
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

**Senator Ben Hueso, Chair
2021 - 2022 Regular**

Bill No: SB 4 **Hearing Date:** 4/12/2021
Author: Gonzalez
Version: 3/25/2021 Amended
Urgency: Yes **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Communications: California Advanced Services Fund

DIGEST: This bill extends and makes various modifications to the California Advanced Services Fund (CASF), including increasing the minimum speed of broadband infrastructure funded by the program, expanding the communities eligible for grants, allowing the California Public Utilities Commission (CPUC) to issue bonds secured by CASF revenues.

ANALYSIS:

Existing law:

- 1) Establishes the CASF, which is administered by the CPUC to fund broadband infrastructure deployment in unserved areas through December 31, 2022. (Public Utilities Code §281(a-b)).
- 2) Defines an unserved household eligible for CASF funds as one for which there is no broadband provider offering service at a speed of at least six megabits per second (mbps) downstream and one mbps upstream. (Public Utilities Code §281(b))
- 3) Requires the CPUC to prioritize CASF grants for projects in areas with no internet connectivity or areas with only dial up service that have no wireline or wireless broadband service. (Public Utilities Code §281(b))
- 4) Requires the CASF to deploy infrastructure capable of speeds of at least 10 mbps downstream and one mbps upstream. (Public Utilities Code §281(f))
- 5) Allows the CPUC to collect a surcharge to fund the CASF and establishes accounts within the CASF. Existing law establishes specified minimum funding amounts for each account within the CASF. (Public Utilities Code §281(d))

- 6) Caps the amount of revenue the CPUC may collect for the CASF at no more than \$66 million per year or \$330 million total, unless the CPUC determines that collecting a higher amount in any year would not increase the total amount of total surcharges collected per year. (Public Utilities Code §281(d))
- 7) Defines Voice over Internet Protocol (VoIP) as a service enabling two-way voice communications, requires a broadband connection, and permits the user to receive calls originating over the publicly switched telephone network. (Public Utilities Code §285).
- 8) Requires the CPUC to direct interconnected VoIP providers to collect surcharges on California intrastate revenues and deposit those funds in the accounts for the state's telecommunications universal service programs, including the CASF. Existing law allows VoIP providers to use one of several specified methods to identify the appropriate surcharge amount or develop an alternative method for calculating their surcharge contributions. (Public Utilities Code §285(e))
- 9) Limits local government agencies' eligibility for CASF grants to only those projects where the infrastructure is for an unserved household or business, the CPUC has conducted an open application process, and no other eligible provider has applied. (Public Utilities Code §281(f))
- 10) Provides incumbent internet service providers (ISPs) with the ability to object to and block a CASF application on an annual basis if the ISP intends to upgrade or extend service to the project area within six months. If the ISP does not extend or upgrade the service within six months, the ISP must update the CPUC with information about its progress towards providing service. If the CPUC finds that the ISP is making progress towards providing or upgrading service, the CPUC must extend the ISP's six-month right of first refusal period. (Public Utilities Code §281(f))
- 11) Requires the CPUC to conduct an interim and final audit of the CASF, which the CPUC must submit to the Legislature by April 1, 2020, and April 1, 2023, respectively. (Public Utilities Code §912)
- 12) Establishes the Governor's Office of Business and Economic Development (GO-Biz) and specifies the Office's duties, including the coordination and development of policies that advance the state's economic development goals. (Government Code §12096.3)

This bill:

- 1) Extends the CASF indefinitely and establishes regular reporting and stakeholder consultation requirements for the CASF.
- 2) Redefines an unserved area as an area in which at least 90 percent of the population has no facility-based broadband provider offering at speeds of at least 25 mbps downstream/3 mbps upstream and a latency that is sufficiently low to allow real-time interactive applications.
- 3) Requires the CPUC to prioritize projects in unserved areas without internet connectivity or unserved areas with connectivity at or below speeds of 10 mbps up/1 mbps down.
- 4) Permits the use of CASF monies to match or leverage federal funds and requires the CPUC to provide technical assistance to applicants, including helping develop grant applications.
- 5) Deletes specified minimum appropriation amounts for certain accounts within the CASF and instead authorizes the CPUC to make recommendations to the Legislature regarding appropriations to specific accounts within the CASF.
- 6) Replaces existing law capping the annual and total funds that can be collected for the CASF and instead allows the CPUC to collect a surcharge on each 911 access line, not to exceed 23 cents per line per month.
- 7) Eliminates the right of first refusal process by which an incumbent ISP can block or delay a proposed CASF grant if the incumbent ISP intends to extend or upgrade service to the project area within six months.
- 8) Increases the minimum speed for CASF-funded infrastructure from 10/1 mbps to 25/3 mbps and establishes a goal of CASF projects providing downstream speeds of at least 100 mbps.
- 9) Deletes existing law that restricts a local government's ability to obtain for CASF grants unless the project is for an unserved business or household for which no other entity has applied.
- 10) Deletes existing law that restricts funds in the CASF's Broadband Public Housing Account to public housing facilities that meet specified "unserved" criteria.

- 11) Establishes the Broadband Bond Financing and Securitization Account and requires the CPUC to deposit funds from the CASF surcharge into this account for the purposes of supporting bonds and securities that finance the deployment of broadband infrastructure, including the financing of local government and nonprofit broadband deployment projects.
- 12) Requires the CPUC to conduct an audit and performance review of the CASF every other year and extends these auditing and reporting duties indefinitely.
- 13) Requires GO-Biz to coordinate with public agencies and national organizations to explore ways to streamline local land use approvals and permits for broadband infrastructure deployment.

Background

The CASF helps address the infrastructure barriers to broadband access. This bill extends the CASF, which is administered by the CPUC to fund the deployment of broadband infrastructure. In addition to financing infrastructure, the CASF also includes accounts that support specific broadband deployment and adoption efforts, including projects that connect public housing communities to broadband networks and digital literacy resources. While the digital divide is not new, the Covid-19 pandemic highlighted the extent to which lack of broadband access persists for many communities. Recent research from the University of Southern California indicates that low-income households, Spanish-speaking households, Californians with disabilities, and rural households are disproportionately impacted by inadequate broadband access. Even where broadband exists, a lack of competition between providers offering high-speed internet decreases consumers' ability to shop for plans offering lower, competitive prices. According to Federal Communications Commission (FCC) data, four percent of households have no access to broadband at speeds of at least 100/10 mbps, 28 percent have only one provider offering those speeds, 45 percent have only two providers offering those speeds, and only 23 percent of households can choose between three or more providers offering internet plans at speeds of 100/10 mbps. Inadequate broadband access is driven by several causes; however, a lack of affordable internet service and lack of infrastructure are leading causes. The CASF helps address the extent to which the lack of infrastructure is a barrier to broadband access.

This bill makes changes to the CASF surcharge that may stabilize the fund's revenues. The CASF is one of several Universal Service Fund programs funded through a surcharge on consumers' intrastate telecommunications. Currently, the CASF surcharge is assessed at approximately one percent of a user's in-state

telecommunications services. However, existing law allows VoIP telecommunications providers to establish their own alternative methods for calculating their contributions to the CASF. Generally, this authorization has led to proportionately lower CASF revenue collections from VoIP and wireless providers and cost-shifting of CASF revenue obligations to traditional telephone users. For example, a company may remit approximately 20 cents per user per month into the CASF from its traditional telephone consumers while only remitting nine cents per user per month from each of its VoIP customers. As more consumers shift to VoIP for telephone service, the projected total amount of revenue the CASF can collect has declined. Prior to December 2020 adjustments to the CASF surcharge rate, the CASF was on track to only collect \$187 million out of the \$330 million total funding authorized under existing law. Even with surcharge rate increases, the CASF may never collect its total authorized revenue if the revenues disproportionately rely on surcharges paid by traditional telephone users.

Existing law sunsets the CASF, including the surcharge funding the CASF, on December 31, 2022. This bill would extend the CASF indefinitely and modify the CPUC's method for collecting the surcharge that funds the CASF. This bill authorizes the CPUC to charge a flat fee no greater than 23 cents on each 911 access line in the state. This mechanism could enable the CPUC to spread the cost of funding the CASF more evenly across a greater number of telecommunications lines, which would reduce the degree to which CASF revenues rely on traditional telephone customers and improve the CASF's long-term funding. However, it is not clear that the CPUC lacks the authority to establish a flat fee in the absence of legislation specifying a fee. On March 4, 2021, the CPUC opened a rulemaking (R. 21-03-002) to update the surcharge mechanism for the state's Universal Service Fund programs. The first phase of this proceeding is intended to consider shifting the surcharge mechanism for all the Universal Service Fund public purpose programs to a flat surcharge assessed on access lines by January 1, 2022.

This bill would expand the communities eligible for CASF grants while prioritizing the most unserved areas. Existing law defines an unserved household eligible for CASF grants as one for which no facilities-based broadband provider offers service at speeds of 6/1 mbps. This bill modifies this definition to specify that an unserved area is one in which at least 90 percent of the population has no facilities-based broadband provider offering service at speeds of at least 25/3 mbps. In 2015, the FCC modified its definition of broadband to define broadband as service at speeds of 25/3 mbps or greater. This bill modifies the definition of an unserved area to specify that communities that lack broadband at speeds that meet the FCC's definition are considered unserved. While this expanded definition may include communities that have lower-speed internet service, this bill also requires the

CPUC to prioritize CASF grants for projects deployed in communities that lack internet service or only have service at speeds of 6/1 mbps, which include the most unserved and underserved communities.

The need for speed: this bill updates CASF speed standards to match federal broadband standards. This bill increases the minimum speed of CASF-funded infrastructure from 10/1 mbps to 25/3 mbps – with a goal of obtaining 100 mbps downstream – or the broadband standard adopted by the FCC, depending on whichever is greater. Broadband speeds generally reflect the amount of fiber in the network. More fiber in a network increases the speed of data travelling through the network.

In August 2020, the governor signed Executive Order N-73-20, which directed the California Broadband Council to create a new state Broadband Action Plan that incorporated a goal of deploying broadband capable of providing download speeds of at least 100 mbps. In December 2020, the California Broadband Council released its 2020 Broadband Action Plan. The plan recommends adopting a minimum speed standard for broadband of at least 25/3 mbps to match federal standards; however, the plan also recommended establishing a goal of building networks capable of delivering 100 mbps downstream and 10 mbps upstream.

While the FCC has maintained the 25/3 mbps broadband speed standard for six years, the current FCC Chair, Jessica Rosenworcel, has indicated that the current FCC broadband standard is inadequate to meet current and future broadband needs. The Biden Administration has also called for \$100 billion in federal infrastructure funding for “future proof” networks; while the Biden Administration did not specify as speed standard that would be considered future proof, the speed standard for this infrastructure would likely exceed the FCC’s existing 25/3 mbps standard. While 25/3 mbps may be sufficient for a single user’s basic internet needs, this speed may be insufficient for an entire family to each use devices streaming video, including attending virtual classes and obtaining high definition video for telehealth and other purposes. According to the California Broadband Council’s Action Plan, building a California broadband network capable of delivering download speeds of at least 100 mbps would cost approximately 19 percent more than building a network to provide speeds of 25/3 mbps. However, a network capable of 100 mbps downstream is more likely to be future proof and require fewer upgrades in the near term.

The bill’s elimination of the “right of first refusal” could help streamline the CASF grant process. Existing law provides an incumbent ISP with the ability to challenge any proposed CASF grant if the ISP intends to provide service to the project’s area within six months. This rebuttal process is referred to as the “right

of first refusal.” While the right of first refusal may be intended to ensure that CASF grants are provided only to areas that otherwise would not receive infrastructure through private investment, the process has been used to challenge the majority of proposed CASF grants in recent years. The six-month rebuttal process can significantly delay a CASF project, increasing project costs and limiting grant recipients’ ability to leverage multiple funding sources.

Is bond financing the best option for boosting broadband investment? This bill requires the CPUC to deposit CASF surcharge revenues into an account that can be used to finance bonds to make additional broadband deployment investments. Securing long-term debt against CASF revenues would require at least a certain portion of the revenues to remain in the securitization account until the interest and face value of the bond is repaid. However, certain federal funds, including federal infrastructure stimulus monies, may be available by 2022. The American Rescue Plan Act of 2021 makes broadband infrastructure an eligible use of federal infrastructure monies appropriated by the relief plan. Since these federal stimulus funds must be spent by 2025, they cannot provide long-term funding; but federal stimulus funds may be used to fund broadband projects that are ready for deployment.

Need for Amendments. As currently drafted, this bill defines an unserved area as one in which 90 percent of the households lack broadband service at speeds of 25/3 mbps; however, this bill does not include a requirement that ISPs report the level of speed and service on a household level. As a result, identifying percentages of service meeting the threshold may not be feasible under this bill. This bill establishes a minimum speed threshold for broadband infrastructure that is consistent with the federal speed threshold; however, this speed threshold may not be sufficient for multiple users streaming video over one connection in a household and multiple ISPs have indicated that they are prepared to provide download speeds of at least 100 mbps if funded through the CASF. This bill also allows the CPUC to establish a monthly flat surcharge on each 911 access line not to exceed 23 cents per line per month. However, the CPUC is already in the process of exploring this change administratively for all the Universal Service Fund programs, and this bill does not eliminate conflicting language in existing law regarding VoIP providers’ CASF contributions. *As a result, the author and this committee may wish to amend this bill to do the following:*

- *Modify the definition of an “unserved area” to remove the reference to 90 percent of households in the area.*
- *Modify the speed threshold for infrastructure funded by the CASF to specify that the infrastructure must be capable of providing speeds of at least 100 mbps downstream and 20 mbps upstream or the federal speed threshold, depending on whichever is greater.*

- *Replace the provisions specifying a capped 23 cent access line surcharge with a \$150 million cap on the total annual surcharge revenues that can be collected and remove provisions of existing law that limit the CPUC's ability to modify the Universal Service Fund surcharge mechanism.*

This bill also authorizes the CPUC to deposit CASF surcharge revenue in a Broadband Bond Financing and Securitization Account for the purpose of supporting bonds and securities that finance the deployment of broadband infrastructure, including the financing of local government and nonprofit broadband deployment projects. However, securitizing these revenues may limit the ability to fully use CASF monies for infrastructure grants and limits the ability to establish a sunset date for the CASF surcharge and other sources of revenue, including general funds and federal infrastructure funds, may provide a greater source of revenue than may be obtained through securitizing CASF surcharge revenues. Many local governments will be eligible for funding through the CASF pursuant to this bill; however, there are certain local facilities that may not be prioritized for grants because they lack residential internet accounts. For example, fairgrounds are frequently used as emergency evacuation and response facilities during disasters. *As a result, the author and committee may wish to amend this bill to remove the securitization provisions of this bill and instead do the following:*

- *Establish a sunset date of December 31, 2032, for the CASF*
- *Permit the CPUC to use CASF revenues to fund projects deploy broadband infrastructure to certain unserved nonresidential facilities used for local and state emergency response, including, but not limited to, fairgrounds.*

Prior/Related Legislation

SB 732 (Bates, 2021) would establish a \$10 billion Rural Broadband Infrastructure fund, administered by the CPUC to deploy high-speed broadband to unserved rural areas. The bill is currently pending in the Senate Committee on Energy, Utilities and Communications.

SB 740 (Borgeas, 2021) would clarify that a local government's broadband deployment project is eligible for CASF grant funding, and it would shorten the time frame – from 180 days to 60 days – in which an incumbent ISP may block a CASF applicant's grant by demonstrating that the incumbent ISP plans deploy broadband to the applicant's area. The bill is currently pending in the Senate Committee on Energy, Utilities and Communications.

AB 14 (Aguiar-Curry, 2021) would extend the CASF and make various modifications to the fund, including increasing the minimum speed standards for CASF-funded infrastructure, expanding the definition of an "unserved" area

eligible for grants, and expanding the types of projects eligible for CASF funding to include projects that deploy broadband to specified “anchor institutions.” The bill defines anchor institutions as K-12 schools, colleges, fairgrounds, libraries, hospitals, health clinics, public safety entities, government buildings, and community organizations. The bill is currently pending in the Assembly.

AB 1349 (Mathis, 2021) would add churches to the list of organizations eligible for grant funding from the CASF’s broadband adoption account. The bill is currently pending in the Assembly.

AB 1426 (Mathis, 2021) would delete the existing right of an incumbent ISP to block a CASF grant in an area that that incumbent ISP plans to deploy broadband. The bill is currently pending in the Assembly.

SB 1130 (Gonzalez, 2020) would have extended and modified the CASF, including increasing minimum speed standards for CASF-funded infrastructure, expanded the communities eligible for the CASF, and set open access requirements for certain infrastructure projects. The bill died in the Assembly.

AB 570 (Aguiar-Curry, 2020) would have extended and modified the CASF, including increasing the minimum speed standards for CASF-funded infrastructure, expanding the communities eligible for CASF monies, allowing the CPUC to collect additional CASF revenue, and authorizing the issuance of up to \$1 billion in bonds secured by the CASF. The bill died in the Senate.

AB 82 (Committee on Budget, Chapter 14, Statutes of 2020) made various changes to implement the 2020 State Budget, including deleting restrictions that prevented the CPUC from leveraging CASF grants with federal funding.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

Tony Thurmond, State Superintendent of Public Instruction

Libby Schaaf, Mayor of Oakland

California Faculty Association, Co-sponsor

Common Sense Media, Co-sponsor

Electronic Frontier Foundation, Co-sponsor

Service Employees International Union California, Co-sponsor

Tony Madrigal, Modesto City Councilmember, District 2

3CORE, Inc.

Abriendo Puertas/Opening Doors

Access Humboldt
Access Now
ACLU California Action
Alliance for A Better Community
AltaMed Health Services
Bay Area Youth Climate Action Team
Broadband Connect Initiative
California Association of Public Authorities for IHSS
California Association of School Business Officials
California Cable & Telecommunications Association, if amended
California Center for Rural Policy
California Charter Schools Association
California Community Foundation
California County Superintendents Educational Services Association
California Edge Coalition
California Forward Action Fund
California School Boards Association
California State Association of Counties
California State PTA
California State University, Chico – North State Planning and Development
Collective
California State University, Fresno - Office of Community and Economic
Development
California Telehealth Policy Coalition
California Workforce Association
CaliforniaHealth+ Advocates
Canal Alliance
Center for Powerful Public Schools
Central Coast Broadband Consortium
Central Valley Community Foundation
City of Daly City
City of Lakewood
City of Long Beach
City of National City
City of Signal Hill
City of Thousand Oaks
City of Torrance
City of West Sacramento
Coalition for COVID Recovery, Support and Prevention
Communities in Schools of Los Angeles
Community Clinic Association of Los Angeles County
Computer Science Teachers Association

Consumer Action
Consumer Reports
Contextly
Council for a Strong America
County of Marin Board of Supervisors
County of Monterey
County of Monterey Board of Supervisors
CUE
Digital Nest
Economic Development Collaborative - Ventura County
Economic Vitality Corporation of San Luis Obispo County
Eden Housing
Educators for Excellence
EveryoneOn
Fight for the Future
Founder Academy
Fresno Business Council
Great Public Schools Now
Great School Voices
Humboldt County Office of Education
Imperial County Transportation Commission
Inland Empire Community Foundation
InnovateEDU
Institute for Local Self-reliance
Khan Academy
L.A. Coalition for Excellent Public Schools
League of California Cities
Livable California
Los Angeles County Democratic Party
Los Angeles County Office of Education
Louisville Metro Office of Civic Innovation and Technology
MakeKnowledge
Media Alliance
MediaJustice
Mohuman
New America's Open Technology Institute
Next Century Cities
Nexus Ventures
Normal Heights Indivisible
North Bay Leadership Council
North Peninsula Democratic Club
OCHIN

Open Door Community Health Centers
Our Voice: Communities for Quality Education
Pacoima Beautiful
Partnership for Los Angeles Schools
Public Knowledge
REACH Central Coast
Reddit, Inc.
San Diego County Office of Education
San Joaquin Valley Redevelopment Center
Santa Barbara Women's Political Committee
Sierra Business Council
Siskiyou Works
SJV Partnership
South Bay Cities Council of Governments
Southern California Association of Governments
Speak Up
Stanislaus Community Foundation
Tahoe Prosperity Center
TechEquity Collaborative
Techqueria
The Fresno Center
The Greenlining Institute
The Utility Reform Network, if amended
Triple P America
Tucows
UNITE-LA, INC.
United Parents and Students
Valley Vision
Western Center on Law & Poverty
Western Governors University
Writers Guild of America West

OPPOSITION:

California Taxpayers Association

ARGUMENTS IN SUPPORT: According to the author:

SB 4 is a critical and timely measure to address the digital divide. Access to the internet is about access to opportunity, and this has never been clearer than it is now, as so much of work, healthcare, and education have moved online in response to COVID-19. We need to smartly invest in long-term,

21st century ready broadband technologies, rather than continue to spend state dollars on outdated internet infrastructure. SB 4 will remove the sunset for the surcharge to secure critical long term funding for CASF. SB 4 will also require that new broadband projects built with CASF funds are future-proof, will make those funds more accessible to local governments and small ISPs to work in their communities, and will encourage projects that will break monopolies and drive down costs to consumers. Our communities deserve legislation that will begin to provide the investment needed to build fiber connectivity to every home, school, and business in California.

ARGUMENTS IN OPPOSITION: In opposition, the California Taxpayers Association states:

Now that California will receive federal funds from the American Recovery and Rescue Plan, which includes funds specifically earmarked for broadband infrastructure projects, the state should not ask taxpayers for more revenue to fund the same projects. In addition to the significant funding being provided by the federal government, the state is projected to have a record \$22 billion reserve, which is why the governor and administration officials have stated that additional taxes are unnecessary in the current environment. California enjoyed an estimated \$15 billion revenue windfall this year, and general fund revenue for the first eight months of the current fiscal year was \$14.3 billion higher than projected in the January budget proposal. Now is the wrong time to add another tax that exacerbates California's high tax burden and cost of living.

-- END --