

By: Ashby, Anderson, Paddie, Price, Canales,
et al.

H.B. No. 5

Substitute the following for H.B. No. 5:

By: Paddie

C.S.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

1 organization in this state, appointed by the governor;

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

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

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

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

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

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

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

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

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

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

27 SECTION 2. Section 490H.006(a), Government Code, is amended

1 to read as follows:

2 (a) The council shall:

3 (1) research the progress of:

4 (A) broadband development in unserved areas;

5 (B) deployment of broadband statewide; and

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

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

10 (3) study:

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

13 (B) industry and technology trends in broadband;
14 and

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

17 (A) economic development;

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

20 (C) state and local law enforcement;

21 (D) state emergency preparedness; and

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

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

26 CHAPTER 490I. BROADBAND DEVELOPMENT OFFICE

27 Sec. 490I.0101. THRESHOLD SPEED FOR BROADBAND SERVICE. (a)

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

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

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

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

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

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

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

24 (c) The broadband development office:

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

27 (2) shall promote the policies enumerated in this

1 chapter; and

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

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

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

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

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

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

17 (c) This chapter does not grant the comptroller authority to
18 regulate broadband services or broadband service providers or,
19 except as required of an applicant or recipient under Section
20 490I.0106, to require broadband service providers to submit
21 information to the comptroller.

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

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

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

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

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

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

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

24 or

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

27 (b) The comptroller by rule may determine the scope of a

1 designated area under Subsection (a).

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

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

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

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

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

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

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

26 (g) Information a broadband service provider reports to the
27 office under Subsection (f) and information provided by the Federal

1 Communications Commission, if not publicly available, is
2 confidential and not subject to disclosure under Chapter 552.

3 (h) The office may contract with a private consultant or
4 other appropriate person who is not associated or affiliated with a
5 commercial broadband provider, including a local governmental
6 entity, to provide technical or administrative assistance to the
7 office for the purpose of creating or updating the map.

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

11 (1) keep the information confidential; and
12 (2) return the information to the office on the
13 earliest of the following dates:

14 (A) the date the contract expires;
15 (B) the date the contract is terminated; or
16 (C) the date the mapping project for which the
17 contractor is providing services is complete.

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

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

26 (l) A broadband service provider or political subdivision
27 may petition the office to reclassify a designated area on the map

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

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

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

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

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

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

21 Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) The
22 broadband development office shall establish a program to award
23 grants, low-interest loans, and other financial incentives to
24 applicants for the purpose of expanding access to and adoption of
25 broadband service in designated areas determined to be eligible
26 areas by the office under Section 490I.0105.

27 (b) The office shall establish and publish criteria for

1 making awards under Subsection (a). The office shall:

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

5 (2) prioritize the applications of applicants that
6 will expand access to and adoption of broadband service in eligible
7 areas in which the lowest percentage of addresses have access to
8 broadband service.

9 (c) The office may not:

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

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

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

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

23 (d) The office shall:

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

27 (2) make each application available on the

1 comptroller's Internet website for a period of at least 30 days
2 before the office makes a decision on the application.

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

8 (f) The office shall establish and publish criteria for
9 award recipients. The criteria must include requirements that
10 grants, loans, and other financial incentives awarded through the
11 program be used only for capital expenses, purchase or lease of
12 property, and other expenses, including backhaul and transport,
13 that will facilitate the provision or adoption of broadband
14 service.

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

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

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

26 (1) to the extent possible, collaborate with state
27 agencies, political subdivisions, broadband industry stakeholders

1 and representatives, and community organizations that focus on
2 broadband services and technology access;

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

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

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

9 (5) examine broadband service needs related to:

10 (A) public safety, including the needs of state
11 agencies involved in the administration of criminal justice, as
12 that term is defined by Article 66.001, Code of Criminal Procedure;

13 (B) public education and state and local
14 education agencies, including any agency involved in the electronic
15 administration of an assessment instrument required under Section
16 39.023, Education Code; and

17 (C) public health, including the needs of state
18 agencies involved in the administration of public health
19 initiatives such as the Health and Human Services Commission and
20 the Department of State Health Services.

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

24 (b) The account consists of:

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

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

1 grants; and

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

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

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

9 (1) creating or updating the map described by Section
10 490I.0105;

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

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

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

18 (e) The account is exempt from the application of Sections
19 403.095, 403.0956, and 404.071.

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

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

27 (b) Not later than January 1, 2022, the office shall publish

1 on the comptroller's Internet website:

2 (1) a map created by the Federal Communications
3 Commission that displays the number of broadband service providers
4 that serve each designated area; or

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

7 (c) For the purpose of administering the broadband
8 development program established by Section 490I.0106, Government
9 Code, as added by this Act, the office shall use a map described by
10 Subsection (b) of this section to determine whether an area is
11 eligible until the office publishes the map required by Section
12 490I.0105, Government Code, as added by this Act.

13 SECTION 5. The broadband development office established by
14 Section 490I.0102, Government Code, as added by this Act, shall
15 prepare the initial state broadband plan required by Section
16 490I.0107, Government Code, as added by this Act, not later than
17 September 1, 2022.

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