

Date of Hearing: April 7, 2021

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1560 (Daly) – As Amended March 11, 2021

[Note: This bill is doubled referred to the Assembly Privacy and Consumer Protection Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Distance learning: pupil access: computing devices and broadband internet service

SUMMARY: Requires that the Superintendent of Public Instruction (SPI) collect information about pupils' access to computing devices and residential broadband service, and authorizes the Department of Technology (DOT) to enter into a sponsored service agreement on behalf of a local educational agency (LEA) with a broadband service provider for providing free or reduced-cost residential broadband service to eligible pupils. Specifically, **this bill:**

- 1) Requires, on or before April 1, 2022, and annually thereafter, that the SPI survey each school district, county office of education (COE), and charter school and report to the Legislature on the number of pupils without computing devices that meet the minimum performance standard for distance learning, as established by the SPI, and on the number of pupils from households without residential broadband service.
- 2) Authorizes, contingent upon an appropriation in the annual Budget Act or another statute for this purpose, the SPI to provide each eligible pupil in kindergarten or any of grades 1 to 12, inclusive, of a school district, COE, or charter school with a computing device that meets the minimum performance standard for distance learning, as established by the SPI, in order to participate in distance learning.
- 3) Requires that the SPI develop a standard to determine which pupils are eligible to receive a computing device. Requires that, at a minimum, a pupil who qualifies for the federal National School Lunch Program be eligible.
- 4) Requires that the SPI maintain a list of broadband service options available for eligible low-income Californians, including service options offered voluntarily by broadband service providers and broadband service options offered by providers participating in the state lifeline program administered by the Public Utilities Commission.
 - a) Requires that the SPI maintain the list on the SPI's website and further requires that the SPI distribute the list to the California Department of Education (CDE), COEs, school districts, charter schools, and other education organizations with the request that the list be distributed to all pupils and their families connected to those entities.
 - b) Requires, in order to be included in the list maintained and distributed by the SPI, a provider that voluntarily offers broadband service to eligible low-income Californians provide the SPI current information about the terms of service offerings, and update that information as necessary.

- 5) Authorizes, contingent upon an appropriation in the annual Budget Act or another statute for this purpose, the DOT to enter into a sponsored service agreement on behalf of any LEA with a broadband service provider for the purpose of providing free or reduced-cost residential broadband service to eligible pupils in kindergarten to grade 12.
- 6) Requires that, the DOT, in consultation with the CDE, and any participating LEA, develop a standard to determine which pupils are eligible to receive broadband service under a sponsored service agreement. Requires a pupil who qualifies for the federal National School Lunch Program be eligible.
- 7) Requires that an LEA that elects to participate in a sponsored service agreement provide the broadband service provider with information on eligible pupil households that consent to providing the information so the provider can determine if the household is within the provider's service area and does not currently subscribe to broadband service. Requires that the information provided be limited to only that information, such as an address, required to provide service, to verify eligibility, and to prevent fraud.
- 8) Requires that information provided by an LEA to a broadband service provider for purposes of a sponsored service agreement be confidential and not be publicly disclosed or used by the provider for any purpose unrelated to providing service under the sponsored service agreement.
- 9) Defines the following:
 - a) "Local educational agency" means a school district, COE, or charter school.
 - b) "Sponsored service agreement" means a contract that enables the DOT to purchase broadband service from a broadband service provider at a bulk rate, and enables eligible pupils in kindergarten or any of grades 1 to 12, inclusive, to receive the service without the pupils or their families being billed by the provider.

EXISTING LAW:

- 1) Requires that, for the 2020–21 school year, an LEA that offers distance learning comply with the following requirements:
 - a) Confirmation or provision of access for all pupils to connectivity and devices adequate to participate in the educational program and complete assigned work.
 - b) Content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction.
 - c) Academic and other supports designed to address the needs of pupils who are not performing at grade level, or need support in other areas, such as English learners, pupils with exceptional needs, pupils in foster care or experiencing homelessness, and pupils requiring mental health supports.

- d) Special education, related services, and any other services required by a pupil's individualized education program with accommodations necessary to ensure that individualized education program can be executed in a distance learning environment.
 - e) Designated and integrated instruction in English language development for English learners, including assessment of English language proficiency, support to access curriculum, the ability to reclassify as fully English proficient, and, as applicable, support for dual language learning.
 - f) Daily live interaction with certificated employees and peers for purposes of instruction, progress monitoring, and maintaining school connectedness. This interaction may take the form of internet or telephonic communication, or by other means permissible under public health orders. If daily live interaction is not feasible as part of regular instruction, the governing board or body of the local educational agency shall develop, with parent and stakeholder input, an alternative plan for frequent live interaction that provides a comparable level of service and school connectedness. (Education Code (EC) 43503)
- 2) Requires LEAs offering in-person instruction for the 2020-21 school year to include all prioritized pupil groups. Prioritized pupil groups include all of the following:
- a) Pupils at risk for abuse, neglect, or exploitation;
 - b) Homeless pupils;
 - c) Foster youth;
 - d) English learners; and
 - e) Pupils without access to a computing device, software, and high-speed internet necessary to participate in online instruction, as determined by the LEA. (EC 43521)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “The COVID-19 pandemic has underscored the depth of disadvantages students face when they do not have Internet access in their homes. Even after our students can return to their classrooms, Internet access will remain paramount to accessing education opportunities, employment and everyday life. Therefore, efforts must continue to bring all Californians online. This bill removes barriers to broadband adoption and provides more K-12 students with immediate access to equal learning, employment, social and health opportunities they need to keep pace in today’s world.”

Many schools in California closed for in-person instruction as a result of COVID-19. On March 4, 2020, Governor Newsom proclaimed a State of Emergency in California as a result of the threat of the COVID-19 virus. An Executive Order (EO) issued on March 13, 2020 authorized, but did not require, LEAs to close schools for in-person instruction as a result of the threat of COVID-19. The state subsequently began using a color-coded tiered system to determine when schools could reopen for in-person instruction. Except for LEAs located in the

highest tier of virus spread, the decision regarding whether to close or re-open schools was left to each LEA, in consultation with local public health officials.

The vast majority of California public schools were closed for in-person instruction through the end of the 2019-20 school year, and many also began the 2020-21 school year by offering only or mostly remote instruction. As of January 2021, due to increasing surges in the rates of COVID-19, many schools throughout the state, including those in the largest school districts, remained closed for in-person instruction. As of this writing, most school districts had either begun to return students to some form of in-person instruction, or have plans to do so soon.

Learning Loss Mitigation Funding (LLMF). The LLMF established in Section 110 of SB 98 (Chapter 24, Statutes of 2020), as amended by Section 59 of SB 820 (Chapter 110, Statutes of 2020), as amended by Section 4 of AB 86 (Chapter 10, Statutes of 2021); appropriates \$5.3 billion to be allocated to LEAs in order to support pupil academic achievement and mitigate learning loss related to COVID-19 school closures. The LLMF is comprised of three different funding sources: \$355 million CARES Act Governor's Emergency Education Relief (GEER) funds, \$4.4 billion CARES Act Coronavirus Relief (CR) Fund, and \$540 million from the state General Fund. Funding is authorized for activities that directly support pupil academic achievement and mitigate learning loss related to COVID-19 school closures, including providing additional academic services for pupils. These academic services may include the purchase of devices or connectivity for the provision of in-classroom and distance learning.

In-Person Instruction Grants and Expanded Learning Opportunities Grants established by AB 86 (Chapter 10, Statutes of 2020). In March, the Legislature adopted AB 86, the COVID-19 relief package that appropriates \$6.5 billion from the General Fund to the SPI of which \$4.5 billion is apportioned to school districts, county offices of education, charter schools, and state special schools, for Expanded Learning Opportunities (EIO) Grants. The appropriation is available for expenditure until August 31, 2022, for certain activities, including offering supplemental instruction and support. As a condition of receiving these funds, the bill requires an LEA to, among other things, adopt at a public meeting a plan describing how these funds will be used consistent with eligible purposes. Requires the remaining \$2 billion to be apportioned to school districts, county offices of education, and certain charter schools, and available for expenditure until August 31, 2022, if those LEAs, among other things, provide optional in-person instruction to certain pupil groups within prescribed timelines. Requires certain reporting requirements regarding the use of apportioned funds, imposes certain penalties for noncompliance with prescribed requirements, and requires the SPI to initiate collection proceedings for unexpended funds. Requires funds appropriated from the Coronavirus Relief Fund be used from March 1, 2020, to May 31, 2021, extending the previous deadline of December 30, 2020.

Students' access to the internet. Although the distance learning statute for the 2020-21 school year requires that a participating LEA confirm or provide access for all pupils to internet connectivity and devices adequate to participate in the educational program and complete assigned work, current law does not require data collection regarding students' home internet access, or access to computing devices. In the spring of 2020, in response to the COVID-19 pandemic, the CDE collected survey data and among the 800 LEAs that reported information, they reported a need for over 400,000 mobile hotspots for students.

According to the Public Policy Institute of California (2021), in the spring of 2020 more than 25% of California students did not always have internet access available. The share was larger among children in low-income (43%), African American (39%), and Latino (33%) families. A third of all households did not always have a device available for learning, including half of low-income households. In spite of efforts to improve access, “internet access remains a widespread problem. More than 30% of Latino students still lack reliable home internet, as do nearly 40% of low-income students—essentially unchanged from the spring.” According to a national study of teachers conducted by the RAND Corporation in Spring 2020, only 30% of teachers in high-poverty schools thought “all or nearly all” of their students had access to the internet at home. Without accurate information about students’ access to devices and the internet, California will never fully understand the unmet need, nor be able to calculate the cost to close the gap in access.

In response to the COVID-19 pandemic, the CDE now voluntarily posts information related to free and low-cost internet service provider plans, as well as a listing of technology companies with available computing devices. As the pandemic comes to an end there is no guarantee this information will continue to be updated for the use of LEAs and the public.

Currently, LEAs may to enter into agreements with internet service providers to either: 1) connect students in households without broadband access with ISPs for low-cost plans (with the household paying for the internet service), or 2) provide internet access at no cost to the household without broadband access (with the LEA paying for the internet service). In doing so, LEAs must follow applicable information and privacy laws. Although there is no formal data collection of the number of LEAs participating in these two types of agreements, it is very likely that there has been an increase in response to the COVID-19 pandemic, and due to the increase in funding made available through the LLMF and other sources. The rates and terms of agreements between an LEA and an ISP also likely vary, and there may be a benefit to a state entity entering into a sponsored service agreement on behalf of an LEA to ensure the terms and costs remain fair and reasonable.

For the 2021-22 school year, in-person instruction will be default format for LEAs, therefore the need for devices and access to the internet will likely decline.

Internet access in California. According to a presentation given by the Legislative Analyst’s Office at a Joint Informational Hearing of the Assembly Communications and Conveyance and Education Committees in August 2020, more than 97% of households in California have Access to broadband internet, defined as having download speeds of 6 megabits per second (mbps) and upload speeds of 1 mbps. Rural availability varies depending on benchmark speed used when using standard of 25/3 mbps, rural availability decreases to 67%. The majority of unserved households are in urban areas: using the 25/3 mbps benchmark, California has 263,000 unserved households in urban areas and 227,000 unserved households in rural areas.

According to the CPUC, California has an 80% broadband adoption rate, defined as the share of households with available broadband internet that subscribe to a broadband internet service. There is a high correlation between household income and adoption rates: a 53% adoption rate in the Census tracts with a median annual household income less than \$20,000, and an 86% adoption rate in census tracts with a median annual household income greater than \$80,000. Latino and limited English-speaking households have lower adoption rates.

California broadband programs and initiatives. A number of state programs target increasing access to various types of technology for Californians that lack access.

- *California Advanced Services Fund (CASF).* CASF is a universal service program created to encourage the deployment of broadband services to unserved areas of the state. The program provides grants to applicants to promote the deployment and adoption of broadband. Most recently under AB 1665 (E. Garcia) of 2017, the bill authorized the California Public Utilities Commission (CPUC) to collect an additional \$330 million over five years and established a new program goal of providing broadband access to no less than 98% of households in each region of the state.
- *California Lifeline Program.* The California Lifeline Program is a universal service program, which provides discounted telephone services to low-income Californians. The program, combined with the federal lifeline program, provides subsidies to Californians to pay for their phone bills. Recently the CPUC issued a decision expanding the lifeline program to include broadband and telephone bundled plans.
- *California Teleconnect Fund (CTF).* The CTF is a universal service program which provides discounted rates to qualifying K-12 schools, libraries, community colleges, government owned hospitals and health clinics, community based organizations (CBOs), and healthcare CBOs.
- *Executive Order N-73-20.* This Executive Order issued by Governor Newsom in August 2020; 1) directs state agencies to pursue a minimum broadband speed goal of 100 mbps to guide investments; 2) directs the California Broadband Council to create a new State Broadband Action Plan; 3) directs the CPUC to map broadband access; and 4) directs other state agencies to identify additional funding and opportunities to leverage state resources to accelerate broadband deployment.

Broadband actions during COVID-19. In response to the COVID-19 pandemic, several public and private initiatives have been established to increase broadband access.

- *Keep America Connected Pledge.* The Federal Communications Commission asked all major providers to sign the Keep America Connected Pledge, which required the companies to pledge that they would 1) not terminate service; 2) waive any late fees; and 3) open its hotspots, during the pandemic. All the major telecommunication companies signed on to the pledge. The pledge expired in July 2020.
- *CTF.* The CPUC made \$25 million available from CTF for hotspots and internet service for student households. School districts were eligible to apply to receive 50% discounts on the cost of hotspot devices and on monthly recurring service charges. Offers applied to rural and small schools and medium school districts only.
- *CASF:* The CPUC made \$5 million from CASF available to school districts in response to COVID-19. The CDE reviews requests from schools and school districts and determines whether the needs of the school district would have priority for funds. Awarded funds may only be for computing devices and hotspot devices.

Arguments in support. The California Cable and Telecommunications Association writes, “AB 1560 is uniquely positioned to produce immediate benefits for Californians given the availability of federal funds for broadband under the American Rescue Plan Act recently signed by President Biden. The Act provides \$220 billion to states for uses that include investments in broadband. The COVID-19 pandemic has underscored the disadvantages students face when they do not have access to the Internet at home – unable to participate in remote learning or otherwise access information online. CCTA.”

Prior legislation. AB 1176 (E. Garcia) of this Session establishes the California Connect Fund in the State Treasury. The bill, until January 1, 2031, requires the Public Utilities Commission to develop, implement, and administer the California Connect Program to ensure that high-speed broadband service is available to every household in the state at affordable rates.

SB 732 (Bates) of this Session requires the CDE to develop and implement a program for COEs, school districts, and charter schools to issue no-cash value vouchers to be distributed to households with eligible pupils, to be used during the 2021–22 fiscal year to assist those households with the impacts of distant or remote learning due to the COVID-19 pandemic. The bill establishes the Rural Broadband Infrastructure Fund as a continuously appropriated fund in the State Treasury in order to provide high-quality broadband service to rural areas that are unserved.

AB 82 (Committee on Budget) Chapter 14, Statutes of 2020, in pertinent part, made statutory changes to allow the CPUC to provide matching funds through the CASF to broadband providers as they pursue funding through the federal Rural Digital Opportunity Fund.

AB 570 (Aguiar-Curry) of the 2019-20 Session would have made numerous changes to CASF, to encourage deployment of broadband technology to all areas of the state. This bill was held on the Senate Floor.

SB 1130 (L. Gonzalez) of the 2019-20 Session would have made numerous changes to CASF, to encourage deployment of broadband technology to all areas of the state. This bill was held on the Assembly Floor.

AB 1665 (E. Garcia), Chapter 851, Statutes of 2017, revises the goal of the CASF to approve funding by December 31, 2022 for infrastructure projects that will provide broadband access to no less than 98% of California households in each consortia region, as identified by the PUC, among other provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cable & Telecommunications Association

Opposition

None on file

Analysis Prepared by: Marguerite Ries / ED. / (916) 319-2087