

Date of Hearing: April 19, 2022

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 2750 (Mia Bonta) – As Introduced February 18, 2022

**SUBJECT:** Department of Technology: digital equity plan

**SUMMARY:** This bill would require the California Department of Technology (CDT), in consultation with the public, the Public Utilities Commission, (CPUC) and the California Broadband Council, to develop a state digital equity plan. The bill would require that the plan include, among other things, the identification of barriers to digital equity faced by specified populations, as provided, and measurable objectives towards achieving digital equity among those populations. Specifically, **this bill would:**

- 1) Require CDT, in consultation with the public, the CPUC, and the California Broadband Council, to develop a state digital equity plan and seek all available federal funding for purposes of developing and implementing the state digital equity plan.
- 2) The state digital equity plan shall include the following:
  - The identification of barriers to digital equity faced by covered populations in this state, as specified.
  - Measurable objectives for documenting and promoting digital equity among covered populations located in the state.
  - An assessment of how the objectives described will impact and interact with the following:
    - Economic and workforce development goals, plans, and outcomes of the state.
    - Educational and health outcomes.
    - Civic and social engagement.
    - Delivery of other essential services.
    - A description of how the department plans to collaborate with key stakeholders, as specified.
    - A list of organizations with which the department collaborated in developing and implementing the state digital equity plan.
- 3) Define “covered populations” to mean demographics that are underserved in regards to internet access and digital literacy, and includes, but is not limited to, the following:
  - Households whose income is 150 percent of the federal poverty level or less for the prior calendar year.

- Individuals 65 years of age or older.
- Incarcerated individuals, other than individuals who are incarcerated in a federal correctional facility.
- Veterans.
- Individuals with disabilities.
- Individuals with language barriers, such as English learners and individuals with low literacy levels.
- Members of a racial or ethnic minority groups.
- Residents of rural areas.

**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 that California is eligible for federal funding under the Digital Equity Act and the Infrastructure Investment and Jobs Act by requiring CDT to create a state digital equity plan and seek all available federal funding, as specified. This bill is author-sponsored.

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

A state digital equity plan is needed for the state to become eligible for federal funding under the Digital Equity Act and the Infrastructure Investment and Jobs Act.

Despite recent and planned advances in broadband expansion, California continues to need further investments in broadband infrastructure. According to the LAO report in the April 6, 2022 hearing on last mile broadband, 6% of households remain underserved in not having access to broadband at speeds of 100 Mbps down / 25 Mbps up. Moreover, simply being in an area served by broadband does not guarantee the affordability of the service, or the presence of a computer in the home rather than a cell phone or other device. In order for California to take an intentional, equitable approach to universal digital access and functional digital literacy, the state needs a digital equity plan under AB 2750.

- 3) **Background:** The Infrastructure Investment and Jobs Act (IIJA), as recently passed by Congress, appropriates over \$65 billion to states, local governments, community organizations, and other entities for a range of digital inclusion activities. All states will receive a minimum of \$100 million as part of the Broadband Equity Access and Deployment Program (BEAD) which is a grant program that makes \$42.45 billion available to states for broadband infrastructure deployment and other digital inclusion activities such as device programs and broadband adoption. The remaining BEAD dollars are allocated based on formulas detailed in the IIJA. States will also receive money from the State Digital Equity Capacity Grant Program based on formulas detailed in the IIJA. Notably, states must apply for both of these programs in order to receive funds.

The Digital Equity Act (DEA) establishes two grant programs for digital inclusion activities. First, the DEA makes \$60 million available to states in planning grants, for the purpose of developing a State Digital Equity Plan. The DEA establishes a State Digital Equity Capacity Grant Program, which will award \$1.44 billion to states for the purpose of implementing their plan. The DEA also establishes a Digital Equity Competitive Grant Program, which makes available \$1.25 billion in grant awards (not through states) for digital inclusion activities.

In order to ensure that California is able to take advantage of these federal funding opportunities, this bill would require CDT, in consultation with the public, the CPUC, and the California Broadband Council, to develop a state digital equity plan. The bill would require that the plan include, among other things, the identification of barriers to digital equity faced by specified populations, as provided, and measurable objectives towards achieving digital equity among those populations. The bill would require CDT to seek all available federal funding for purposes of developing and implementing the plan.

- 4) **The California Broadband Council:** The California Broadband Council (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 Council released an action plan focused 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 Council plans to leverage the state's full range of tools, including policy, programs, funding, partnerships, and collaborations with federal, local, and tribal governments. This bill would task the Council to work with CDT in the development of a state digital equity plan.

Importantly, the Council's action plan is closely aligned with the requirements of this bill, and the Council is experienced at engaging with the public for input. However, as noted by the California Cable and Telecommunications Association (CCTA), the Legislature should carefully consider which entity tasked with implementing the Plan in this bill. In their "support, if amended letter," CCTA asks the Legislature to carefully "consider which state agency is best positioned to be the official 'administering entity' of the State Digital Equity Plan, recognizing that the IJA specifies that this entity is *not* eligible for a grant from the Digital Equity Competitive Grant Program."

Accordingly, as this bill moves through the Legislative process, the author should continue to engage with stakeholders to determine which entity is the most appropriate entity to administer the State Digital Equity Plan, given the limitation on that entity's eligibility to receive grants.

- 5) **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 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 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.

- 6) **This bill requires the creation of a state digital equity plan:** Internet access has been hailed as the civil rights issue of the 21st century. More Americans are online than ever before and use the internet to access healthcare, education, entertainment, and work. Unfortunately, the web is not universally accessible. Digital equity generally refers to the ability of people to

access and effectively use the technology necessary to participate in modern society. Another phrase, “digital inclusion,” denotes efforts to remedy deficits in digital equity. This bill would require CDT, in consultation with the public, the CPUC, and the California Broadband Council, to develop a state digital equity plan and would require CDT to seek all available federal funding for purposes of developing and implementing the plan.

The bill outlines numerous factors and considerations that must be taken into account in the formulation of the digital equity plan, to ensure fair representation of California’s diverse population. Notably, AB 2750 requires CDT, the CPUC, and the Broadband Council to identify barriers to digital equity faced by covered populations. Barriers include, but are not limited to, the availability and affordability of access to fixed and wireless broadband technology; accessibility and inclusivity of online public resources and services; digital literacy; and the availability and affordability of consumer devices and technical support for those devices.

The bill would also require CDT to include measurable objectives for documenting and promoting digital equity among covered populations, and an assessment of how the objectives described will impact and interact with various goals, plans, and outcomes of the State. Finally, the plan must include a description of how CDT plans to collaborate with key stakeholders, including, but not limited to, local governments, local educational agencies, Native American tribes, civil rights organizations, and organizations that represent covered populations.

CCTA writes, in their “support if amended” letter, that they would like the author to add “internet service providers” in the list stakeholders with whom CDT must consult. CCTA writes:

Include internet service providers (“ISPs”) in the list of stakeholders that the California Department of Technology (“CDT”) is required to collaborate with in developing the State Digital Equity Plan. Even if including ISPs is not called out in the IJJA, California’s state plan will be greatly enhanced by ensuring that ISPs are at the table providing input on best practices for public-private partnerships and proven strategies for broadband adoption by California’s most vulnerable populations.

ISPs are certainly an important stakeholder in this space and can provide much wisdom on broadband adoption. The bill, however, creates no limitation on the type of stakeholder that may be consulted in the development of a State Equity Plan. It is almost certain that ISPs will engage in the public comment process, and they do not need to be named expressly in the stakeholder list to do so.

Staff notes that as drafted, this bill lacks definitions, timelines, and other details that would require CDT to take specific action. Accordingly, the author may wish to designate a date by which CDT begin the undertaking of developing a digital equity plan and a date by which that plan must be completed. In relation to federal funding for this state, the author may wish to require, to the extent practicable, CDT to *obtain* all available federal funding for the purposes of developing and implementing the state digital equity plan, rather than requiring them to *seek* such funding. Finally, the author may wish to provide definitions for key terms in the bill such as “digital equity,” “digital literacy,” and “community anchor institutions.”

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 assigned to CDT. At the time of this writing, AB 2750 is still under review by CDT. That said, the objectives of AB 2750 are laudable. The Committee therefore suggests that as the bill moves through the legislative process, the author continues to engage with stakeholders and CDT to ensure that the goals of this legislation are practically feasible and economically practical.

- 7) **Author’s amendments:** The following amendments are clarifying in nature and would 1) incorporate definitions from the federal Infrastructure Investment and Jobs Act and flesh out how CDT shall engage the public in the development of the State Equity Plan; 2) require CDT to complete the State Equity Plan by 2024; and 3) require CDT to obtain available funding to the extent practicable.

Author’s amendments:

- 1) On page 3, after line 12, insert “(c) For the purposes of this section, the definitions in the Infrastructure Investment and Jobs Act, Section 60302 1-23 apply unless otherwise specified in this section.  
  
(d) For the purposes of this section, “consultation with the public” means soliciting and receiving policy recommendation letters from key stakeholders as listed in (4) above, soliciting and receiving public comment, and hosting public workshops and meetings.
  - 2) On page 2, line 3 after “(1)” insert “By January 1, 2024,”
  - 3) On page 2, line 7, strike “seek” and insert “to the extent practicable, obtain”
- 8) **Prior legislation:** AB 34 (Muratsuchi, 2021) would have enacted the Broadband for All Act of 2022. AB 34 died in Assembly Appropriations.
- 9) **Double referral:** This bill will be referred to the Assembly Committee on Communications and Conveyance should it pass out of this Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

NextGen California

**Opposition**

None on file

**Analysis Prepared by:** Nichole Rocha / P. & C.P. / (916) 319-2200