87R10214 BRG-D

By:  Ashby H.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to the expansion of broadband services to certain areas.

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

SECTION 1.  Section 490H.002(a), Government Code, is amended to read as follows:

(a)  The council is composed of one nonvoting member appointed by the broadband development office and the following [~~17~~] voting members:

(1)  two representatives of separate Internet service provider industry associations, including at least one representative of an association that primarily represents small providers, as defined by Section 56.032, Utilities Code, appointed by the governor;

(2)  one representative of the health information technology industry, appointed by the governor;

(3)  two representatives of unaffiliated nonprofit organizations that advocate for elderly persons statewide, appointed by the governor;

(4)  two representatives of unaffiliated nonprofit organizations that have a demonstrated history of working with the legislature and the public to identify solutions for expanding broadband to rural, unserved areas of this state, appointed by the governor;

(5)  one representative of an agricultural advocacy organization in this state, appointed by the governor;

(6)  one representative of a hospital advocacy organization in this state, appointed by the governor;

(7)  one representative of a medical advocacy organization in this state, appointed by the governor;

(8)  one county official who serves in an elected office of a county with a population of less than 35,000, appointed by the governor;

(9)  one municipal official who serves in an elected office of a municipality with a population of less than 20,000 located in a county with a population of less than 60,000, appointed by the governor;

(10)  one representative of an institution of higher education that has its main campus in a county with a population of less than 60,000, appointed by the governor;

(11)  one representative of a school district with a territory that includes only counties with a population of less than 60,000, appointed by the governor;

(12)  one representative from a library association, appointed by the governor;

(13)  one member of the house of representatives, appointed by the speaker of the house of representatives; [~~and~~]

(14)  one state senator, appointed by the lieutenant governor; and

(15)  one representative from an electric cooperative providing broadband, appointed by the governor.

SECTION 2.  Section 490H.006(a), Government Code, is amended to read as follows:

(a)  The council shall:

(1)  research the progress of:

(A)  broadband development in unserved areas;

(B)  deployment of broadband statewide; and

(C)  purchase of broadband by residential and commercial customers;

(2)  identify barriers to residential and commercial broadband deployment in unserved areas;

(3)  study:

(A)  technology-neutral solutions to overcome barriers identified under Subdivision (2); and

(B)  industry and technology trends in broadband; and

(4)  analyze how statewide access to broadband would benefit:

(A)  economic development;

(B)  the delivery of educational opportunities in higher education and public education;

(C)  state and local law enforcement;

(D)  state emergency preparedness; and

(E)  the delivery of health care services, including telemedicine and telehealth.

SECTION 3.  Subtitle F, Title 4, Government Code, is amended by adding Chapter 490I to read as follows:

CHAPTER 490I. BROADBAND DEVELOPMENT OFFICE

Sec. 490I.0101.  THRESHOLD SPEED FOR BROADBAND SERVICE. (a) For purposes of this chapter, subject to Subsection (b), "broadband service" means Internet service with the capability of providing:

(1)  a download speed of 25 megabits per second or faster; and

(2)  an upload speed of three megabits per second or faster.

(b)  If the Federal Communications Commission adopts 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 providing download or upload speeds that match or exceed that federal threshold in order to qualify under this chapter as "broadband service."

(c)  Not later than the 60th day after the date the comptroller adjusts the minimum download or upload speeds required for Internet service to qualify as "broadband service," the broadband development office shall publish on the comptroller's Internet website the adjusted minimum download and upload speeds.

Sec. 490I.0102.  OFFICE. (a) The broadband development office is an office within the comptroller's office.

(b)  The comptroller may employ additional employees necessary for the discharge of the duties of the broadband development office.

(c)  The broadband development office:

(1)  is under the direction and control of the comptroller;

(2)  shall promote the policies enumerated in this chapter; and

(3)  may perform any action authorized by state or federal law.

Sec. 490I.0103.  POWERS AND DUTIES. (a) The broadband development office shall:

(1)  serve as a resource for information regarding broadband service in this state;

(2)  engage in outreach to communities regarding the expansion and adoption of broadband service and the programs administered by the office; and

(3)  serve as an information clearinghouse in relation to federal programs providing assistance to local entities with respect to broadband service.

(b)  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)  This chapter does not grant the comptroller authority to regulate broadband services or broadband service providers or, except as required of an applicant or recipient under Section 490I.0106, to require broadband service providers to submit information to the comptroller.

Sec. 490I.0104.  PARTICIPATION IN PROCEEDINGS OF THE FEDERAL COMMUNICATIONS COMMISSION. (a) The broadband development office may monitor, participate in, and provide input in proceedings of the Federal Communications Commission related to the geographic availability and deployment of broadband service in this state to ensure that:

(1)  the information available to the Federal Communications Commission reflects the current status of geographic availability and deployment of broadband service in this state; and

(2)  this state is best positioned to benefit from broadband service deployment programs administered by federal agencies.

(b)  The office may participate in a process established by the Federal Communications Commission allowing governmental entities to challenge the accuracy of the commission's information regarding the geographic availability and deployment of broadband service.

(c)  The office shall establish procedures and a data collection process in accordance with rules established by the Federal Communications Commission for the Digital Opportunity Data Collection that will enable the office to participate in the process described by Subsection (b).

Sec. 490I.0105.  BROADBAND DEVELOPMENT MAP. (a) The broadband development office shall create, update annually, and publish on the comptroller's Internet website a map classifying each designated area in this state as:

(1)  an eligible area, if fewer than 80 percent of the addresses in the designated area have access to broadband service; or

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

(b)  The comptroller by rule may determine the scope of a designated area under Subsection (a).

(c)  The map required by Subsection (a) must display:

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

(2)  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

(3)  each public school in this state and an indication of whether the public school has access to broadband service.

(d)  The office must create, update, and publish the map in a manner consistent with the most current mapping methodology adopted by the Federal Communications Commission.

(e)  Except as provided by Subsection (c), the office shall use information available from the Federal Communications Commission to create or update the map.

(f)  If information from the Federal Communications Commission is not available or not sufficient for the office to create or update the map, the office may request the necessary information from a political subdivision or broadband service provider, and the subdivision or provider may report the information to the office. The office may not require a subdivision or provider to report information in a format different from the format required by the most current mapping methodology adopted by the Federal Communications Commission.

(g)  Information a broadband service provider reports to the office under Subsection (f) and information provided by the Federal Communications Commission, if not publicly available, is confidential and not subject to disclosure under Chapter 552.

(h)  The office may 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.

(i)  The office may release information reported under Subsection (f) to a contractor providing services under Subsection (h). The contractor shall:

(1)  keep the information confidential; and

(2)  return the information to the office on the earliest of the following dates:

(A)  the date the contract expires;

(B)  the date the contract is terminated; or

(C)  the date the mapping project for which the contractor is providing services is complete.

(j)  A person who contracts under Subsection (h) may not provide services for a broadband provider in this state before the second anniversary of the last day the person was under the contract.

(k)  The office shall establish criteria for determining whether a designated area should be reclassified as an eligible area or an ineligible area. The criteria must include an evaluation of Internet speed test data and information on end user addresses.

(l)  A broadband service provider or political subdivision may petition the office to reclassify a designated area on the map as an eligible area or ineligible area. The office shall provide notice of the petition to each broadband service provider that provides broadband service to the designated area and post notice of the petition on the comptroller's Internet website.

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

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

(o)  The office is not required to create, update, or publish a map under this section if the Federal Communications Commission produces a map that:

(1)  enables the office to identify eligible and ineligible areas, as described by Subsection (a); and

(2)  meets the requirements of Subsection (c).

Sec. 490I.0106.  BROADBAND DEVELOPMENT PROGRAM. (a) The broadband development office shall 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.0105.

(b)  The office shall establish and publish criteria for making awards under Subsection (a). The office shall take into consideration grants and other financial incentives received by an applicant for the deployment of broadband service in a designated area.

(c)  The office may not:

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

(2)  award grants, loans, or other financial incentives to a broadband provider that does not report information requested by the office under Section 490I.0105;

(3)  award 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)  take into consideration distributions from the state universal service fund established under Section 56.021, Utilities Code, when deciding to award grants, loans, or other financial incentives.

(d)  The office shall:

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

(2)  make each application available on the comptroller's Internet website for a period of at least 30 days before the office makes a decision on the application.

(e)  During the 30-day posting period described by Subsection (d) for an application, the office shall accept from any interested party a written protest of the application relating to whether the applicant or project is eligible for an award or should not receive an award based on the criteria prescribed by the office.

(f)  The office shall establish and publish criteria for award recipients. The criteria must include requirements that:

(1)  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

(2)  an award recipient, when using grants, loans, and other financial incentives awarded through the program, prioritize eligible areas in which the lowest percentage of addresses have access to broadband service.

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

Sec. 490I.0107.  STATE BROADBAND PLAN. (a) The broadband development office shall prepare, update, and publish on the comptroller's Internet website a state broadband plan that establishes long-term goals for greater access to and adoption of broadband service in this state.

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

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

(2)  consider the policy recommendations of the governor's broadband development council;

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

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

Sec. 490I.0108.  BROADBAND DEVELOPMENT ACCOUNT. (a) The broadband development account is an account in the general revenue fund.

(b)  The account consists of:

(1)  appropriations of money to the account by the legislature;

(2)  gifts, donations, and grants, including federal grants; and

(3)  interest earned on the investment of the money in the account.

(c)  The comptroller shall deposit to the credit of the account federal money received by the state for the purpose of broadband development, to the extent permitted by federal law.

(d)  Money in the account may be appropriated only to the broadband development office for purposes of:

(1)  creating or updating the map described by Section 490I.0105;

(2)  administering the broadband development program under Section 490I.0106;

(3)  creating or updating the state broadband plan under Section 490I.0107; or

(4)  engaging in outreach to communities regarding the expansion and adoption of broadband service and the programs administered by the office.

(e)  The account is exempt from the application of Sections 403.095, 403.0956, and 404.071.

Sec. 490I.0109.  RULEMAKING. The comptroller may adopt rules as necessary to implement this chapter.

SECTION 4.  (a) The broadband development office established by Section 490I.0102, Government Code, as added by this Act, shall publish the map required by Section 490I.0105, Government Code, as added by this Act, on the comptroller's Internet website not later than September 1, 2022.

(b)  Not later than January 1, 2022, the office shall publish on the comptroller's Internet website:

(1)  a map created by the Federal Communications Commission that displays the number of broadband service providers that serve each census block; or

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

(c)  For the purpose of administering the broadband development program established by Section 490I.0106, Government Code, as added by this Act, the office shall 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.0105, Government Code, as added by this Act.

SECTION 5.  The broadband development office established by Section 490I.0102, Government Code, as added by this Act, shall prepare the initial state broadband plan required by Section 490I.0107, Government Code, as added by this Act, not later than September 1, 2022.

SECTION 6.  This Act takes effect September 1, 2021.