

BILL ANALYSIS

C.S.H.B. 9
By: Ashby
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to recent studies conducted by the state broadband development office, almost 2.8 million Texas households, or roughly seven million Texans, lack broadband Internet access. This means that nearly a quarter of Texans do not have the quality of Internet access necessary to attend online classes, see a healthcare provider from their living room, complete an online job application, start a business online, or access digital marketplaces from their kitchen table. These barriers negatively affect Texans' quality of life and limit economic opportunities for the people of Texas and the state overall. Given the ever-increasing demand for access to the Internet, both in Texas and across the world, C.S.H.B. 9 seeks to create the broadband infrastructure fund with the hopes of distinguishing the State of Texas with a bold and ambitious investment to support a holistic, state-driven approach toward addressing the state's connectivity needs.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 9 amends the Government Code to establish the broadband infrastructure fund as a special fund in the state treasury outside the general revenue fund to be administered by the comptroller of public accounts for the following purposes:

- meeting an imperative public need and serving the economic, educational, and health care needs of the State of Texas; and
- furthering the public purpose of expanding and ensuring access to reliable, high-speed broadband and telecommunications connectivity.

The fund consists of legislative appropriations for deposit to the credit of the fund, money transferred or deposited to the credit of the fund by the constitution or by general law, revenue that the legislature by general law dedicates for deposit to the credit of the fund, investment earnings and interest earned on money in the fund, and gifts, grants, or donations to the fund.

C.S.H.B. 9 restricts the use of the broadband infrastructure fund to the following:

- a purpose described by statutory provisions governing the broadband development office;
- providing funding to the Texas Universal Service Fund (TUSF) for the purposes for which the TUSF was established;
- providing funding for 9-1-1 and next generation 9-1-1 services;

- supporting the deployment of next generation 9-1-1 service, including its costs of equipment, operations, and administration, as provided by statutory provisions governing the next generation 9-1-1 service fund;
- supporting the Texas Broadband Pole Replacement Program;
- providing matching funds for federal money provided for the federal Broadband Equity, Access, and Deployment Program;
- supporting increased connectivity needs for qualifying schools under the federal Schools and Libraries Program ("E-rate program") as provided by federal regulations or similar legislation providing federal funding for broadband and telecommunications initiatives;
- improving public safety telecommunications connectivity, including support for school safety; and
- administering and enforcing the bill's provisions establishing the fund.

The bill authorizes the comptroller, after taking into account any required transfer of money, to use money from the fund for any of those authorized purposes.

C.S.H.B. 9 requires the Texas Treasury Safekeeping Trust Company to hold and invest the broadband infrastructure fund, and any accounts established in the fund, for and in the name of the comptroller, taking into account the purposes for which money in the fund may be used. The fund may be invested with the state treasury pool and may be pooled with other state assets for purposes of investment. The overall objective for the investment of the fund is to maintain sufficient liquidity to meet the needs of the fund while striving to preserve the purchasing power of the fund over a full economic cycle. The bill grants the trust company any power necessary to accomplish the purposes of managing and investing the fund's assets. The bill authorizes the trust company, in managing the assets of the fund, through procedures and subject to restrictions the trust company considers appropriate, to acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment. The bill provides that the trust company may recover the costs incurred in managing and investing the fund only from the fund.

C.S.H.B. 9 requires the trust company annually to provide a written report to the comptroller with respect to the investments of the broadband infrastructure fund. The bill requires the trust company to adopt a written investment policy that is appropriate for the fund and present the investment policy to the investment advisory board. The investment advisory board must submit to the trust company recommendations regarding the policy. The bill requires the comptroller annually to provide to the trust company a forecast of the cash flows into and out of the fund and to provide updates to the forecasts as appropriate to ensure that the trust company is able to achieve the fund's specified objective. The bill requires the trust company to disburse money from the fund as directed by the comptroller.

C.S.H.B. 9 requires the comptroller, not later than September 15 of each year, to make the following transfers from the broadband infrastructure fund:

- transfer to the TUSF an amount necessary to provide required services, as determined by the comptroller in consultation with the Public Utility Commission of Texas (PUC);
- transfer to the next generation 9-1-1 service fund an amount equal to the difference between the emergency service fees for wireless telecommunications connections collected during the preceding state fiscal year and the amount that would have been collected during that preceding state fiscal year if the amount of the monthly fee were 85 cents, as determined by the comptroller in consultation with the Commission on State Emergency Communications (CSEC); and
- transfer to the commissioner of education an amount necessary to provide matching funds to schools under the federal E-rate program as provided by federal regulations or similar legislation providing federal funding for broadband and telecommunications initiatives, as determined by the comptroller in consultation with the Texas Education Agency.

C.S.H.B. 9 authorizes the comptroller to adopt rules as necessary to administer the bill's provisions establishing the broadband infrastructure fund.

C.S.H.B. 9 authorizes the comptroller to transfer to the credit of the state pole replacement fund an available amount from the broadband infrastructure fund, which is in addition to the funding provided from transfers of federal coronavirus relief money. In addition, the bill requires the comptroller to make the following one-time transfers from the broadband infrastructure fund not later than the 30th day after the bill's effective date:

- \$1 billion to the state broadband development account; and
- \$75 million to the state broadband pole replacement fund.

C.S.H.B. 9 amends the Health and Safety Code to postpone the expiration of statutory provisions governing the next generation 9-1-1 service fund from September 1, 2025, to September 1, 2035. The bill authorizes the comptroller, in addition to the money transferred to the credit of the next generation 9-1-1 service fund, to transfer to the credit of that fund an available amount from the broadband infrastructure fund.

C.S.H.B. 9 repeals Section 56.022, Utilities Code, which provides for the funding of the TUSF through the imposition of a statewide uniform charge.

EFFECTIVE DATE

January 1, 2024, if the constitutional amendment providing for the creation of the broadband infrastructure fund to assist in the financing of broadband and telecommunications services projects in Texas is approved by the voters.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 9 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the provision setting out the components of the broadband infrastructure fund. The substitute includes among those components any money transferred or deposited to the credit of the fund by the constitution or by general law, whereas the introduced did not. In addition, the substitute does not include depository interest allocable to the fund among the fund's components, whereas the introduced did. The substitute also includes investment earnings as part of the fund, which reflects the fact that the substitute includes provisions absent from the introduced providing for the management and investment of the fund by the trust company.

Whereas the introduced required the comptroller to jointly with the PUC determine the use of the money from the broadband infrastructure fund, the substitute does not. The substitute authorizes the comptroller, after taking into account any required transfer, to use money from the fund for any authorized purpose.

The substitute clarifies the authorized uses of money in the broadband infrastructure fund. Whereas the introduced detailed specific purposes related to broadband for which the money may be used, the substitute instead authorizes the funds to be used for any purpose described under statutory provisions governing the state broadband development office. Whereas the introduced authorized the use of money to fully fund the TUSF, the substitute authorizes the use of money to provide funding to the TUSF for purposes described by statutory provisions governing the TUSF. Lastly, the substitute clarifies that the money may be used to cover the equipment, operations, and administration costs incurred in deploying next generation 9-1-1 service, whereas the introduced did not.

The substitute revises the legislative findings set out in the introduced to include an additional finding that the use of the broadband infrastructure fund is in the furtherance of the public purpose of expanding and ensuring access to telecommunications connectivity.

The introduced required the comptroller to adopt rules to administer the provisions establishing the broadband infrastructure fund, whereas the substitute makes the adoption of rules permissive.

The substitute includes provisions providing for transfers from the broadband infrastructure fund to the TUSF, the next generation 9-1-1 service fund, and to the commissioner of education, none of which appeared in the introduced.

The substitute does not include the provisions from the introduced suspending the imposition of the following fees during a period in which funding of the fees' corresponding services is being provided from the broadband infrastructure fund:

- the 9-1-1 emergency service fee;
- the emergency service fee for wireless telecommunications connections;
- the prepaid wireless 9-1-1 emergency services fee; and
- the 9-1-1 equalization surcharge.

The substitute includes provisions that were not in the introduced authorizing the comptroller to transfer to the credit of the pole replacement fund and the next generation 9-1-1 service fund any available amount from the broadband infrastructure fund. The substitute postpones the expiration of the provisions governing the next generation 9-1-1 service fund from 2025 to 2035, whereas the introduced did not.

The substitute omits the provision from the introduced appropriating \$5 billion on January 1, 2024, to the comptroller from the Economic Stabilization Fund, otherwise known as the Rainy Day Fund, for the purpose of immediately depositing that amount to the credit of the broadband infrastructure fund. The substitute includes provisions that instead require the comptroller to make the following one-time transfers:

- \$1 billion to the state broadband development account; and
- \$75 million to the state broadband pole replacement fund.