By:  Ashby, et al. (Senate Sponsor - Nichols) H.B. No. 5

(In the Senate - Received from the House April 12, 2021; April 15, 2021, read first time and referred to Committee on Transportation; April 26, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 26, 2021, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Nichols           X

Seliger           X

Alvarado          X

Blanco            X

Hancock           X

Hinojosa          X

Kolkhorst         X

Perry             X

West              X

COMMITTEE SUBSTITUTE FOR H.B. No. 5 By:  Nichols

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 state 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 regulated 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.

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

(a)  The council shall:

(1)  research and monitor the progress of:

(A)  broadband development in unserved areas;

(B)  deployment of broadband services 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 services; 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. STATE BROADBAND DEVELOPMENT OFFICE

Sec. 490I.0101.  OFFICE. (a) The state broadband development office is established to promote the expansion of access to broadband service in this state.

(b)  The state broadband development office is administratively attached to The University of Texas System. The system may employ additional employees necessary for the discharge of the duties of the office.

(c)  The state broadband development office:

(1)  is under the direction and control of the board of advisors established by Section 490I.0104;

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

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

Sec. 490I.0102.  POWERS AND DUTIES. (a) The state 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, adoption, and affordability of broadband service and the programs administered by the office; and

(3)  serve as an information clearinghouse regarding federal programs that provide 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 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) For the purposes of this chapter and 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 3 megabits per second or faster.

(b)  If the Federal Communications Commission 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), the state broadband development office by rule may 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)  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, the office shall publish the adjusted minimum download and upload speeds on the comptroller's Internet website.

Sec. 490I.0104.  BOARD OF ADVISORS. (a)  In this section:

(1)  "Rural area" means a county with a population of less than 100,000 that is not adjacent to a county with a population of more than 350,000.

(2)  "Urban area" means:

(A)  a municipality with a population of more than 500,000; or

(B)  a county with a population of more than 1 million.

(b)  The state broadband development office board of advisors is composed of 12 members, appointed as follows:

(1)  three members appointed by the governor, including:

(A)  one member to represent the Texas Economic Development and Tourism Office; and

(B)  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:

(A)  one member who resides in a rural area;

(B)  one member who resides in an urban area; and

(C)  one member to represent the public education community;

(3)  three members appointed by the speaker of the house of representatives, including:

(A)  one member who resides in a rural area;

(B)  one member who resides in a county that:

(i)  is adjacent to an international border;

(ii)  is located not more than 150 miles from the Gulf of Mexico; and

(iii)  has a population of more than 60,000; and

(C)  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)  Members of the board of advisors 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. A member may serve more than one term.

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

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

(f)  The board of advisors shall meet at least once per month with representatives from the state broadband development office for the purpose of directing and overseeing the work of the office in implementing the provisions of this chapter.

(g)  The board of advisors may retain employees to discharge the duties of the office.

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

(i)  The board of advisors may consult with stakeholders with technical expertise in the area of broadband and telecommunication technology.

(j)  Meetings of the board of advisors are subject to Chapter 551.

Sec. 490I.0105.  PARTICIPATION IN PROCEEDINGS OF FEDERAL COMMUNICATIONS COMMISSION. (a) The state 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 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 that will enable the office to participate in the process described by Subsection (b).

Sec. 490I.0106.  BROADBAND DEVELOPMENT MAP. (a) The state broadband development office shall develop and maintain a public Internet website.

(b)  The office shall create, update annually, and publish on the office'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.

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

(d)  After creation of the initial map described in Subsection (b), the office may 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)  The map must display:

(1)  the number of broadband service providers that serve each eligible 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 campus in this state with an indication of whether the public school campus has access to broadband service.

(f)  The office must create, update, and publish the map in a manner consistent with the Federal Communications Commission mapping methodology prescribed under the Broadband DATA Act (Pub. L. No. 116-130).

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

(h)  If information from the Federal Communications Commission is 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 Federal Communications Commission mapping methodology prescribed under the Broadband DATA Act (Pub. L. No. 116-130).

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

(j)  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.

(k)  The office may release information reported under Subsection (h) to a contractor providing services under Subsection (j). 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.

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

(m)  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. The criteria may also include community surveys regarding the reliability of Internet service, where available.

(n)  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 office's Internet website.

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

(p)  Not later than the 75th day after the date that a broadband provider receives notice under Subsection (n), 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.

(q)  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 (b); and

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

Sec. 490I.0107.  BROADBAND DEVELOPMENT PROGRAM. (a) The state 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.0106.

(b)  The office shall establish and publish eligibility criteria for award recipients. The criteria must:

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

(d)  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.0106;

(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.

(e)  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) The broadband development fund is a special fund in the state treasury outside of the general revenue fund.

(b)  The fund consists of:

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

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

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

(c)  The comptroller shall 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)  Money in the fund may be appropriated only to the state broadband development office for purposes of:

(1)  administering the broadband development program;

(2)  creating or updating the map described by Section 490I.0106;

(3)  creating or updating the state broadband plan under Section 490I.0109; or

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

(e)  The fund is exempt from the application of Section 404.071.

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

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

(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, Education Code.

Sec. 490I.0110.  RULEMAKING. The state broadband development office may adopt rules necessary to implement this chapter. Rules must be:

(1)  proposed and adopted according to Chapter 2001; and

(2)  approved by a majority vote of the board of advisors.

SECTION 4.  Not later than November 1, 2021, each appointing authority shall appoint the members of the state broadband development office board of advisors as required by Section 490I.0104, Government Code, as added by this Act. The board of advisors may not take action until a majority of the members have taken office.

SECTION 5.  Not later than the first anniversary of the effective date of this Act, the state broadband development office established by Section 490I.0101, Government Code, as added by this Act, shall prepare the initial state broadband plan required by Section 490I.0109, Government Code, as added by this Act.

SECTION 6.  (a) The state broadband development office established by Section 490I.0101, Government Code, as added by this Act, shall 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)  Not later than September 1, 2022, the office shall publish on the office's Internet website:

(1)  a map created by the Federal Communications Commission 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)  For the purpose of administering the broadband development program established by Section 490I.0107, 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.0106, Government Code, as added by this Act.

SECTION 7.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

\* \* \* \* \*