

(Without Reference to File)

SENATE THIRD READING

SB 156 (Committee on Budget and Fiscal Review)

As Amended July 11, 2021

Majority vote. Budget Bill Appropriations Takes Effect Immediately

SUMMARY

Provides the statutory framework to implement the broadband provisions contained in the 2021 budget package.

Major Provisions

- 1) Creates the structure for the broadband middle-mile project:
 - a) Establishes the Office of Broadband and Digital Literacy at the Department of Technology to oversee the acquisition and management of a statewide open-access middle-mile broadband network;
 - b) Requires the office to retain a third-party administrator, with experience serving libraries, schools, and universities, to manage the development, acquisition, construction, and maintenance of the middle-mile broadband network, this contract is exempt from Public Contracting Code;
 - c) Requires the Public Utilities Commission, in collaboration with the third-party administrator, to identify and prioritize statewide open-access middle-mile locations using the following criteria and process:
 - i) Identify locations that will enable last-mile service connections and are in communities where there is no known middle-mile infrastructure that is open access, with sufficient capacity, and at affordable rates;
 - ii) Identify priority statewide open-access middle-mile broadband network locations, including areas that can be built expeditiously, areas with no known middle-mile network access, regions underserved by middle-mile networks, and regions without sufficient capacity to meet future middle-mile needs.
 - iii) Prioritize locations that enable last-mile connections to residences unserved by 25 mbps downstream and three mbps upstream. The locations prioritized by the commission may also include entities that lack sufficient high-bandwidth connections, including, but not limited to, all of the following:
 - (1) Elementary and secondary schools.
 - (2) Community colleges and other institutions of higher education.
 - (3) Government entities.
 - (4) Healthcare institutions.
 - (5) Libraries.

- (6) Public safety answering points and technologies to assist in the prevention or response to natural disasters, including, but not limited to, fairgrounds.
- (7) Tribal lands;
- iv) Requires the Public Utilities Commission, in collaboration with relevant stakeholders, to identify state highway rights-of-way where installation of open-access middle-mile broadband infrastructure should be prioritized. In prioritizing state highway rights-of-way, the commission shall prioritize a geographically diverse group of projects in rural and urban areas of the state to achieve the greatest reductions in the amount of households unserved by broadband internet access service meeting federal and state standards;
- v) Stipulates that prioritized locations must be published on the Public Utilities Commission website for the Commission to solicit public comment:
 - (1) Requires a 90 day public comment period;
 - (2) Allows for communications providers to submit confidential information, which may be shared with the Department of Transportation;
- d) Obliges the Office of Broadband and Digital Literacy to develop a statewide open-access middle-mile network using the information from the prioritization process overseen by the Public Utilities Commission, as noted above, with technical advice from service providers, governmental entities, non-profits, tribes, organized labor, regional consortia, and a potential working group;
- e) Stipulates the construction process for the middle-mile:
 - i) Uses a construction manager/general contractor method of construction, with no limit to the contract amount;
 - ii) Allows for one or more contractors to be selected to build all or portions of the middle-mile;
 - iii) Requires the Department of Transportation to establish a procedure to prequalify job order contractors and shall prepare a set of documents for each job order contract that stipulate unit prices and job order contract specification;
 - iv) Authorizes the Office of Broadband and Digital Literacy, or another entity, including the Department of Transportation, to solicit competitive sealed bids from prequalified job order contractors for contracts lasting no more than 12 months, with two additional possible 12-month extensions or renewal periods;
- f) Allows the Office of Broadband and Digital Literacy to issue rules to encourage or require internet services providers that use the statewide open-access middle-mile broadband network to participate in the lifeline program pursuant to the Moore Universal Communications Service Act (Article 8 (commencing with Section 871) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code) and the federal lifeline program;

- g) Stipulates that the middle-mile network is for a public purpose and can be leased for less than fair market value;
- h) Outlines the operation of the middle-mile by the Office of Broadband and Digital Literacy:
 - i) Permits the Office of Broadband and Digital Literacy to establish reasonable user policies, perform reasonable network management practices, and create related standards and policies.
 - ii) Requires a variety of services offered to internet service providers or other eligible entities on the statewide open-access middle-mile broadband network.
 - iii) Considers, when feasible, the term of access to dark fiber shall be no less than a 20-year indefeasible right to use.
 - iv) Requires, when feasible, the Office of Broadband and Digital Literacy to consider including excess conduit capacity in projects to ensure for potential growth of the statewide open-access middle-mile broadband network.
 - v) Allows the making of a grant of dark fiber strands for purposes of enhancing the California Research and Education Network.
- i) Creates an accountability structure within the Office of Broadband and Digital Literacy:
 - i) Establishes the Deputy Director for Broadband who:
 - (1) shall be appointed by, and hold office at the pleasure of, the Governor;
 - (2) shall be the primary point of contact for the third-party administrator, the commission, the Department of Transportation, and the Legislature;
 - ii) Requires the Department of Technology to establish a broadband advisory committee to monitor the construction and establishment of the statewide open-access middle-mile broadband network, with the following structure and membership:
 - (1) Identifies the members of the broadband advisory committee:
 - (a) A representative of the Public Utilities Commission;
 - (b) A representative of the Department of Technology;
 - (c) A representative of the Department of Transportation;
 - (d) A representative of the Department of Finance;
 - (e) A representative of the Government Operations Agency;
 - (f) Two ex officio members, who shall be members of the Assembly and be appointed by the Speaker of the Assembly. These ex officio members shall serve at the pleasure of the Speaker of the Assembly; and

- (g) Two ex officio members, who shall be members of the Senate and be appointed by the Senate Committee on Rules. These ex officio members shall serve at the pleasure of the Senate Committee on Rules.
- (2) Designates the representative of the Department of Technology shall chair the broadband advisory committee.
- (3) Requires monthly meetings for the first 12 months following the effective date of this section, and shall meet quarterly thereafter;
- (4) Stipulates that the third-party administrator shall seek policy advice from the broadband advisory committee;
- iii) Requires reporting on or before March 1, 2022, and annually thereafter, the office, in consultation with the department and the Department of Finance, shall report to both budget committees of the Legislature all of the following:
 - (1) The total length of the statewide open-access middle-mile broadband network.
 - (2) The length of the portion of the statewide open-access middle-mile broadband network constructed in the preceding year, by quarter.
 - (3) The number of internet service providers using the statewide open-access middle-mile broadband network.
 - (4) The number of households projected to connect to the statewide open-access middle-mile broadband network.
 - (5) The total expenditures for each project, by quarter.
 - (6) The projected goals for each of the metrics described above, for the 18 months following the report.
- 2) Allows a County to acquire, construct, improve and maintain broadband infrastructure and operate a broadband internet access service;
- 3) Expands the definition of local agencies subject to public broadband services to include counties, local education agencies, tribal governments, joint power authorities, and electrical cooperatives;
- 4) Exempts the middle-mile and other linear broadband deployment in a right of way by private or non-profit corporations from the provision of the California Environmental Quality Act if certain conditions are fulfilled.
 - a) The project must:
 - i) Locate in an area identified by the Public Utilities Commission as a component of the statewide open-access middle-mile broadband network.
 - ii) Construct along, or within 30-feet of, the right-of-way of any public road or highway.

- iii) Deploy underground where the surface area is restored to a condition existing before the project or placed aurally along an existing utility pole right-of-way.
 - iv) Incorporate, as a condition of project approval, measures developed by the Public Utilities Commission or the Department of Transportation to address potential environmental impacts. At minimum, the project shall be required to include monitors during construction activities and measures to avoid or address impacts to cultural and biological resources.
 - v) Comply with all conditions otherwise authorized by law, imposed by the planning department of a city or county as part of a local agency permit process, that are required to mitigate potential impacts of the proposed project, and to comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.
- b) If a project meets all of these requirements, the person undertaking the project shall do all of the following:
- i) Notify, in writing, any affected public agency, including, but not limited to, any public agency having permit, land use, environmental, public health protection, or emergency response authority, of the exemption of the project pursuant to this section.
 - ii) Provide notice to the public in the area affected by the project in a manner consistent with Public Resources Code Section 21108(b).
 - iii) Receive, in the case of private rights-of-way over private property, from the underlying property owner permission for access to the property.
 - iv) Comply with all conditions authorized by law imposed by the planning department of a city or county as part of any local agency permit process, that are required to mitigate potential impacts of the proposed project, and otherwise comply with the Keene-Nejedly California Wetlands Preservation Act (Chapter 7 (commencing with Section 5810) of Division 5), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), as applicable, other applicable state laws, and all applicable federal laws.
- 5) Amends the Broadband Infrastructure Grant Account program to reflect the \$2 billion "last mile" grant funding provided for in the 2021-22 budget, these changes:
- a) Defines an unserved area as an area that does not offer at least one tier of services of 25 megabits per second downstream and three megabits per second upstream service speeds with sufficiency low latency to allow real-time interactive applications;
 - b) Allows funding provided to match or leverage federal funding;
 - c) Requires the Public Utilities Commission to transition the California Advanced Services Fund program methodologies to provide serviceable locations and leverage that funding;

- d) Requires the Public Utilities Commission to provide technical assistance to local governments and providers, assist in developing grant applications, and assist in preparing infrastructure plans;
- e) Updates the speed requirement for infrastructure projects funded to be at least 100 megabits per second downstream and 20 megabits per second upstream service speeds or the most current speed set by the Federal Communication Commission;
- f) Removes limitations on local governments receiving grant funding;
- g) Revises "low-income" community eligibility to include publicly supported housing developments, and other housing developments or mobile home parks with low-income residents, as determined by the commission for purpose of the use of the Broadband Public Housing Account;
- h) Eliminates obsolete reporting requirements;
- i) Requires specific reporting on expenditure of these funds, including contractors name and license number for any contract or subcontract exceeding \$25,000;
- j) Allocates the \$2 billion provided in the budget in the following manner:
 - i) One billion dollars, at least, for last-mile broadband projects in rural counties as follows:
 - (1) first allocate \$5 million for last-mile broadband projects in each rural county.
 - (2) Then remaining moneys based on each rural county's proportionate share of the California households without broadband internet access service with at least 100 megabits per second download speeds, as identified and validated by the commission pursuant to the most recent broadband data collection, as of July 1, 2021, as ordered in commission Decision 16-12-025 (December 1, 2016), Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market.
 - ii) One billion dollars initially for last-mile broadband projects in urban counties as follows:
 - (1) First allocate \$5 million for last-mile broadband projects in each urban county.
 - (2) Then remaining moneys based on each urban county's proportionate share of the California households without access to broadband internet access service with at least 100 megabits per second download speeds, as identified and validated by the commission pursuant to the most recent broadband data collection, as of July 1, 2021, as ordered in commission Decision 16-12-025 (December 1, 2016), Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market.
- k) Stipulates that any moneys allocated that are not encumbered on or before June 30, 2023, shall be made available to the commission to allocate for the construction of last-mile broadband infrastructure anywhere in the state.

- 6) Establishes the Broadband Loan Loss Reserve Fund to fund costs related to financing of the deployment of broadband infrastructure by a local government agency or nonprofit organization including, but not limited to, payment of costs of debt issuance, obtaining credit enhancement, and establishment and funding of reserves for the payment of principal and interest on the debt;
 - a) Establishes a continuous appropriation, without regard to fiscal years, for this fund.
 - b) Authorizes, in the budget year, the Public Utilities Commission to may make cashflow loans to the Broadband Loan Loss Reserve Fund.
 - c) Permits the Public Utilities Commission to establish, among other things, eligibility requirements, financing terms and conditions, and allocation criteria, for infrastructure projects deployed using financing supported in whole or in part by funds allocated pursuant to this section.
 - d) Allows the Public Utilities Commission to require a local government agency or nonprofit organization to provide information demonstrating the agency's or nonprofit organization's ability to reasonably finance and implement the infrastructure project deployed using financing supported in whole or in part by funds allocated pursuant to this section.
 - e) Requires biannual progress reports identifying project milestones and percent completions to date and a completion report, including a full description of the completed project, comparison of approved versus actual costs of construction, speed test data for all areas served by the project;
- 7) Allows a joint powers authority to issue revenue bonds for deployment of broadband by a public or nonprofit organization that are supported by the Broadband Loan Loss Reserve; and
- 8) Requires the Public Utilities Commission to conduct a biennial fiscal and performance audit of the implementation and effectiveness of the California Advanced Services Fund beginning in April 1, 2023

COMMENTS

This bill contains necessary statutory changes to implement the broadband provisions included in the 2021-22 budget package. Funding for this bill is included in SB 129 (Skinner), AB 164 (Ting), and SB 164 (Skinner), all of the current legislative session, which amend the 2021 Budget Act AB 128 (Ting), Chapter 21, Statutes of 2021.

There are three major elements to the broadband package:

- 1) *Middle-Mile*. This bill creates a structure and framework for the construction of a \$3.25 billion state-owned open-access middle mile broadband infrastructure through a third-party administrator overseen by the Department of Technology. This bill priorities for middle mile construction a geographically diverse group of projects in rural and urban areas of the state to achieve the greatest reductions in the amount of households unserved by broadband internet access service meeting federal and state standards. This bill also outlines the roles of the Department of Technology, the Public Utilities Commission, and the Department of

Transportation in the project and establishes a Deputy Director of Broadband as the central point of contact. Finally this bill establishes a broadband advisory council, with legislative appointments, and includes reporting measures.

- 2) *Last Mile*. This bill amends the existing Broadband Infrastructure Grant Account program to allocate the \$2 billion for last mile expenditures. Of this amount, at least \$1 billion must be used for last mile projects in rural counties, and \$1 billion is initially allocated to urban counties
- 3) *Loan Loss*. This bill creates a continuously appropriated loan-loss fund to assist local governments and non-profits in financing broadband service projects. The budget includes \$750 million in total funds for this purpose.

This bill also includes a narrow exemption for CEQA for a broadband project using an existing right-of-way that meets other specific criteria laid out in the bill. The exemption applies to the middle mile and projects undertaken by public and private entities for that purpose.

According to the Author

This bill provides a necessary statutory framework needed to implement the broadband proposal contained in the 2021 budget package.

Arguments in Support

None on file.

Arguments in Opposition

None on file.

FISCAL COMMENTS

The 2021 budget package implements the first year of a three-year \$6 billion investment in the broadband. Funding appropriated in SB 129 (Skinner) as amended by AB/SB 164 provides \$4.372 billion (\$50 million General Fund) in 2021-22 to begin this project.

There are three components to the broadband proposal, outlined by the bill:

- 1) \$3.25 billion federal American Rescue Plan Act (ARPA) funds for the construction of the open-access broadband middle mile, appropriated in 2021-22.
- 2) \$2 billion (\$928 million General Fund and 1.072 billion federal ARPA) for last mile funding, of which \$1.072 billion is available in 2021-22, \$125 million is available in 2022-23, and \$803 million is available in 2022-24.
- 3) \$750 million General Fund for the loan-loss reserve of which \$50 million is appropriated in 2021-22, \$125 million is appropriated in 2022-23 and the balance of \$575 million is included in 2023-24.

VOTES

SENATE FLOOR: 29-8-2

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Laird, Leyva, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener

NO: Bates, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Borgeas, Limón

UPDATED

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