advancing the public benefit of the program.
- 5) *Wireless internet service providers.* This bill specified that otherwise eligible wireless internet service providers (ISP) are eligible for funding from the CASF Broadband Infrastructure Grant Account and the FFA. Both federal and CASF statutes restrict funding eligibility to broadband infrastructure projects that provide service at speeds of at least 100/20 Mbps. As part of its implementation decisions, the CPUC has restricted eligibility for FFA funds to wireline infrastructure projects due to the reliability and speed requirements set in federal guidance; however, neither federal nor state statute prohibit funding for wireless projects. To the extent that wireless broadband providers demonstrate that their infrastructure can meet the service and reliability standards in federal and state law, this bill would have clarified those projects are eligible to apply for and receive funds.

According to the Author

AB 2749 will ensure that the CPUC is working efficiently and expeditiously to award grants to build broadband in unserved areas of the state. In last year's budget, this Legislature and Governor invested \$2-billion dollars to address last-mile broadband needs. A significant portion of that is federal funding, which must be spent by 2026 or returned back to the federal government. Looking back at the CPUC's past performance and trends awarding grants, the CPUC will need to significantly increase the amount of applications received and amounts awarded to meet the federal deadlines. This bill will ensure we avoid the worst-case scenario of returning money to the federal government, while also preserving the flexibility of the CPUC to review applications in a reasonable time period.

Arguments in Support

Various organizations representing potential CASF applicants and individual internet service providers support this bill because it will provide more certainty in the grant review process. For example, Frontier Communications argues that this bill will make specific changes to CASF to increase participation, maximize funding, and more quickly deliver broadband to the state's last-remaining unserved communities.

Arguments in Opposition

Opponents claim that the 180-day review deadline for completed applications would limit the CPUC's review of applications. The American Civil Liberties Union (ACLU) California Action

opposes this bill unless it is amended to remove the 180-day review period requirements. In opposition ACLU California Action states: "The artificial restraint of a review shot clock would leave the CPUC with inadequate time to review proposals. There is already significant potential for opportunistic grifting, as the state provides billions in funding."

FISCAL COMMENTS

According the Assembly Appropriation Committee, costs are of an unknown amount but will likely total in high hundreds of thousands of dollars the low millions of dollars. The CPUC may need to revise its rules to reflect changes to its application review and approval processes, the bill's statement of legislative intent notwithstanding, so that the CPUC will be able to review and act upon each application for funding within 180 days.

VOTES**ASM COMMUNICATIONS AND CONVEYANCE: 12-0-1**

YES: Quirk-Silva, Patterson, Boerner Horvath, Mia Bonta, Cervantes, Davies, Eduardo Garcia, Holden, Low, Maienschein, Rodriguez, Valladares

ABS, ABST OR NV: Akilah Weber

ASM APPROPRIATIONS: 12-0-4

YES: Holden, Bryan, Calderon, Carrillo, Mike Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 74-0-4

YES: Arambula, Bauer-Kahan, Bennett, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

ABS, ABST OR NV: Aguiar-Curry, Berman, Bigelow, O'Donnell

SENATE FLOOR: 36-0-4

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Eggman, Glazer, Grove, Hertzberg, Hueso, Hurtado, Jones, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Caballero, Durazo, Gonzalez, Kamlager

ASSEMBLY FLOOR: 75-0-5

YES: Aguiar-Curry, Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

ABS, ABST OR NV: Bigelow, Cunningham, Gray, Irwin, Voepel

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