

## BILL ANALYSIS

Senate Research Center  
87R20932 CXP-D

C.S.H.B. 5  
By: Ashby et al. (Nichols)  
Transportation  
4/21/2021  
Committee Report (Substituted)

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 pandemic has highlighted, more than ever, the critical importance of a robust broadband infrastructure network to maintaining basic quality of life. Remote learning, access to telemedicine, economic development, and other facets of life all hinge on the availability of quality high speed Internet. Hundreds of thousands of Texans are currently without access to quality broadband and this bill seeks to move Texas forward to bridging the digital divide.

1. **Office:** Creation of a State Broadband Development Office (office) that is administratively attached to The University of Texas System. The purpose of the office is to promote the expansion of access to broadband in Texas.
  - a. The office is governed by an 11-member board of advisors who will serve staggered two-year terms.
  - b. The bill directs the office to serve as a resource for broadband service information and to engage in outreach to communities regarding the expansion and adoption of broadband service.
  - c. The bill places one representative from the office on the existing Governor's Broadband Development Council (council) established by the 86th Legislature as a non-voting member. It also updates the mission of the council to ensure coordination among the council and the office.
2. **Map:** Directs the office to create and publish a map that identifies areas where 80 percent of the addresses have access to broadband and those areas where they do not.
  - a. The map will display the number of service providers providing service in an area and also identify where there may be service at a speed of less than 25/3.
  - b. Directs the office to use information available from the Federal Communications Commission (FCC) where possible to create and update the map. If the information is not available, the office can request that information from providers. The office cannot require a provider to report data in a manner significantly different from FCC reporting.
  - c. Includes a clause that if the FCC publishes a map that already meets the requirements of the bill, then the office does not have to produce the map.
3. **Broadband Development Program:** The bill directs the office to establish a Broadband Development Program (program) to award grants, low-interest loans, and other financial incentives to expand access to and adoption of broadband.
  - a. The office will develop and publish eligibility criteria for awards under the program, which must require that awards are for capital expenses only.
  - b. The program must be technology-neutral, and award money only to commercial providers unless no commercial provider is available.
  - c. The program will not award money to providers that do not participate in data requests by the office for its mapping efforts.
  - d. The program will not discriminate against providers that receive Universal Service Fund (USF) funding.
4. **Broadband Development Account:** The bill creates a Broadband Development Account which will consist of any legislative appropriations as well as any federal funds.

5. **State Broadband Plan:** The bill directs the office to create and adopt a State Broadband Plan within a year of the effective date of the bill, collaborating with industry and other stakeholders and state agencies, and incorporating the recommendations of the council.

(Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 5 amends current law relating to the expansion of broadband services to certain areas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the State Broadband Development Office in SECTION 3 (Sections 490I.0103, 490I.0106, and 490I.0110, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 490H.002(a), Government Code, to provide that, in addition to 17 voting members of the governor's broadband development council (council), including two representatives of separate Internet service provider industry associations, including at least one representative of an association that primarily represents regulated small providers, rather than small providers, as defined by Section 56.032 (Adjustments: Small and Rural Incumbent Local Exchange Company Universal Service Plan), Utilities Code, the council includes one nonvoting member appointed by the State Broadband Development Office (office).

SECTION 2. Amends Section 490H.006(a), Government Code, as follows:

(a) Requires the council to:

- (1) research and monitor the progress of, among other things, deployment of broadband services statewide, and purchase of broadband by residential and commercial customers;
- (2) makes no changes to this subdivision;
- (3) study, among other things, industry and technology trends in broadband services; and
- (4) makes no changes to this subdivision.

SECTION 3. Amends Subtitle F, Title 4, Government Code, by adding Chapter 490I, as follows:

#### **CHAPTER 490I. STATE BROADBAND DEVELOPMENT OFFICE**

Sec. 490I.0101. OFFICE. (a) Provides that the office is established to promote the expansion of access to broadband service in Texas.

(b) Provides that the office is administratively attached to The University of Texas (UT) System. Authorizes the UT system to employ additional employees necessary for the discharge of the duties of the office.

(c) Provides that the office:

- (1) is under the direction and control of the board of advisors established by Section 490I.0104;
- (2) is required to promote the policies enumerated in this chapter; and
- (3) is authorized to perform any action authorized by state or federal law.

Sec. 490I.0102. POWERS AND DUTIES. (a) Requires the office to serve as a resource for information regarding broadband service in Texas; to engage in outreach to

communities regarding the expansion, adoption, and affordability of broadband service and the programs administered by the office; and to serve as an information clearinghouse regarding federal programs that provide assistance to local entities with respect to broadband service.

(b) Provides that the office has the powers necessary to carry out the duties of the office under this chapter, including the power to enter into contracts and other necessary instruments.

(c) Provides that this chapter does not grant the office authority to regulate broadband services or broadband service providers or, except as provided by Section 490I.0107, to require broadband service providers to submit information to the office.

Sec. 490I.0103. THRESHOLD SPEED FOR BROADBAND SERVICE. (a) Defines, for the purposes of this chapter and subject to Subsection (b), "broadband service" to mean Internet service with the capability of providing a download speed of 25 megabits per second or faster and an upload speed of 3 megabits per second or faster.

(b) Authorizes the office, if the Federal Communications Commission (FCC) adopts download or upload threshold speeds for advanced telecommunications capability under 47 U.S.C. Section 1302 that are higher than those specified by Subsection (a), by rule to require Internet service to be capable of providing download and upload speeds that match those federal threshold speeds in order to qualify as broadband service under this chapter.

(c) Requires the office, not later than the 60th day after the date the state broadband development office adjusts the minimum download or upload speeds required for Internet service to qualify as broadband service under this chapter, to publish the adjusted minimum download and upload speeds on the Internet website of the Comptroller of Public Accounts of the State of Texas (comptroller).

Sec. 490I.0104. BOARD OF ADVISORS. (a) Defines "rural area" and "urban area."

(b) Provides that the office board of advisors (board) is composed of 12 members, appointed as follows:

(1) three members appointed by the governor, including one member to represent the Texas Economic Development and Tourism Office and two members to represent nonprofit corporations that work on broadband connectivity, broadband adoption, and digital literacy;

(2) three members appointed by the lieutenant governor, including one member who resides in a rural area, one member who resides in an urban area, and one member to represent the public education community;

(3) three members appointed by the speaker of the house of representatives, including one member who resides in a rural area; one member who resides in a county that is adjacent to an international border, is located not more than 150 miles from the Gulf of Mexico, and has a population of more than 60,000; and one member to represent the health and telemedicine industry;

(4) one member appointed by the board of regents of The University of Texas System;

(5) one member appointed by the board of regents of the Texas Tech University System; and

(6) one nonvoting member appointed by the state broadband development office to represent the office.

(c) Provides that members of the board serve at the pleasure of the appointing authority for staggered two-year terms, with the terms of the members described by Subsections (b)(1) and (2) expiring February 1 of each odd-numbered year and the terms of the members described by Subsections (b)(3), (4), (5), and (6) expiring February 1 of each even-numbered year. Authorizes a member to serve more than one term.

(d) Requires the appropriate appointing authority, not later than the 30th day after the date a member's term expires, to appoint a replacement in the same manner as the original appointment.

(e) Requires the appropriate appointing authority, if a vacancy occurs on the board, to appoint a successor in the same manner as the original appointment to serve for the remainder of the unexpired term. Requires the appropriate appointing authority to appoint the successor not later than the 30th day after the date the vacancy occurs.

(f) Requires the board to meet at least once per month with representatives from the office for the purpose of directing and overseeing the work of the office in implementing the provisions of this chapter.

(g) Authorizes the board to retain employees to discharge the duties of the office.

(h) Provides that a person who is professionally affiliated with a person serving as a member of the board is not eligible for funding from the broadband development program established under Section 490I.0107.

(i) Authorizes the board to consult with stakeholders with technical expertise in the area of broadband and telecommunications technology.

(j) Provides that meetings of the board are subject to Chapter 551 (Open Meetings).

Sec. 490I.0105. PARTICIPATION IN PROCEEDINGS OF FEDERAL COMMUNICATIONS COMMISSION. (a) Authorizes the office to monitor, participate in, and provide input in proceedings of the FCC related to the geographic availability and deployment of broadband service in Texas to ensure that the information available to the FCC reflects the current status of geographic availability and deployment of broadband service in Texas and ensure that Texas is best positioned to benefit from broadband service deployment programs administered by federal agencies.

(b) Authorizes the office to participate in a process established by the FCC allowing governmental entities to challenge the accuracy of the FCC's information regarding the geographic availability and deployment of broadband service.

(c) Requires the office to establish procedures and a data collection process in accordance with rules established by the FCC that will enable the office to participate in the process described by Subsection (b).

Sec. 490I.0106. BROADBAND DEVELOPMENT MAP. (a) Requires the office to develop and maintain a public Internet website.

(b) Requires the office to create, update annually, and publish on the office's Internet website a map classifying each designated area in this state as an eligible area, if fewer than 80 percent of the addresses in the designated area have access

to broadband service; or an ineligible area, if 80 percent or more of the addresses in the designated area have access to broadband service.

(c) Authorizes the office by rule to determine the scope of a designated area under Subsection (b).

(d) Authorizes the office, after creation of the initial map described in Subsection (b), to evaluate the usefulness of the standards for eligible and ineligible areas outlined in Subsection (b) and, if appropriate, make a recommendation to the legislature to revise the standards.

(e) Requires that the map display the number of broadband service providers that serve each eligible area; for each eligible area, an indication of whether the area has access to Internet service that is not broadband service, regardless of the technology used to provide the service; and each public school campus in Texas with an indication of whether the public school campus has access to broadband service.

(f) Requires the office to create, update, and publish the map in a manner consistent with the FCC mapping methodology prescribed under the Broadband DATA Act (Pub. L. No. 116-130).

(g) Requires the office, except as provided by Subsection (h), to use information available from the FCC to create or update the map.

(h) Authorizes the office, if information from the FCC is not sufficient for the office to create or update the map, to request the necessary information from a political subdivision or broadband service provider, and authorizes the subdivision or provider to report the information to the office. Prohibits the office from requiring a subdivision or provider to report information in a format different from the format required by the FCC mapping methodology prescribed under the Broadband DATA Act (Pub. L. No. 116-130).

(i) Provides that information a broadband service provider reports to the office under Subsection (h) and information provided by the FCC, if not publicly available, is confidential and not subject to disclosure under Chapter 552 (Public Information).

(j) Authorizes the office to contract with a private consultant or other appropriate person who is not associated or affiliated with a commercial broadband provider, including a local governmental entity, to provide technical or administrative assistance to the office for the purpose of creating or updating the map.

(k) Authorizes the office to release information reported under Subsection (h) to a contractor providing services under Subsection (j). Requires the contractor to keep the information confidential, and return the information to the office on the earliest of the date the contract expires, the date the contract is terminated, or the date the mapping project for which the contractor is providing services is complete.

(l) Prohibits a person who contracts under Subsection (j) from providing services for a broadband provider in Texas before the second anniversary of the last day the contract is in effect.

(m) Requires the office to establish criteria for determining whether a designated area should be reclassified as an eligible area or an ineligible area. Requires that the criteria include an evaluation of Internet speed test data and information on end user addresses. Authorizes the criteria to also include community surveys regarding the reliability of Internet service, where available.

(n) Authorizes a broadband service provider or political subdivision to petition the office to reclassify a designated area on the map as an eligible area or ineligible area. Requires the office to provide notice of the petition to each broadband service provider that provides broadband service to the designated area and to post notice of the petition on the office's Internet website.

(o) Requires a broadband provider, not later than the 45th day after the date that the provider receives notice under Subsection (n), to provide information to the office showing whether the designated area should or should not be reclassified.

(p) Requires the office, not later than the 75th day after the date that a broadband provider receives notice under Subsection (n), to determine whether to reclassify the designated area on the map and update the map as necessary. Provides that a determination made by the office under this subsection is not a contested case for purposes of Chapter 2001 (Administrative Procedure).

(q) Provides that the office is not required to create, update, or publish a map under this section if the FCC produces a map that enables the office to identify eligible and ineligible areas, as described by Subsection (b), and meets the requirements of Subsection (f).

Sec. 490I.0107. BROADBAND DEVELOPMENT PROGRAM. (a) Requires the office to establish a program to award grants, low-interest loans, and other financial incentives to applicants for the purpose of expanding access to and adoption of broadband service in designated areas determined to be eligible areas by the office under Section 490I.0106.

(b) Requires the office to establish and publish eligibility criteria for award recipients. Requires that the criteria:

(1) include consideration of grants and other financial incentives awarded from the federal government for the deployment of broadband service in a designated area;

(2) require that grants, loans, and other financial incentives awarded through the program be used only for capital expenses, purchase or lease of property, and other expenses, including backhaul and transport, that will facilitate the provision or adoption of broadband service; and

(3) prioritize eligible areas in which the lowest percentage of addresses have access to broadband service.

(c) Authorizes the office, notwithstanding Subsection (b)(3), to establish eligibility criteria that take into account a cost benefit analysis for awarding money to the eligible areas described by that subdivision.

(d) Prohibits the office from:

(1) favoring a particular broadband technology in awarding grants, loans, or other financial incentives;

(2) awarding grants, loans, or other financial incentives to a broadband provider that does not report information requested by the office under Section 490I.0106;

(3) awarding a grant, loan, or other financial incentive to a noncommercial provider of broadband service for an eligible area if a commercial provider of broadband service has submitted an application for the eligible area; or

(4) taking into consideration distributions from the state universal service fund established under Section 56.021 (Universal Service Fund

Established), Utilities Code, when deciding to award grants, loans, or other financial incentives.

(e) Provides that an award granted under this section does not affect distributions received by a broadband provider from the state universal service fund established under Section 56.021, Utilities Code.

Sec. 490I.0108. BROADBAND DEVELOPMENT FUND. (a) Provides that the broadband development fund is a special fund in the state treasury outside of the general revenue fund.

(b) Provides that the fund consists of appropriations of money to the fund by the legislature; gifts, donations, and grants, including federal grants; and interest earned on the investment of the money in the fund.

(c) Requires the comptroller to deposit to the credit of the fund federal money received by the state for the purpose of broadband development, to the extent permitted by state and federal law.

(d) Authorizes money in the fund to be appropriated only to the office for purposes of administering the broadband development program, creating or updating the map described by Section 490I.0106, creating or updating the state broadband plan under Section 490I.0109, or engaging in outreach to communities regarding the programs administered by the office and the expansion, adoption, and affordability of broadband services and equipment.

(e) Provides that the fund is exempt from the application of Section 404.071 (Disposition of Interest on Investments).

Sec. 490I.0109. STATE BROADBAND PLAN. (a) Requires the office to prepare a state broadband plan (plan) that establishes long-term goals for greater access to and affordability and adoption of broadband service in Texas.

(b) Requires the office, in developing the plan, to:

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

(2) give consideration to the policy recommendations of the governor's broadband development council;

(3) favor policies that are technology-neutral and protect all members of the public;

(4) explore state and regional approaches to broadband development; and

(5) prioritize broadband needs related to public education and state and local education agencies, including agencies involved in the electronic administration of all assessment instruments required under Section 39.023 (Adoption and Administration of Instruments), Education Code.

Sec. 490I.0110. RULEMAKING. Authorizes the office to adopt rules necessary to implement this chapter. Requires that rules be proposed and adopted according to Chapter 2001 and approved by a majority vote of the board.

SECTION 4. Requires each appointing authority, not later than November 1, 2021, to appoint the members of the board as required by Section 490I.0104, Government Code, as added by this Act. Prohibits the board from taking action until a majority of the members have taken office.

SECTION 5. Requires the office established by Section 490I.0101, Government Code, as added by this Act, not later than the first anniversary of the effective date of this Act, to prepare the initial state broadband plan required by Section 490I.0101, Government Code, as added by this Act.

SECTION 6. (a) Requires the office established by Section 490I.0101, Government Code, as added by this Act, to publish the map required by Section 490I.0106, Government Code, as added by this Act, on the office's Internet website not later than January 1, 2023.

(b) Requires the office, not later than September 1, 2022, to publish on the office's Internet website:

(1) a map created by the FCC that displays the number of broadband service providers that serve each designated area; or

(2) a link to a map described by Subdivision (1) of this subsection.

(c) Requires the office, for the purpose of administering the broadband development program established by Section 490I.0107, Government Code, as added by this Act, to use a map described by Subsection (b) of this section to determine whether an area is eligible until the office publishes the map required by Section 490I.0106, Government Code, as added by this Act.

SECTION 7. Effective date: upon passage or September 1, 2021.