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SB-156 Communications: broadband. (2021-2022)

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Senate Bill No. 156

CHAPTER 112

An act to amend Sections 6547.7 and 53167 of, to add Section 26231 to, and to add Chapter 5.8 (commencing with Section 11549.50) to Part 1 of Division 3 of Title 2 of, the Government Code, to add Section 21080.51 to the Public Resources Code, and to amend Sections 281, 912.2, and 914.7 of, and to add Section 281.2 to, the Public Utilities Code, relating to communications, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor July 20, 2021. Filed with Secretary of State July 20, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 156, Committee on Budget and Fiscal Review. Communications: broadband.

The Joint Exercise of Powers Act authorizes joint power entities created under that act to issue mortgage revenue bonds and industrial development bonds, as provided.

This bill would authorize those joint power entities to also issue revenue bonds for the deployment of broadband infrastructure by a public entity or nonprofit organization, as provided.

The County Service Area Law authorizes a county service area to provide any governmental services and facilities within the county service area that the county is authorized to perform, and that the county does not perform to the same extent on a countywide basis, and expressly authorizes a county service area to provide specified services and facilities, including, among others, television translator services and low-power television services.

Existing law authorizes any municipal corporation to acquire, construct, own, operate, or lease any public utility, and provides that "public utility" for these purposes means to supply the inhabitants of that municipal corporation with specified services, including a means of communication. Existing law similarly authorizes a municipal utility district and a public utility district to acquire, construct, own, operate, control, or use works for supplying the inhabitants of the district with specified services, including a means of communication. Existing law authorizes a community services district to construct, own, improve, maintain, and operate broadband facilities and to provide broadband services if certain conditions are met.

This bill would authorize the board of supervisors of a county to acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service and any telecommunication services necessary to obtain federal or state support for the acquisition, construction, improvement, or maintenance of broadband infrastructure or operation of broadband internet access service.

Existing law establishes within the Government Operations Agency the Department of Technology, under the supervision of the Director of Technology, also known as the State Chief Information Officer. Existing law requires the director to, among other

things, provide technology direction to agency and department chief information officers to ensure the integration of statewide technology initiatives.

This bill would establish within the Department of Technology the Office of Broadband and Digital Literacy. The bill would require the office to oversee the acquisition and management of contracts for the development and construction of, and for the maintenance and operation of, a statewide open-access middle-mile broadband network, as defined, to provide an opportunity for last-mile providers, anchor institutions, and tribal entities to connect to, and interconnect with other networks and other appropriate connections to, the broadband network to facilitate high-speed broadband service, as specified. The bill would require the department to establish a broadband advisory committee to monitor the construction and establishment of the broadband network, as specified. The bill would require the office to retain a California based nonprofit entity as a third-party administrator to manage the development, acquisition, construction, maintenance, and operation of the broadband network, and to submit annually a report to the budget committees of the Legislature on the broadband network, as specified. The bill would require the Public Utilities Commission, in collaboration with the third-party administrator, to provide to the office the locations for the broadband network, as specified. The bill would prescribe contracting requirements for, and would authorize the use of job order contracting for, the construction of the broadband network, as provided. The bill would require the office to consider adopting rules to encourage or require internet services providers that use the broadband network to participate in the state and federal lifeline programs. The bill would require all state agencies to work in cooperation to expedite the delivery and permitting of the broadband network. The bill would declare that the broadband network serves a public purpose and would authorize the leasing of public properties for purposes of the broadband network for less than fair market value. The bill would authorize the office to establish reasonable user policies, perform reasonable network management practices, and create related standards and policies for the operation of the broadband network.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would exempt from CEQA a project consisting of linear broadband deployment in an existing right-of-way that meets certain requirements. By requiring a lead agency to determine the applicability of this exemption, the bill would impose a state-mandated local program.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop, implement, and administer the California Advanced Services Fund (CASF) program to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies. Existing law provides that the goal of the program is, by no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households.

This bill would revise and recast the CASF program, among other things, to establish as the goal of the Broadband Infrastructure Grant Account, rather than the CASF program, by not later than December 31, 2026, to approve funding for infrastructure projects that will provide broadband access to no less than 98% of California households and would establish the Federal Funding Account in the CASF. The bill would require moneys in the Broadband Public Housing Account to be available for grants and loans to low-income communities to finance projects to connect broadband networks that offer free broadband service for residents of low-income communities. The bill would require each entity that receives funding or financing for a project pursuant to the CASF program to report specified information monthly to the commission, and for the commission to post that information on its internet website. The bill would require the commission to use state or federal infrastructure moneys deposited into the Federal Funding Account to implement a program to expeditiously connect unserved and underserved communities by applicable federal deadlines. The bill would require the commission to allocate the \$2,000,000,000 appropriated to the commission to fund last-mile infrastructure in the Budget Act of 2021 to applicants for the construction of last-mile broadband infrastructure, as specified.

This bill would establish the Broadband Loan Loss Reserve Fund in the State Treasury and would continuously appropriate moneys in that fund to the commission to fund costs related to the financing of the deployment of broadband infrastructure by a local government agency or nonprofit organization, thereby making an appropriation.

Existing law requires the commission, by certain dates, to conduct an interim and final financial audit of the implementation and effectiveness of the CASF and to report its findings to the Legislature.

This bill would instead require the commission, on or before April 1, 2023, and biennially thereafter, to conduct a fiscal and performance audit of the implementation and effectiveness of the CASF program.

Existing law requires, until April 1, 2023, the commission to provide annually a report to the Legislature containing certain information regarding the implementation of the CASF program.

This bill would authorize the commission to report that information regarding the implementation of the CASF program in the biennial fiscal and performance audit, as applicable, or as a separate report.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the above provisions would be part of the act and a violation of a commission action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature that any state-owned assets constructed for the purposes of this bill shall not be sold to any other party for at least 20 years after the completion of construction.

SEC. 2. Section 6547.7 of the Government Code is amended to read:

6547.7. A joint powers entity created pursuant to this chapter may issue mortgage revenue bonds pursuant to Part 5 (commencing with Section 52000) of Division 31 of the Health and Safety Code, revenue bonds for the deployment of broadband infrastructure by a public entity or nonprofit organization that are supported in whole or in part by funding granted pursuant to Section 281.2 of the Public Utilities Code, and industrial development bonds pursuant to the California Industrial Development Financing Act (Title 10 (commencing with Section 91500)).

SEC. 3. Chapter 5.8 (commencing with Section 11549.50) is added to Part 1 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 5.8. Office of Broadband and Digital Literacy

11549.50. For purposes of this chapter, the following definitions apply:

(a) "Commission" means the Public Utilities Commission.

(b) "Department" means the Department of Technology.

(c) "Mbps" means megabit per second.

(d) "Office" means the Office of Broadband and Digital Literacy established pursuant to Section 11549.51.

(e) "Open access" means equal non-discriminatory access to eligible entities on a technology and competitively neutral basis, regardless of whether the entity is privately or publicly owned.

(f) "Statewide open-access middle-mile broadband network" means the broadband infrastructure that is funded pursuant to Item 7502-062-8506 of the Budget Act of 2021.

(g) "Third-party administrator" means the third-party administrator retained by the office pursuant to Section 11549.53.

11549.51. There is in state government, within the department, the Office of Broadband and Digital Literacy.

11549.52. (a) The office shall, consistent with Item 7502-062-8506 of the Budget Act of 2021, oversee the acquisition and management of contracts for the development and construction of a statewide open-access middle-mile broadband network, and for the maintenance and operation of the statewide open-access middle-mile broadband network to provide an opportunity for last-mile providers, anchor institutions, and tribal entities to connect to, and interconnect with other networks and other appropriate connections to, the statewide open-access middle-mile broadband network to facilitate high-speed broadband service.

(b) The office has the same authority granted to the department pursuant to paragraph (1) of subdivision (e) of Section 6611 of the Public Contract Code for purposes of implementing this section.

11549.53. (a) The office has the powers and authorities necessary to implement this chapter, including, but not limited to, the authority to enter into contracts with one or more entities to acquire goods and services and to take actions it deems necessary and appropriate for the development, acquisition, construction, maintenance, and operation of a statewide open-access middle-mile broadband network, including the creation of rural exchange points.

(b) (1) The office shall retain a third-party administrator to manage the development, acquisition, construction, maintenance, and operation of a statewide open-access middle-mile broadband network, including the creation of rural exchange points.

(2) The third-party administrator retained by the office shall be a California based nonprofit entity with demonstrated experience serving public libraries, elementary and secondary schools, and institutions of higher education with broadband connectivity.

(c) Contracts entered into by the office are exempt from Section 10295 of, and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code.

11549.54. (a) The commission, in collaboration with the third-party administrator, shall assist the office and provide to the office the locations for the statewide open-access middle-mile broadband network in a commission staff report, and shall update the locations from time to time as the commission deems appropriate.

(b) The commission shall identify statewide open-access middle-mile broadband network 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.

(c) The commission shall 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.

(d) In identifying priority statewide open-access middle-mile broadband network locations pursuant to subdivision (c), the commission shall prioritize locations that enable last-mile connections to residences unserved by 25 mbps downstream and 3 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.

(e) The commission, in collaboration with relevant stakeholders, shall identify state highway rights-of-way where installation of open-access middle-mile broadband infrastructure should be prioritized.

(1) 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.

(2) Upon identifying and prioritizing locations pursuant to this section, the commission shall transmit the list of priority projects to the Department of Transportation and publish the list on the commission's internet website.

(f) (1) The commission shall solicit and receive public comments within 90 days of the effective date of this section with respect to both of the following:

(A) The current locations, routes, availability, technical performance characteristics, and other aspects of commercial sources of supply of middle-mile broadband network services.

(B) The locations, routes, technical performance characteristics, network design, regeneration points, interconnection points and tie-ins, and other design, technical, business, and operational considerations that would increase the attractiveness and usefulness of the statewide open-access middle-mile broadband network for commercial internet service providers.

(2) These public comments shall inform the locations for the statewide open-access middle-mile network provided to the office pursuant to subdivision (a).

(g) (1) The commission shall treat any confidential information obtained from the department pursuant to this section consistent with its processes and statutory requirements for maintaining confidential information otherwise received from communications service providers.

(2) The commission may share with the department any confidential information it receives from communications service providers that is related to the development and operation of the statewide open-access middle-mile broadband network, and the department shall not disclose that information.

(h) The office shall plan and develop the statewide open-access middle-mile broadband network using the information provided pursuant to subdivisions (a) to (d), inclusive.

(i) (1) In the planning and development of the statewide open-access middle-mile broadband network, the office shall consider technical advice received from entities, including, but not limited to, wireless communications service providers, wireline communications service providers, state agencies, local governments, nonprofit entities, tribes, educational institutions, organized labor groups, regional consortia, and, if applicable, a working group convened pursuant to paragraph (2).

(2) The office may convene a working group to provide additional advice pursuant to this subdivision.

11549.55. (a) (1) The construction of a statewide open-access middle-mile broadband network under design-build authority is exempt from the design-build procurement authorization limit of subdivision (a) of Section 6821 of the Public Contract Code.

(2) Notwithstanding subdivision (a) of Section 6829 of the Public Contract Code, the design-build procurement authorization under Chapter 6.5 (commencing with Section 6820) of Part 1 of Division 2 of the Public Contract Code shall remain in effect for purposes of the statewide open-access middle-mile broadband network after January 1, 2024, until the completion of the broadband network.

(b) (1) The office, or an entity, including the Department of Transportation, assigned by the office to construct the statewide open-access middle-mile broadband network, or a portion of the broadband network, may use the Construction Manager/General Contractor method under Chapter 6.3 (commencing with Section 6700) of Part 1 of Division 2 of the Public Contract Code for the construction of the broadband network.

(2) The dollar value limitation on the Construction Manager/General Contractor method as specified in paragraph (1) of subdivision (b) of Section 6701 of the Public Contract Code does not apply to the statewide open-access middle-mile broadband network.

(c) The office, or an entity, including the Department of Transportation, assigned by the office to construct the statewide open-access middle-mile broadband network, or a portion of the broadband network, may use job order contracting to construct the broadband network as follows:

(1) The office, or an entity, including the Department of Transportation, assigned by the office to construct the statewide open-access middle-mile broadband network, or a portion of the broadband network, shall establish a procedure to prequalify job order contractors and shall prepare a set of documents for each job order contract.

(2) The documents prepared pursuant to paragraph (1) shall include a unit price book of construction tasks with preestablished unit prices, job order contract specifications, and any other information deemed necessary to describe adequately the office's or the entity's needs.

(3) Based on the documents prepared pursuant to paragraph (1), the office, or an entity, including the Department of Transportation, assigned by the office to construct the statewide open-access middle-mile broadband network, or a portion of the broadband network, shall prepare a request for bids that invites prequalified job order contractors to submit competitive sealed bids in the manner prescribed by the office or the entity.

(4) Job order contracts may be executed for an initial contract term of no more than 12 months, with the option of extending or renewing the job order contract for two 12-month periods. All extensions or renewals shall be priced as provided in the request for bids. The extension or renewal shall be mutually agreed to by the office, or an entity, including the Department of Transportation, assigned by the office to construct the statewide open-access middle-mile broadband network, or a portion of the broadband network, and the job order contractor.

(5) Any job order contractor that is selected to construct a project pursuant to this subdivision shall possess or obtain sufficient bonding to cover the contract amount for construction services and risk and liability insurance as the office, or an entity, including the Department of Transportation, assigned by the office to construct the statewide open-access middle-mile broadband network, or a portion of the broadband network, may require.

(d) This section is not intended to affect, expand, alter, or limit any rights or remedies otherwise available at law.

(e) Any construction of the statewide open-access middle-mile broadband network performed by the Department of Transportation and any moneys received as reimbursement for the work are not transportation funds subject to Sections 182 and 183 of the Streets and Highways Code.

11549.56. (a) All state agencies shall work in cooperation to expedite the delivery and permitting of the statewide open-access middle-mile broadband network.

(b) The office shall consider adopting 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 Telephone 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.

(c) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2) does not apply to regulations related to the operation of the statewide open-access middle-mile broadband network adopted by the office or a state agency assigned by the office to operate the broadband network.

(d) The Legislature finds and declares that the statewide open-access middle-mile broadband network serves a public purpose. Notwithstanding Section 104.12 of the Streets and Highways Code and any other applicable law, any lease of public property for purposes of the statewide open-access middle-mile broadband network may be made for less than fair market value.

11549.57. (a) In the operation of the statewide open-access middle-mile broadband network, the office may establish reasonable user policies, perform reasonable network management practices, and create related standards and policies.

(b) The office shall ensure that there are a variety of services offered to internet service providers or other eligible entities on the statewide open-access middle-mile broadband network.

(c) Where feasible, the office shall consider if the term of access to dark fiber shall be no less than a 20-year indefeasible right to use.

(d) Where feasible, the office shall consider including excess conduit capacity in projects to ensure for potential growth of the statewide open-access middle-mile broadband network.

(e) This section does not prohibit the office from making a grant of dark fiber strands for purposes of enhancing the California Research and Education Network.

11549.58. (a) The department shall provide oversight and policy input for the statewide open-access middle-mile broadband network.

(b) (1) Within the department shall be a Deputy Director for Broadband, who shall be appointed by, and hold office at the pleasure of, the Governor.

(2) The Deputy Director for Broadband shall be the primary point of contact for the third-party administrator, the commission, the Department of Transportation, and the Legislature.

(c) (1) The department shall establish a broadband advisory committee to monitor the construction and establishment of the statewide open-access middle-mile broadband network.

(2) The broadband advisory committee shall comprise all of the following members:

(A) A representative of the commission.

(B) A representative of the department.

(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.

(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.

(3) The representative of the department shall chair the broadband advisory committee.

(d) The broadband advisory committee shall meet no less often than monthly for the first 12 months following the effective date of this section, and shall meet quarterly thereafter.

(e) The third-party administrator shall seek policy advice from the broadband advisory committee.

(f) (1) 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:

(A) The total length of the statewide open-access middle-mile broadband network.

(B) The length of the portion of the statewide open-access middle-mile broadband network constructed in the preceding year, by quarter.

(C) The number of internet service providers using the statewide open-access middle-mile broadband network.

(D) The number of households projected to connect to the statewide open-access middle-mile broadband network.

(E) The total expenditures for each project, by quarter.

(F) The projected goals for each of the metrics described in subparagraphs (A) to (E), inclusive, for the 18 months following the report.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795.

SEC. 4. Section 26231 is added to the Government Code, to read:

26231. (a) For purposes of this section, "broadband internet access service" has the same meaning as defined in Section 53167.

(b) The board of supervisors of a county may acquire, construct, improve, and maintain broadband infrastructure and operate broadband internet access service and any telecommunications services necessary to obtain federal or state support for the acquisition, construction, improvement, or maintenance of broadband infrastructure or operation of broadband internet access service.

(c) A county that acquires, constructs, improves, or maintains broadband infrastructure or operates broadband internet access service shall comply with the requirements of Article 12 (commencing with Section 53167) of Chapter 1 of Part 1 of Division 2 of Title 5.

SEC. 5. Section 53167 of the Government Code is amended to read:

53167. For purposes of this article, the following definitions apply:

(a) "Broadband internet access service" means a mass-market retail service provided by a local agency in California by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. "Broadband internet access service" also encompasses any service provided by a local agency in California that provides a functional equivalent of that service or that is used to evade the protections set forth in this article.

(b) "Edge provider" means any individual or entity that provides any content, application, or service over the internet, and any individual or entity that provides a device used for accessing any content, application, or service over the internet to an end user.

(c) "End user" means any individual or entity in California that uses a broadband internet access service that is provided by a local agency.

(d) "Fixed broadband internet access service" means any broadband internet access service that serves end users primarily at fixed endpoints using stationary equipment. Fixed broadband internet access service includes fixed wireless services, including fixed unlicensed wireless services, and fixed satellite services.

(e) "Local agency" means any agency of local government authorized by any other law to provide broadband internet access service, including the following:

- (1) A city.
- (2) A county, including a county service area.
- (3) A community services district.
- (4) A public utility district.
- (5) A municipal utility district.
- (6) A joint powers authority.
- (7) A local educational agency, as defined in Section 47640 of the Education Code.
- (8) A sovereign tribal government.
- (9) An electrical cooperative, as defined in Section 2776 of the Public Utilities Code.

(f) "Mobile broadband internet access service" means any broadband internet access service that serves end users primarily using mobile stations.

(g) "Network management practice" means a practice that has a primarily technical network management justification, but does not include other business practices.

(h) "Paid prioritization" means the management of a broadband provider's network to directly or indirectly favor some traffic over other traffic, including through the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, that either:

- (1) Is in exchange for consideration, monetary or otherwise, from a third party.
- (2) Done to benefit an affiliated entity.

(i) "Reasonable network management" means a network management practice that is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband internet access service.

SEC. 6. Section 21080.51 is added to the Public Resources Code, to read:

21080.51. (a) This division does not apply to a project funded by Item 7502-062-8506 of the Budget Act of 2021 or any entity, including a public entity or private or nonprofit corporation, that consists of linear broadband deployment in a right-of-way if the project meets all of the following conditions:

- (1) The project is located in an area identified by the Public Utilities Commission as a component of the statewide open-access middle-mile broadband network pursuant to Section 11549.54 of the Government Code.
- (2) The project is constructed along, or within 30-feet of, the right-of-way of any public road or highway.
- (3) The project is either deployed 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) The project incorporates, 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.
- (5) The project applicant agrees to 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 the requirements of subdivision (a), the person 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 in a manner consistent with subdivision (b) of Section 21108.

(3) In the case of private rights-of-way over private property, receive 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.

SEC. 7. Section 281 of the Public Utilities Code is amended to read:

281. (a) The commission shall develop, implement, and administer the California Advanced Services Fund to encourage deployment of high-quality advanced communications services to all Californians that will promote economic growth, job creation, and the substantial social benefits of advanced information and communications technologies, consistent with this section and with the statements of intent in Section 2 of the Internet for All Now Act (Chapter 851 of the Statutes of 2017).

(b) (1) (A) The goal of the Broadband Infrastructure Grant Account is, no later than December 31, 2026, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the commission on or before January 1, 2022. The commission shall be responsible for achieving the goals of the program.

(B) For purposes of the Broadband Infrastructure Grant Account, both of the following definitions apply:

(i) "Mbps" means megabits per second.

(ii) (I) Except as provided in subclause (II), "unserved area" means an area for which there is no facility-based broadband provider offering at least one tier of broadband service at speeds of at least 25 mbps downstream, 3 mbps upstream, and a latency that is sufficiently low to allow realtime interactive applications, considering updated federal and state broadband mapping data.

(II) For projects funded, in whole or in part, from moneys received from the federal Rural Digital Opportunity Fund, "unserved area" means an area in which no facility-based broadband provider offers broadband service at speeds consistent with the standards established by the Federal Communications Commission pursuant to In the Matter of Rural Digital Opportunity Fund, WC Docket No. 19-126, Report and Order, FCC 20-5 (adopted January 30, 2020, and released February 7, 2020), or as it may be later modified by the Federal Communications Commission.

(2) In approving infrastructure projects funded through the Broadband Infrastructure Grant Account, the commission shall do both of the following:

(A) Approve projects that provide last-mile broadband access to households that are unserved by an existing facility-based broadband provider, and, upon accomplishment of the goal of the program specified in paragraph (1), also approve projects pursuant to paragraph (13) of subdivision (f).

(B) (i) Prioritize projects in unserved areas where internet connectivity is available only at speeds at or below 10 mbps downstream and 1 mbps upstream or areas with no internet connectivity.

(ii) This subparagraph does not prohibit the commission from approving funding for projects outside of the areas specified in clause (i).

(3) Moneys appropriated for purposes of this section may be used to match or leverage federal moneys for communications infrastructure, digital equity, and adoption, including, but not limited to, moneys from the United States Department of Commerce, Economic Development Administration, the United States Department of Agriculture ReConnect Loan and Grant Program, and the Federal Communications Commission for communications infrastructure, digital equity, and adoption.

(4) The commission shall transition California Advanced Services Fund program methodologies to provide service to serviceable locations and evaluate other program changes to align with other funding sources, including, but not limited to, funding locations.

(5) The commission shall maximize investments in new, robust, and scalable infrastructure and use California Advanced Services Fund moneys to leverage federal and non-California Advanced Services Fund moneys by undertaking activities, including, but not limited to, all of the following:

(A) Providing technical assistance to local governments and providers.

(B) Assisting in developing grant applications.

(C) Assisting in preparing definitive plans for deploying necessary infrastructure in each county, including coordination across contiguous counties.

(c) The commission shall establish the following accounts within the fund:

(1) The Broadband Infrastructure Grant Account.

(2) The Rural and Urban Regional Broadband Consortia Grant Account.

(3) The Broadband Public Housing Account.

(4) The Broadband Adoption Account.

(5) The Federal Funding Account.

(d) (1) The commission shall transfer the moneys received by the commission from the surcharge the commission may impose pursuant to paragraph (3) to fund the accounts to the Controller for deposit into the California Advanced Services Fund. Moneys collected shall be deposited in the following amounts in the following accounts:

(A) Three hundred million dollars (\$300,000,000) into the Broadband Infrastructure Grant Account.

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

(C) Twenty million dollars (\$20,000,000) into the Broadband Adoption Account.

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

(3) The commission may collect a sum not to exceed three hundred thirty million dollars (\$330,000,000) for a sum total of moneys collected by imposing the surcharge described in paragraph (1). The commission may collect the sum beginning with the calendar year starting on January 1, 2018, and continuing through the 2022 calendar year, in an amount not to exceed sixty-six million dollars (\$66,000,000) per year, unless the commission determines that collecting a higher amount in any year will not result in an increase in the total amount of all surcharges collected from telephone customers that year.

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

(f) In administering the Broadband Infrastructure Grant Account, the commission shall do all of the following:

(1) The commission shall award grants from the Broadband Infrastructure Grant Account on a technology-neutral basis, taking into account the useful economic life of capital investments, and including both wireline and wireless technology.

(2) The commission shall consult with regional consortia, stakeholders, local governments, existing facility-based broadband providers, and consumers regarding unserved areas and cost-effective strategies to achieve the broadband access goal through public workshops conducted at least annually no later than April 30 of each year.

(3) The commission shall identify unserved rural and urban areas and delineate the areas in the annual report prepared pursuant to Section 914.7.

(4) An existing facility-based broadband provider may, but is not required to, apply for funding from the Broadband Infrastructure Grant Account to make an upgrade pursuant to this subdivision.

(5) Projects eligible for grant awards shall deploy infrastructure capable of providing broadband access at speeds of a minimum of 100 mbps downstream and 20 mbps upstream, or the most current broadband definition speed standard set by the Federal

Communications Commission from time to time, as determined appropriate by the commission, whichever broadband access speed is greater, to unserved areas or unserved households.

(6) (A) An individual household or property owner shall be eligible to apply for a grant to offset the costs of connecting the household or property to an existing or proposed facility-based broadband provider. Any infrastructure built to connect a household or property with funds provided under this paragraph shall become the property of, and part of, the network of the facility-based broadband provider to which it is connected.

(B) (i) In approving a project pursuant to this paragraph, the commission shall consider limiting funding to households based on income so that funds are provided only to households that would not otherwise be able to afford a line extension to the property, limiting the amount of grants on a per-household basis, and requiring a percentage of the project to be paid by the household or the owner of the property.

(ii) The aggregate amount of grants awarded pursuant to this paragraph shall not exceed five million dollars (\$5,000,000).

(7) An entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved household, if the entity otherwise meets the eligibility requirements and complies with program requirements established by the commission.

(8) The commission shall provide each applicant, and any party challenging an application, the opportunity to demonstrate actual levels of broadband service in the project area, which the commission shall consider in reviewing the application.

(9) The commission shall establish a service list of interested parties to be notified of any California Advanced Services Fund applications. Any application and any amendment to an application for project funding shall be served to those on the service list and posted on the commission's internet website at least 30 days before publishing the corresponding draft resolution.

(10) A grant awarded pursuant to this subdivision may include funding for the following costs consistent with paragraph (5):

(A) Costs directly related to the deployment of infrastructure.

(B) Costs to lease access to property or for internet backhaul services for a period not to exceed five years.

(C) Cost incurred by an existing facility-based broadband provider to upgrade its existing facilities to provide for interconnection.

(11) The commission may award grants to fund all or a portion of the project. The commission shall determine, on a case-by-case basis, the level of funding to be provided for a project and shall consider factors that include, but are not limited to, the location and accessibility of the area, the existence of communication facilities that may be upgraded to deploy broadband, and whether the project makes a significant contribution to achievement of the program goal.

(12) The commission may require each infrastructure grant applicant to indicate steps taken to first obtain any available funding from the Connect America Fund program or similar federal public programs that fund broadband infrastructure. This paragraph does not authorize the commission to reject a grant application on the basis that an applicant failed to seek project funding from the Connect America Fund program or another similar federal public program.

(13) Upon the accomplishment of the goal of the program specified in paragraph (1) of subdivision (b), not more than thirty million dollars (\$30,000,000) of the moneys remaining in the Broadband Infrastructure Grant Account shall be available for infrastructure projects that provide last-mile broadband access to households to which no facility-based broadband provider offers broadband service at speeds of at least 10 mbps downstream and one mbps upstream.

(g) (1) Moneys in the Rural and Urban Regional Broadband Consortia Grant Account shall be available for grants to eligible consortia to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process. An eligible consortium may include, as specified by the commission, representatives of organizations, including, but not limited to, local and regional government, public safety, elementary and secondary education, health care, libraries, postsecondary education, community-based organizations, tourism, parks and recreation, agricultural, business, workforce organizations, and air pollution control or air quality management districts, and is not required to have as its lead fiscal agent an entity with a certificate of public convenience and necessity.

(2) Each consortium shall conduct an annual audit of its expenditures for programs funded pursuant to this subdivision and shall submit to the commission an annual report that includes both of the following:

(A) A description of activities completed during the prior year, how each activity promotes the deployment of broadband services, and the cost associated with each activity.

(B) The number of project applications assisted.

(h) (1) All remaining moneys in the Broadband Infrastructure Revolving Loan Account that are unencumbered as of January 1, 2018, shall be transferred to the Broadband Infrastructure Grant Account.

(2) All repayments of loans funded by the former Broadband Infrastructure Revolving Loan Account shall be deposited into the Broadband Infrastructure Grant Account.

(i) (1) For purposes of this subdivision, "low-income community" includes, but is not limited to, publicly supported housing developments, and other housing developments or mobilehome parks with low-income residents, as determined by the commission.

(2) Moneys in the Broadband Public Housing Account shall be available for the commission to award grants and loans pursuant to this subdivision to a low-income community that otherwise meets eligibility requirements and complies with program requirements established by the commission.

(3) Moneys deposited into the Broadband Public Housing Account shall be available for grants and loans to low-income communities to finance projects to connect broadband networks that offer free broadband service that meets or exceeds state standards, as determined by the commission, for residents of the low-income communities. A low-income community may be an eligible applicant if the low-income community does not have access to any broadband service provider that offers free broadband service that meets or exceeds state standards, as determined by the commission, for the residents of the low-income community.

(4) To the extent feasible, the commission shall approve projects for funding from the Broadband Public Housing Account in a manner that reflects the statewide distribution of low-income communities.

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

(j) (1) Moneys in the Broadband Adoption Account shall be available to the commission to award grants to increase publicly available or after school broadband access and digital inclusion, such as grants for digital literacy training programs and public education to communities with limited broadband adoption, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption.

(2) Eligible applicants are local governments, senior centers, schools, public libraries, nonprofit organizations, and community-based organizations with programs to increase publicly available or after school broadband access and digital inclusion, such as digital literacy training programs.

(3) Payment pursuant to a grant for digital inclusion shall be based on digital inclusion metrics established by the commission that may include the number of residents trained, the number of residents served, or the actual verification of broadband subscriptions resulting from the program funded by the grant.

(4) The commission shall give preference to programs in communities with demonstrated low broadband access, including low-income communities, senior communities, and communities facing socioeconomic barriers to broadband adoption. The commission shall determine how best to prioritize projects for funding pursuant to this paragraph.

(5) Moneys awarded pursuant to this subdivision shall not be used to subsidize the costs of providing broadband service to households.

(k) The commission shall post on the homepage of the California Advanced Service Fund on its internet website a list of all pending applications, application challenge deadlines, and notices of amendments to pending applications.

(l) (1) The commission shall require each entity that receives funding or financing for a project pursuant to this section to report monthly to the commission, at minimum, all of the following information:

(A) The name and contractor's license number of each licensed contractor and subcontractor undertaking a contract or subcontract in excess of twenty-five thousand dollars (\$25,000) to perform work on a project funded or financed pursuant to this section.

(B) The location where a contractor or subcontractor described in subparagraph (A) will be performing that work.

(C) The anticipated dates when that work will be performed.

(2) The commission shall, on a monthly basis, post the information reported pursuant to this subdivision on the commission's California Advanced Service Fund internet website.

(m) The commission shall notify the appropriate policy committees of the Legislature on the date on which the goal specified in paragraph (1) of subdivision (b) is achieved.

(n) (1) Upon the deposit of state or federal infrastructure moneys into the Federal Funding Account, the commission shall implement a program using those moneys to expeditiously connect unserved and underserved communities by applicable federal deadlines.

(2) Projects funded pursuant to this subdivision shall be implemented consistent with Part 35 of Title 31 of the Code of Federal Regulations and any conditions or guidelines applicable to these one-time federal infrastructure moneys.

(3) Of the two billion dollars (\$2,000,000,000) appropriated to the commission to fund last-mile broadband infrastructure in the Budget Act of 2021, the commission shall allocate those moneys to applicants for the construction of last-mile broadband infrastructure as follows:

(A) The commission shall initially allocate one billion dollars (\$1,000,000,000) for last-mile broadband projects in urban counties as follows:

(i) The commission shall first allocate five million dollars (\$5,000,000) for last-mile broadband projects in each urban county.

(ii) The commission shall allocate the 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) The commission shall allocate at least one billion dollars (\$1,000,000,000) for last-mile broadband projects in rural counties as follows:

(i) The commission shall first allocate five million dollars (\$5,000,000) for last-mile broadband projects in each rural county.

(ii) The commission shall allocate the 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.

(4) Until June 30, 2023, applicants may apply for and encumber moneys allocated pursuant to this subdivision for last-mile broadband projects. Any moneys allocated pursuant to this subdivision 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.

SEC. 8. Section 281.2 is added to the Public Utilities Code, to read:

281.2. (a) (1) The Broadband Loan Loss Reserve Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the fund are hereby continuously appropriated, without regard to fiscal years, to the commission and shall be available to fund costs related to the 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.

(2) In the 2021–22 fiscal year, the commission may make cashflow loans to the Broadband Loan Loss Reserve Fund from accounts established pursuant to subdivision (c) of Section 281.

(b) The commission may 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.

(c) The commission may 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.

(d) The commission shall require each local government agency or nonprofit organization receiving funds under this section to file both of the following reports in the form and manner specified by the commission:

(1) Biannual progress reports identifying project milestones and percent completions to date, and including other information as the commission may prescribe.

(2) 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, and other information as the commission may prescribe.

SEC. 9. Section 912.2 of the Public Utilities Code is amended to read:

912.2. On or before April 1, 2023, and biennially thereafter, the commission shall conduct a fiscal and performance audit of the implementation and effectiveness of the California Advanced Services Fund to ensure that funds have been expended in accordance with the approved terms of the grant awards and loan agreements pursuant to Section 281 or 281.2 and shall report its findings to the Legislature. The reports shall include an update to the maps in the final report of the California Broadband Task Force and data on the types and numbers of jobs created as a result of the program administered by the commission pursuant to Section 281 or 281.2 and shall include information specified in Section 914.7.

SEC. 10. Section 914.7 of the Public Utilities Code is amended to read:

914.7. By April 1, 2019, and by April 1 of each year thereafter, until April 1, 2023, the commission shall provide to the Legislature either a report or the biennial fiscal and performance audit conducted pursuant to Section 912.2 that includes all of the following information:

(a) The remaining unserved areas in the state.

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

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

(d) The geographic regions of the state affected by funds expended from the California Advanced Services Fund in the prior year, including information by county.

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

(f) Details on the status of each project funded through the California Advanced Services Fund and whether the project has been completed or the expected completion date of the project.

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

(h) The cost per household for each project.

(i) The number of formerly unserved households subscribing to broadband service in areas covered by projects funded by the California Advanced Services Fund.

(j) The number of subscriptions resulting from the broadband adoption program funded by the California Advanced Services Fund.

(k) An update on the expenditures from the California Advanced Services Fund, broadband adoption levels, the progress in achieving the goals of the program, and an accounting of the remaining unserved households in each region of the state as of December 31 of the immediately preceding year.

(l) The amount of funds expended from the California Advanced Services Fund to match federal funds.

(m) Addition details on efforts to leverage non-California Advanced Services Fund moneys.

(n) The status of the California Advanced Services Fund balance and the projected amount to be collected in each year through 2022 to fund approved projects.

SEC. 11. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 12. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or

level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 13. The Legislature finds and declares that Section 3 of this act, which adds Section 11549.54 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect confidential information, this limitation is necessary.

SEC. 14. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.