

By: Nichols

S.B. No. 1238

A BILL TO BE ENTITLED

AN ACT

relating to broadband development.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 490I.0101(a) and (b), Government Code, are amended to read as follows:

(a) For purposes of this chapter, subject to Subsection (b), "broadband service" means Internet service with the capability of providing a:

(1) ~~[a download]~~ speed of not less than 25 megabits per second for a download ~~[or faster]; [and]~~

(2) ~~[an upload]~~ speed of not less than three megabits per second for an upload; and

(3) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements ~~[or faster]~~.

(b) If the Federal Communications Commission adopts standards ~~[upload or download threshold speeds]~~ for advanced telecommunications capability under 47 U.S.C. Section 1302 that are different than those specified by Subsection (a), the comptroller by rule may require Internet service to be capable of matching the ~~[providing download or upload speeds that match that]~~ federal standards ~~[threshold]~~ in order to qualify under this chapter as "broadband service."

SECTION 2. Sections 490I.0105(a), (c), (d), (f), (k), (l),

1 and (n), Government Code, are amended to read as follows:

2 (a) The broadband development office shall create, update  
3 annually, and publish on the comptroller's Internet website a map  
4 classifying each designated area in this state as:

5 (1) an unserved [~~eligible~~] area, if[+  
6 [~~(A)~~] fewer than 80 percent of the broadband  
7 serviceable locations [~~addresses~~] in the designated area have  
8 access to broadband service; [~~and~~  
9 [~~(B) the federal government has not awarded~~  
10 ~~funding under a competitive process to support the deployment of~~  
11 ~~broadband service to addresses in the designated area; or]~~

12 (2) an underserved [~~ineligible~~] area, if the area is  
13 not an unserved area and fewer than[+  
14 [~~(A)~~] 80 percent [~~or more~~] of the broadband  
15 serviceable locations [~~addresses~~] in the designated area have  
16 access to broadband service capable of delivering threshold speeds  
17 the comptroller establishes by rule; or

18 (3) a served area if the designated area is neither an  
19 unserved nor an underserved area [~~(B) the federal government has~~  
20 ~~awarded funding under a competitive process to support the~~  
21 ~~deployment of broadband service to addresses in the designated~~  
22 ~~area].~~

23 (c) After creation of the initial map described in  
24 Subsection (a), the office may evaluate the usefulness of the  
25 standards for unserved [~~eligible and ineligible~~] areas outlined in  
26 Subsection (a) and, if appropriate, make a recommendation to the  
27 legislature to revise the standards.

1 (d) The map required by Subsection (a) must display:

2 (1) the number of broadband service providers that  
3 serve each designated area;

4 (2) for each designated [~~eligible~~] area, an indication  
5 of whether the area has access to Internet service that is not  
6 broadband service, regardless of the technology used to provide the  
7 service; and

8 (3) each public school campus in this state with an  
9 indication of whether the public school campus has access to  
10 broadband service.

11 (f) Except as provided by Subsection (g), the office shall  
12 use the best available data, including information available from  
13 the Federal Communications Commission, to create or update the map.

14 (k) A person who contracts under Subsection (i) may not  
15 provide services in this state to [~~for~~] a broadband provider [~~in~~  
16 ~~this state~~] before the second anniversary of the last day the  
17 contract is in effect.

18 (l) The office shall establish criteria for determining  
19 whether a designated area should be reclassified as an unserved  
20 [~~eligible~~] area or an underserved [~~ineligible~~] area. The criteria  
21 must include an evaluation of Internet speed test data and  
22 information on end user addresses. The criteria may also include  
23 community surveys regarding the reliability of Internet service,  
24 where available.

25 (n) A broadband service provider or political subdivision  
26 may petition the office to reclassify a designated area on the map  
27 as an unserved [~~eligible~~] area or underserved [~~ineligible~~] area.

1 The office shall provide notice of the petition to each broadband  
2 service provider that provides broadband service to the designated  
3 area and post notice of the petition on the comptroller's Internet  
4 website.

5 SECTION 3. Section 490I.0106, Government Code, is amended  
6 to read as follows:

7 Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) The  
8 broadband development office shall establish a program to award  
9 grants, low-interest loans, and other financial incentives to  
10 applicants for the purpose of expanding access to and adoption of  
11 broadband service [~~in designated areas determined to be eligible~~  
12 ~~areas by the office under Section 490I.0105~~].

13 (a-1) The office may award grants, low-interest loans, and  
14 other financial incentives to applicants for the deployment of  
15 eligible broadband infrastructure projects located in:

16 (1) an area classified by the office as unserved or  
17 underserved; or

18 (2) an area classified by the office as served if the  
19 proposed broadband infrastructure project is targeted to deploy  
20 broadband services to locations within the designated area that do  
21 not have access to broadband service.

22 (a-2) The office may award grants to applicants for projects  
23 not involving the deployment of broadband infrastructure that  
24 expand the accessibility, affordability, or adoption of broadband  
25 service, including education, training, community outreach, remote  
26 learning or telehealth facilities, equipment purchases, or any  
27 other use permitted by the applicable funding source.

1 (b) The office shall establish and publish criteria for  
2 making awards under this chapter [~~Subsection (a)~~]. The office  
3 shall:

4 (1) take into consideration grants and other financial  
5 incentives awarded by the federal government for the deployment of  
6 broadband service in a designated area;

7 (2) prioritize the applications of applicants that  
8 will expand access to and adoption of broadband service in  
9 designated [~~eligible~~] areas in which the lowest percentage of  
10 broadband serviceable locations [~~addresses~~] have access to  
11 broadband service; and

12 (3) prioritize the applications of applicants that  
13 will expand access to broadband service in public and private  
14 primary and secondary schools and institutions of higher education.

15 (c) Notwithstanding Subsection (b)(2), the office may  
16 establish criteria that take into account a cost benefit analysis  
17 for awarding money to the eligible areas described by that  
18 subdivision.

19 (d) The office may not:

20 (1) except as provided by Section 490I.01062, favor a  
21 particular broadband technology in awarding grants, loans, or other  
22 financial incentives;

23 (2) accept an application from or award grants, loans,  
24 or other financial incentives to a broadband provider that does not  
25 report information requested by the office under Section [490I.0105](#)  
26 or 490I.01061;

27 (3) award a grant, loan, or other financial incentive

1 to a noncommercial provider of broadband service for a designated  
2 ~~[an eligible]~~ area if an eligible ~~[a]~~ commercial provider of  
3 broadband service has submitted an application for the same  
4 ~~[eligible]~~ area; ~~[or]~~

5 (4) take into consideration distributions from the  
6 state universal service fund established under Section 56.021,  
7 Utilities Code, when deciding to award grants, loans, or other  
8 financial incentives; or

9 (5) except as provided by Section 490I.01061, award a  
10 grant, loan, or other financial incentive for deployment of  
11 last-mile broadband service for a location that is subject to a  
12 federal commitment to deploy qualifying broadband service.

13 (e) The office shall:

14 (1) post on the comptroller's Internet website  
15 information about the application process and the receipt of awards  
16 and shall update that information as necessary; and

17 (2) post on the comptroller's Internet website for at  
18 least 30 days information from each accepted application, including  
19 the applicant's name, the area targeted for expanded broadband  
20 service access or adoption by the application, and any other  
21 information the office considers relevant or necessary~~[, for a~~  
22 ~~period of at least 30 days before the office makes a decision on the~~  
23 ~~application]~~.

24 (f) During the 30-day posting period described by  
25 Subsection (e) for an application, the office shall accept from any  
26 interested party, other than a broadband service provider that does  
27 not report information requested by the office under Section

1 490I.0105 or 490I.01061, a written protest of the application  
2 relating to whether the applicant or project is eligible for an  
3 award or should not receive an award based on the criteria  
4 prescribed by the office.

5 (g) Notwithstanding any deadline for submitting an  
6 application, if the office upholds a protest submitted under  
7 Subsection (f) on the grounds that one or more of the broadband  
8 serviceable locations [~~addresses~~] in a designated [~~an eligible~~]  
9 area subject to the application have access to broadband service,  
10 the applicant may resubmit the application without the challenged  
11 locations [~~addresses~~] not later than 30 days after the date that the  
12 office upheld the protest.

13 (h) The office shall establish and publish criteria for  
14 award recipients. The criteria must include requirements that  
15 grants, loans, and other financial incentives awarded through the  
16 program for the deployment of broadband infrastructure may be used  
17 only for capital expenses, purchase or lease of property, and other  
18 expenses, including backhaul and transport, that will facilitate  
19 the provision or adoption of broadband service.

20 (i) An award granted under this section does not affect the  
21 eligibility of a telecommunications provider to receive support  
22 from the state universal service fund under Section 56.021,  
23 Utilities Code.

24 SECTION 4. Chapter 490I, Government Code, is amended by  
25 adding Sections 490I.01061 and 490I.01062 to read as follows:

26 Sec. 490I.01061. EXISTING FEDERAL FUNDING; REPORTING  
27 REQUIREMENTS. (a) The office may award a grant, loan, or other

1 financial incentive for deployment of last-mile broadband service  
2 for a location that is subject to a federal commitment to deploy  
3 qualifying broadband service if:

4 (1) federal funding is forfeited or the recipient of  
5 the federal funding is disqualified from receiving the funding; and

6 (2) the location otherwise may receive funding under  
7 the program.

8 (b) An applicant for an award under this chapter that has  
9 been awarded federal funding directly and has entered into an  
10 enforceable commitment to deploy broadband services in a location  
11 shall provide to the office information the office may require  
12 regarding:

13 (1) the existing enforceable commitment; and

14 (2) the proposed deployment of broadband.

15 Sec. 490I.01062. FIBER OPTIC PREFERENCE. (a) The office  
16 shall prioritize broadband infrastructure projects that connect  
17 each end-user location using end-to-end fiber optic facilities that  
18 meet speed, latency, reliability, consistency, scalability, and  
19 related criteria as the office shall determine for each applicable  
20 notice of funds availability.

21 (b) The office may consider an application for a broadband  
22 infrastructure project that does not employ end-to-end fiber optic  
23 facilities if the use of an alternative technology:

24 (1) is proposed for a high cost area;

25 (2) may be deployed at a lower cost; and

26 (3) meets the criteria established by the office under

27 Subsection (a).



1 SECTION 5. Section [490I.0107](#)(b), Government Code, is  
2 amended to read as follows:

3 (b) In developing the state broadband plan, the office  
4 shall:

5 (1) to the extent possible, collaborate with state  
6 agencies, political subdivisions, broadband industry stakeholders  
7 and representatives, and community organizations that focus on  
8 broadband services and technology access;

9 (2) ~~[consider the policy recommendations of the~~  
10 ~~governor's broadband development council];~~

11 ~~[(3)]~~ favor policies that are technology-neutral and  
12 protect all members of the public;

13 (3) ~~[(4)]~~ explore state and regional approaches to  
14 broadband development; and

15 (4) ~~[(5)]~~ examine broadband service needs related  
16 to:

17 (A) public safety, including the needs of state  
18 agencies involved in the administration of criminal justice, as  
19 that term is defined by Article [66.001](#), Code of Criminal Procedure;

20 (B) public education and state and local  
21 education agencies, including any agency involved in the electronic  
22 administration of an assessment instrument required under Section  
23 [39.023](#), Education Code; and

24 (C) public health, including the needs of state  
25 agencies involved in the administration of public health  
26 initiatives such as the Health and Human Services Commission and  
27 the Department of State Health Services.

1 SECTION 6. Section 490I.0110(h), Government Code, is  
2 amended to read as follows:

3 (h) The [~~Beginning one year after the effective date of the~~  
4 ~~Act enacting this chapter, the~~] board of advisors shall meet at  
5 least semiannually [~~once every other month~~] with representatives  
6 from the broadband development office for the purpose of advising  
7 the work of the office in implementing the provisions of this  
8 chapter.

9 SECTION 7. The following provisions of the Government Code  
10 are repealed:

- 11 (1) Chapter 490H;  
12 (2) Section 490I.0101(c); and  
13 (3) Section 490I.0105(m).

14 SECTION 8. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2023.