
UNFINISHED BUSINESS

Bill No: SB 156
Author: Committee on Budget and Fiscal Review
Amended: 7/11/21
Vote: 21

SENATE FLOOR: Not relevant

ASSEMBLY FLOOR: 71-0, 7/15/21, Roll call not available

SUBJECT: Communications: broadband

SOURCE: Author

DIGEST: This bill provides the statutory framework to implement the broadband provisions contained in the 2021 Budget Package.

Assembly Amendments delete the Senate version of the bill, and instead add the current language.

ANALYSIS: This bill makes the following statutory changes:

- 1) *Middle Mile Broadband Infrastructure.* 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 prioritizes 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 (CDT), the Public Utilities Commission (PUC), and the Department of Transportation (Caltrans) 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. Specifically, this bill does the following:

- a) Establishes the Office of Broadband and Digital Literacy at CDT 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. Exempts this contract from the requirements of the Public Contracting Code.
- c) Requires the PUC, in collaboration with the third-party administrator, to identify and prioritize statewide open-access middle-mile locations as follows:
 - i) Requires the PUC to identify priority locations that enable last-mile connections to residences unserved by 25 mbps downstream and 3 mbps upstream and are in communities where there is no known middle-mile infrastructure that is open access, with sufficient capacity, and at affordable rates. 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.
 - ii) Requires the PUC, 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.

- iii) Requires the PUC to publish the identified locations on its website for the Commission to solicit public comment for a 90 day period. The bill allows communications providers to submit confidential information, which may be shared with Caltrans.
- d) Requires 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 PUC, as noted above, with technical advice from service providers, governmental entities, non-profits, tribes, organized labor, regional consortia, and a potential working group.
- e) Defines the construction process for middle-mile infrastructure:
 - i) Allows the use of 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 Caltrans to establish a procedure to prequalify job order contractors and prepare a set of documents for each job order contract that stipulate unit prices and job order contract specifications.
 - iv) Allows the Office of Broadband and Digital Literacy, or Caltrans, 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 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, as follows:
- i) Establishes the Deputy Director for Broadband who shall be appointed by, and hold office at the pleasure of, the Governor and who shall be the primary point of contact for the third-party administrator, the commission, Caltrans, and the Legislature.
 - ii) Requires CDT to establish a broadband advisory committee, chaired by CDT, to monitor the construction and establishment of the statewide open-access middle-mile broadband network, with the following structure and membership:
 - (1) A representative of the PUC.
 - (2) A representative of CDT.
 - (3) A representative of Caltrans.
 - (4) A representative of the Department of Finance (DOF).
 - (5) A representative of the Government Operations Agency.
 - (6) 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.
 - (7) 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.

- iii) Requires the broadband advisory committee to meet monthly for the first 12 months following the effective date of this bill, and quarterly thereafter.
 - iv) Stipulates that the third-party administrator shall seek policy advice from the broadband advisory committee.
- j) Requires CDT, in consultation with DOF, to report to both budget committees of the Legislature on or before March 1, 2022, and annually thereafter, on all of the following:
- i) The total length of the statewide open-access middle-mile broadband network.
 - ii) The length of the portion of the statewide open-access middle-mile broadband network constructed in the preceding year, by quarter.
 - iii) The number of internet service providers using the statewide open-access middle-mile broadband network.
 - iv) The number of households projected to connect to the statewide open-access middle-mile broadband network.
 - v) The total expenditures for each project, by quarter.
 - vi) The projected goals for each of the metrics described in subparagraphs (A) to (E), inclusive, for the 18 months following the report.
- k) Exempts the middle-mile and other linear broadband deployment in a state right of way by private or non-profit corporations from the provision of the California Environmental Quality Act if the following conditions are fulfilled.
- i) The project must:
 - (1) Locate in an area identified by the PUC as a component of the statewide open-access middle-mile broadband network pursuant to Section 11549.54 of the Government Code.
 - (2) Construct along, or within 30-feet of, the right-of-way of any public road or highway.
 - (3) Deploy underground where the surface area is restored to a condition existing before the project or placed aerially along an existing utility pole right-of-way.
 - (4) Incorporate, as a condition of project approval, measures developed by the PUC or Caltrans 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.

- (5) 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.

ii) If a project meets all of these requirements, the entity undertaking the project shall do all of the following:

- (1) 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.
- (2) Provide notice to the public in the area affected by the project.
- (3) Receive, in the case of private rights-of-way over private property, from the underlying property owner permission for access to the property.
- (4) 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.

2) *Broadband Last Mile Support.* Amends the existing Broadband Infrastructure Grant Account program to allocate \$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. Specifically, this bill:

- a) Amends the Broadband Infrastructure Grant Account program to reflect an eventual \$2 billion in “last mile” grant funding provided for in the 2021-22 fiscal year and future budgets. Changes include:
- i) Defines an unserved area as an area that does not offer at least one tier of service at 25 megabits per second downstream and two megabits per second upstream with sufficiency low latency to allow real-time interactive applications.
 - ii) Allows funding provided to match or leverage federal funding.
 - iii) Requires the PUC to transition the California Advanced Services Fund program methodologies to provide serviceable locations and leverage matched funding.
 - iv) Requires the PUC to provide technical assistance to local governments and providers, to assist in developing grant applications, and to assist in preparing infrastructure plans.
 - v) Updates the speed requirement for infrastructure projects funded to be at least 100 megabits per second downstream and 20 megabits per second upstream, or the most current speed set by the Federal Communication Commission.
 - vi) Removes limitations on local governments receiving grant funding.
 - vii) 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 the Broadband Public Housing Account.
 - viii) Eliminates obsolete reporting requirements.
 - ix) Requires specific reporting on expenditure of the funds provided in the 2021-22 fiscal year and future budgets for last mile connections, including the name and license number for contractors with any contract or subcontract exceeding \$25,000.
 - x) Allocates an eventual \$2 billion provided in the budget in the following manner:
 - (1) \$1 billion, at least, for last-mile broadband projects in rural counties as follows:
 - (a) \$5 million in base funding for last-mile broadband projects in each rural county.
 - (b) Additional funding 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.

(2) \$1 billion initially for last-mile broadband projects in urban counties as follows:

- (a) \$5 million for last-mile broadband projects in each urban county.
- (b) 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.

b) Requires that any allocated funding 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 elsewhere in the state.

3) *Loan Loss Reserve*. Creates a continuously appropriated loan-loss fund to assist local governments and non-profits in financing broadband service projects. The budget includes \$750 million over three years for this purpose. Specifically, this bill:

- a) Allows a County to acquire, construct, improve and maintain broadband infrastructure and operate a broadband internet access service.
- b) Expands the definition of local agencies subject to public broadband services requirements to include counties, local education agencies, tribal governments, joint power authorities, and electrical cooperatives.
- c) 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.

- d) 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 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.

Specifically, this bill:

- i) Establishes a continuous appropriation within the Fund, without regard to fiscal years, for this fund.
 - ii) Authorizes, in the budget year, the PUC to make cashflow loans to the Broadband Loan Loss Reserve Fund.
 - iii) Permits the PUC 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.
 - iv) Allows the PUC 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.
 - v) 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.
- e) Requires the PUC to conduct a biennial fiscal and performance audit of the implementation and effectiveness of the California Advanced Services Fund beginning in April 1, 2023.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

According to the Senate Budget and Fiscal Review Committee, this bill 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 (\$3.25 billion General Fund) in 2021-22 to begin this project. Overall the budget provides for a six billion dollar broadband package over three years. This includes:

- 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 in appropriated in 2021-22, \$125 million is appropriated in 2022-23 and the balance of \$575 million is included in 2023-24.

SUPPORT: (Verified 7/12/21)

None received

OPPOSITION: (Verified 7/12/21)

None received

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