

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 34 (Muratsuchi) – As Amended April 6, 2021

**SUBJECT:** Broadband for All Act of 2022

**SUMMARY:** This bill would enact the Broadband for All Act of 2022, which, if approved by the voters, would authorize the issuance of bonds in the amount of \$10,000,000,000 pursuant to the State General Obligation Bond Law to support the 2022 Broadband for All Program that would be administered by the California Department of Technology (CDT) for purposes of providing financial assistance for projects to deploy broadband infrastructure and broadband internet access services. Specifically, **this bill would:**

- 1) Upon approval by the voters, require CDT to develop and implement the “Broadband for All” Program (Program) to provide grants for broadband infrastructure and services in the State. CDT would be required to:
  - Give preference to applications that: 1) leverage other private, federal; 2) local funding to produce the greatest public benefit, to applications that serve unserved areas or disadvantaged communities; and 3) to projects that include multiple benefits, as specified. At least 25% of funds available pursuant to the Program shall be allocated for projects serving unserved areas or disadvantaged communities.
  - Require a cost share of not less than 50% of the total costs by an eligible entity, but permit CDT to waive or reduce this requirement if the project directly benefits a disadvantaged community or serves an underserved area.
- 2) Create certain requirements for eligible entities in applying for financial assistance, including:
  - Identifying anchor institutions that have no or inadequate access to broadband internet access service and that will be served by the project.
  - Demonstrating that the eligible entity has sufficient resources to provide broadband internet access service and maintain the broadband infrastructure deployed by the project for at least five years.
  - Completing a feasibility study for the project.
- 3) Require eligible entities receiving financial assistance pursuant to the Program to do the following, among other things:
  - Provide anchor institutions served by the project with broadband internet access service free of charge.
  - Provide open access to the broadband infrastructure to other internet service providers at a fair and reasonable price.

- Not transfer the ownership, maintenance, control, and operation of broadband infrastructure funded, in whole or in part, by the Program to a private entity.
- 4) Require, before accepting applications for financial assistance from the Program, CDT to develop and adopt project solicitation and evaluation guidelines for the Program. The guidelines shall establish project application metrics to weigh and evaluate an application to determine the success of a project proposed by the application that will be funded by the Program. The guidelines shall include monitoring and reporting requirements and may establish the maximum amount that will be awarded as a grant under the Program.
  - 5) In developing the guidelines, CDT to conduct at least three public hearings to consider public comments, as specified, and to post the draft guidelines on its internet website at least 30 days before the first public hearing. Upon the adoption of the guidelines, CDT must post the guidelines on its internet website.
  - 6) Require CDT to submit an annual report to the Legislature that includes at least the following information:
    - The remaining unserved areas and disadvantaged communities in the State.
    - The amount of moneys, and the recipients, expended from the fund in the prior fiscal year.
    - The geographic regions of the State affected by moneys expended from the fund in the prior fiscal year, including information by county.
    - The expected benefits to be derived from the moneys expended from the fund in the prior fiscal year.
    - Details on the status of each project funded by the Program, including whether the project has been completed and, if not completed, the expected completion date of the project or completion percentage to date, and identification of project milestones.
    - Actual broadband internet access service adoption levels resulting from the program in the prior calendar year.
    - The number of formerly unserved households subscribing to broadband internet access service in areas covered by projects funded under the program.
    - The number of subscriptions resulting from the Program.
    - The amount of moneys expended from the fund to match federal funds and information on efforts to leverage moneys in the fund.
    - The amount remaining in the fund and the projected amount to be dispersed each future fiscal year to fund approved projects.
  - 7) Define a number of terms for the purposes of the Program including:

- “Disadvantaged community” to mean: 1) a community identified as disadvantaged pursuant to the Health & Safety Code; 2) a low-income community as defined in the Health & Safety Code; or 3) a disadvantaged community, as defined in the Public Resources Code.
- “Anchor institutions” to include public schools, community colleges, public universities, public libraries, parks, general acute care hospitals, rural health clinics, fire stations, police stations, California Highway Patrol offices, sheriff’s offices, municipal buildings, State buildings, and fairgrounds.
- “Eligible entity” to mean a city, county, city and county, special district, local educational agency, county office of education, community college district, public university, joint powers authority, regional district, and California Native American tribe, as specified.
- “Unserved area” to mean an area in which no internet service provider offers broadband internet access service at speeds of at least 25 mbps downstream and 3 mbps upstream to at least 98% of the community.

8) Make various Legislative declarations and findings in support of the Broadband for All Act.

**EXISTING LAW:**

- 1) Requires the California Public Utilities Commission (CPUC) to develop and administer the California Advanced Services Fund (CASF) with the goal of the funding infrastructure projects to provide broadband access to no less than 98 % of California households in each broadband consortia region in the State by 2022. (Pub. Util. Code Sec. 281.)
- 2) For the purposes of the CASF, defines an “unserved household” as one for which facility-based broadband provider offers broadband serve at speeds of at least six Mbps downstream and one Mbps upstream. (Pub. Util. Code Sec. 281(b)(1)(B).)
- 3) Establishes, within the Government Operations Agency, the Department of Technology (CDT), and generally tasks the department with the approval and oversight of information technology (IT) projects, and with improving the governance and implementation of IT by standardizing reporting relationships, roles, and responsibilities for setting IT priorities. (Gov. Code Sec. 11545, et seq.)
- 4) Finds that the unique aspects of IT goods and services and their importance to state programs warrant a separate body of governing statutes that should enable the timely acquisition of IT goods and services to meet the state’s needs in the most value effective manner. (Pub. Con. Code Sec. 12100(a).)
- 5) Provides that all contracts for the acquisition of IT goods and services related to IT projects, as defined, shall be made by or under the supervision of CDT as provided, and endows CDT with the final authority for all of the following: the acquisition of IT goods and services related to IT projects; the determination of IT procurement policy; the determination of IT procurement procedures applicable to IT acquisitions and telecommunications procurements; and the determination of procurement policy in telecommunications procurements. (Pub. Con. Code Sec. 12100(b)-(e).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

1) **Purpose of this bill:** This bill seeks to ensure all Californians have access to high quality broadband by establishing the Broadband for All Program, which, if approved by the voters in 2022, would authorize the issuance of \$10 billion in bonds that would be administered by the California Department of Technology [for the] purposes of providing financial assistance for projects to deploy broadband infrastructure and broadband internet access services. This bill is author-sponsored.

2) **Author's statement:** According to the author:

In a 2020 poll commissioned by the Education Trust-West, nearly nine in 10 California parents expressed concern about their children falling behind academically due to coronavirus-related school closures. Further, 38 percent of low-income families and 29 percent of families of color said they were concerned about distance learning because they lack reliable internet at home. The digital divide not only affects the underserved areas of the state but also the rural areas of California. In rural areas, only one-third of California households are subscribed to internet service, compared with 78 percent in urban areas, according to an EdSource analysis of data from the California Public Utilities Commission.

California's lack of broadband access undermines the state's ability to achieve civic well-being and economic prosperity. High-speed internet is not only for our homes and business, or schools and libraries, but also for our hospitals and clinics that have relied on telehealth to see patients during this pandemic. Improving broadband access will improve the lives of Californians by enabling individuals to work, study, communicate, apply for government services, operate home-based businesses, receive emergency information, and access health care. Broadband ensures California's ability to compete on the world stage and spur economic development to rebuild our economy caused by the Covid-19 pandemic.

California needs to go big and bold to close the digital divide and jumpstart the economic recovery. This pandemic has highlighted enormous disparities in access to affordable, reliable, high-speed internet, especially in rural and low-income urban communities. As the Innovation State, California should lead by significantly increasing its investment in public broadband infrastructure -- the Infrastructure of the 21st Century -- to provide affordable and reliable access to the internet for all Californians.

AB 34 proposes the Broadband for All Bond Act of 2022 to be placed on the November 8, 2022 General Election ballot. This bond will provide \$10B for public agencies to fund broadband infrastructure.

3) **Background:** The California Broadband Council is managed by the CDT's office of Broadband and Digital Literacy (BDLO). BDLO provides support to the Council by managing the statewide ecosystem of individuals and organizations dedicated to closing the digital divide. In March of 2020, the California Broadband Council released an action plan. As described by the Council:

The Covid-19 pandemic has only reinforced our reliance on broadband—and the importance of closing the digital divide. With school, work, and health care increasingly—or completely—available online as a public health imperative, Californians’ ability to access and use broadband became the difference between being able to fully engage in life, and being cut off.

In light of these challenges, in response to executive order N-73-20 calling for a California State Broadband Action Plan, the California Broadband Council developed the “Broadband for All” Action Plan with the understanding that broadband access, adoption, and training are essential components of digital equity. The Council solicited extensive engagement and input from state and local agencies, state legislative leaders, tribal nations, broadband industry leaders, nonprofits, and members of the public.

This Plan focuses on achieving three long-term goals: All Californians have high performance broadband available at home, schools, libraries, and businesses; All Californians have access to affordable broadband and the devices necessary to access the internet; and All Californians can access training and support to enable digital inclusion. To achieve these goals the California Broadband Council plans to leverage the state’s full range of tools, including policy, programs, funding, partnerships, and collaborations with federal, local, and tribal governments.

We recognize that enabling every Californian to access and adopt broadband will require time. Like the rest of the country, we face complex and deep-rooted challenges to delivering Broadband for All. We also recognize achieving Broadband for All will require partnerships with and support from the broadband industry and federal, local, and tribal governments. The California Broadband Council is committed to working with all partners to implement these actions, monitor progress, and update the action plan annually informed by what we accomplish, learn, and new opportunities.

In an effort to expand broadband access in California, this bill would establish the Broadband for All Program (Program), which, if approved by the voters in 2022, would authorize the issuance of \$10 billion in bonds that would be administered by the CDT purposes of providing financial assistance for projects to deploy broadband infrastructure and broadband internet access services. In support, the California School Boards Association writes:

AB 34, the Broadband for All Act will provide a comprehensive approach to address the challenges facing Californians who have no access or inadequate access to broadband. The Act will encourage competition and provide more affordable access to broadband, increase digital literacy, encourage regional networking to increase broadband speed and increase performance standards while supporting telework and distance learning.

If approved by the voters, the \$10 billion bond will provide grants to eligible entities for projects that deploy broadband infrastructure and broadband services. Entities are encouraged to form regional organizations in applying for the grants. Preference will be given to applicants that leverage other private, federal, or local funding and that serve underserved or disadvantaged communities.

AB 34 is critical to expediting the deployment of broadband infrastructure throughout California. This bill provides vital funding to connect California’s workforce to gainful

employment, harness the life-saving technology of telemedicine, democratize distance learning, enable precision agriculture, and sustain economic transactions in times of emergencies.

This bill ties to the larger endeavor to ensure that communities have access to broadband services which in turn will ensure that students are fully able to connect to educational programs and necessary services, including telehealth.

- 4) **California Department of Technology oversees contracts for the acquisition of information technology goods and services:** The Legislature has charged the Department of General Services (DGS) and the California Department of Technology (CDT) with overseeing the State's procurement of goods and services on a statewide level. Specifically, DGS is responsible for overseeing the majority of the State's procurements, while CDT is responsible for overseeing acquisitions of information technology (IT) and telecommunications goods and services. Although noncompetitive contracts are appropriate in some situations, state law generally requires agencies to use the competitive bidding process when possible in order to ensure fair competition and to eliminate favoritism, fraud, and corruption. Further, economic experts agree that competition in public procurement benefits taxpayers and consumers by providing lower prices, greater innovation, and improved products and services.

CDT also houses the Broadband and Digital Literacy Office (BDLO), whose mission is to establish digital literacy throughout the State of California. BDLO aims to establish 98% high-speed internet access and 90% statewide adoption by 2023, and partners with Federal, State, and nonprofit organizations. BDLO claims that "[t]ogether, we have made significant advancements in closing the digital divide, and we continue to remain focused on our ultimate goal of digital literacy for all[.]" According to CDT's website, BDLO manages the California Broadband Council and provides support to the Council by managing the statewide ecosystem of individuals and organizations dedicated to closing the digital divide.

This bill, seemingly inspired by the California Broadband Council's action plan would charge CDT with developing and implementing the "Broadband for All" Program to provide grants for broadband infrastructure and services in the State.

The Electronic Frontier Foundation (EFF) would support this bill if amended to address a number of concerns. Among those listed in their letter is the concern that CDT has no background in issuing grants and no authority to address problems, should they arise. EFF writes:

The legislature should carefully consider whether they should give a department with no history in issuing broadband grants of this size and magnitude authority over such a massive once in a generation program. To date, only the California Public Utilities Commission has the expertise and historical knowledge on how to issue grants for broadband infrastructure, including the necessary legal and engineering telecommunications expertise to pre-audit bids. The legislation should take a portion of the bonds to hire staff and resource a selected agency to carry out the program, preferably one closely associated with the Office of the Governor to enforce collaboration among various state agencies. The empowered agency also needs authority to not just issue grants but to oversee issues impacting such grants to safeguard California's investments. For example, should a public bidder run into a barrier raised by a monopolistic private

incumbent who refuses to engage in good faith negotiations, the state needs a means to protect the goals of the program and remedy the market failure.

Along the same line, the California Cable and Telecommunications Association (CCTA) opposes this bill unless amended to address a number of issues. CCTA specifically expresses concern that the CDT, who is given broad discretion under the bill to award grants, would fully fund government-owned broadband networks that may overbuild existing infrastructure built with private investment that meet state and federal speed standards.

Regarding CCTA's particular concern, staff notes that AB 34 appears to require CDT to give preference to applications that leverage other private, federal or local funding to produce the greatest public benefit. Given that strategically utilizing existing infrastructure could also benefit the public, the authors may wish to consider requiring CDT to look not only at available funding, but also available resources, including existing infrastructure, when giving preference to applications for grants.

This Committee is charged with oversight of CDT and therefore has an interest in the capacity of CDT to carry out the requirements of this bill and additionally how this bill could affect other obligations charged to CDT. At the time of this writing, AB 34 is still under review by CDT, who has not yet weighed in on the practicalities of the measure. That being said, the objectives of AB 34 appear to be laudable and prudent. The Committee therefore suggests that as the bill moves through the legislative process, the authors continue to engage with stakeholders and CDT to ensure that the goals of this legislation are practically feasible and economically practical should the voters ultimately approve the Act and the bond.

- 5) **Additional stakeholder concerns:** In addition to the concerns specific to CDT noted in Comment 4, above, EFF and CCTA raise additional concerns. CCTA supports the authors' goal of ensuring that all Californians have access to high-speed internet service, but remains concerned that the bill does not go far enough to ensure that funds will be used in unserved areas. CCTA writes:

The bill would authorize award of grants "to eligible entities for projects that deploy broadband infrastructure and broadband services," but has no overall requirement that grants fund infrastructure in "unserved" areas. Several provisions would create a conflicting scheme of preferences and a set-aside of 25% of bond funds for "unserved or disadvantaged communities." Even with recent amendments to define these terms, the bill still has no overall "unserved" requirement, which would create the potential for significant use of bond funds to overbuild existing broadband infrastructure built with private investment with no guarantee that the completely unserved remote rural areas of California will benefit.

Additionally, EFF argues that while AB 34 provides a good framework, it needs refinement to fully deliver on the promise of bringing high quality broadband to all. EFF would support the bill if amended to address the concerns listed below, among others:

- **Separate grants between open access fiber and funding public ISPs:**

The legislation envisions the same public entity receiving money to be both an open access provider and a direct seller of broadband service. While both goals are laudable,

they are best left as separate programs because the approach and infrastructure design of the two goals are very different.

- **Setting Aside 25 Percent of Funding for Unserved May Overly Complicate Applications, the State Should Just Require 100% Built Out of Fiber Optic based Broadband Access**

Certain areas will require less than 25 percent of the grant to fund unserved access, while other areas may require substantially more than 25 percent. The state's program, particularly with the size of the budget it is provided, should have the flexibility to provide a larger grant for those unserved as well as carry with it the obligation to serve all unserved and underserved people within those same communities. It is also unclear whether AB 34's program is explicitly meant to connect all residents and businesses with 21st century access in the proposed grant applications. Replacing the 25 percent provision with a mandate to build out to nearly 100% of a community with fiber based future proofed infrastructure in the legislation would clear away ambiguity and allow flexibility in the policy.

- **The Program Should Include Rural Cooperatives**

The legislation seeks to empower public models of broadband access but should not overlook other non-profit means of delivering access that have been successful across the nation. Notably California has few broadband cooperatives, but this is not due to any inability to be successful. Rather, most of the federal programs that launched those successful electric cooperatives rapidly becoming fiber broadband providers were targeted towards "rural" geographies more reflective of the Midwest and Southern parts of the nation, not the West coast. A state program designed to empower local communities to solve their own broadband problems should help them form modern day broadband cooperatives given the absence of federal mechanisms. Making them both eligible and able to access technical support from the state much in the same way our country achieved rural electrification will further the goals of the bill. (Emphasis in original.)

6) **Double referral:** This bill was double referred to the Assembly Communications and Conveyance Committee where it was heard on April 14, 2021 and passed out 11-1.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of School Business Officials (CASBO)  
California Charter Schools Association  
California Collaborative for Long-term Services and Supports  
California County Superintendents Educational Services Association (CCSESA)  
California School Boards Association  
California State Association of Counties  
City of Torrance  
Dolores Huerta Foundation  
Electronic Frontier Foundation (if amended)  
First 5 California

City of San Pablo  
South Bay Cities Council of Governments  
State Council on Developmental Disabilities  
Superintendent of Public Instruction Tony Thurmond  
The Utility Reform Network (TURN)  
Torrance Unified School District  
City of Torrance  
Two individuals

**Opposition**

California Cable & Telecommunications Association (unless amended)

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