

## **BILL ANALYSIS**

C.S.S.B. 1238  
By: Nichols  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Since the passage of H.B. 5 by the 87th Texas Legislature, which sought to expand broadband service to certain areas in Texas, the U.S. Congress has made historic investments in broadband funding available to states as part of the Infrastructure Investment and Jobs Act, better known as the Bipartisan Infrastructure Bill. C.S.S.B. 1238 seeks to better align existing state statute with the updated federal guidelines regarding broadband mapping and availability to ensure that the state is in a position to maximize the amount of federal funding the state stands to receive and to enhance broadband access, mapping, and eligibility.

### **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 SECTIONS 1, 2, and 3 of this bill.

### **ANALYSIS**

C.S.S.B. 1238 amends the Government Code to revise provisions relating to the administration of the broadband development office, the development of the state broadband development map, and the state's broadband development program.

#### **Qualification as Broadband Service**

C.S.S.B. 1238 includes among the requisite capabilities of an Internet service to qualify as broadband service the ability to provide a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements. The bill specifies that, in exercising its existing authority to require that an Internet service be capable of matching federal standards for advanced telecommunications capability to qualify as broadband service that are different than state standards, the comptroller of public accounts must do so by adopting rules to that effect. The bill repeals a provision requiring the broadband development office, following an adjustment of minimum download or upload speeds required to qualify as broadband service, to publish on the comptroller's website the adjusted minimum download and upload speeds.

#### **State Broadband Development Map**

C.S.S.B. 1238 revises provisions governing the state broadband development map to replace the provisions providing for the classification of designated areas in Texas as either an "eligible area" or "ineligible area" with provisions providing for the classification of each broadband

serviceable location in Texas as an "unserved location," "underserved location," or "served location," with those new classifications having the following meanings:

- an "unserved location" is a location that does not have access to reliable broadband service capable of providing the requisite speeds to qualify as broadband service;
- an "underserved location" is a location that is not an unserved location but does not have access to reliable broadband service with the capability of providing a speed of not less than 100 megabits per second for a download, a speed of not less than 20 megabits per second for an upload, and a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements; and
- a "served location" is a location that is neither an unserved nor an underserved location.

The bill updates other provisions governing the map accordingly and authorizes the comptroller by rule to establish new threshold speeds for a location to qualify as an underserved location if the comptroller has required Internet service to be capable of matching federal standards to qualify as broadband service.

C.S.S.B. 1238 revises the provision setting out the information the map must display to require that the map organize broadband serviceable locations into designated areas and to further require that the existing map components be displayed for each designated area. The bill expands the information the map must display to require the map to display for each designated area the number and percentage of unserved, underserved, and served locations within the area. The bill broadens the information the office is authorized to use in creating or updating the map by replacing the requirement for the office to use information available from the FCC with a requirement for the office to use the best available data. The bill replaces the prohibition against a person who contracts with the office to provide technical or administrative assistance to the office for the purpose of creating or updating the map from providing services for a broadband provider in Texas before the second anniversary of the last day the contract is in effect with a prohibition against such a person providing services in Texas to a broadband provider before that second anniversary.

C.S.S.B. 1238 revises provisions providing for the redesignation by the office of a particular location on the map following petition by a broadband service provider or political subdivision to do the following:

- replace the provision authorizing the office, in establishing criteria for redesignation, to include as a criterion community surveys regarding Internet reliability with a provision requiring the criteria to include an evaluation of reliability data as a criterion;
- replace the provision requiring the office to provide notice of each redesignation petition to each broadband service provider in the applicable location and also to post notice on the comptroller's website with a provision that, as follows:
  - requires the office to provide notice only of each accepted petition;
  - requires the notice to be provided to all affected broadband services providers and political subdivisions; and
  - specifies that posting the notice on the comptroller's website is the means of providing notice; and
- replace the provision requiring a broadband service provider that receives a redesignation petition notice to provide information to the office showing whether there should be a redesignation with a provision that instead authorizes affected broadband service providers and political subdivisions to provide information to the office for this purpose.

### **Broadband Development Program**

C.S.S.B. 1238 authorizes the office, as part of the broadband development program, to award grants, low-interest loans, and other financial incentives to applicants for eligible broadband infrastructure projects designed to provide qualifying broadband service to unserved and underserved locations. An eligible broadband infrastructure project includes a project in which

not less than 80 percent of the broadband serviceable locations to be served by the project are unserved and underserved locations.

C.S.S.B. 1238 authorizes the office, as part of the broadband development program, to award grants, low-interest loans, and other financial incentives to applicants for middle-mile broadband infrastructure projects. The office may award such incentives to applicants for projects not involving the deployment of broadband that expand the accessibility, affordability, or adoption of broadband service, including education, training, community outreach, remote learning or telehealth facilities, equipment purchases, or any other use permitted by the applicable funding source.

C.S.S.B. 1238 removes the requirement for the office to establish and publish criteria for making awards under the broadband development program generally and requires the office instead to establish eligibility and award criteria for making awards under the program for each applicable notice of funds availability. The bill authorizes the comptroller by rule to prescribe the manner in which the office must provide notice to applicants of the applicable criteria. The bill updates existing requirements applicable to the office in establishing the criteria and requires the office additionally to do the following:

- give preference to an applicant that provided certain information requested by the office relating to existing federal funding accepted by the applicant or relating to the broadband development map; and
- take into consideration whether an applicant has forfeited federal funding for defaulting on a project to deploy qualifying broadband service.

C.S.S.B. 1238 repeals the authorization for an area that was classified as an ineligible area on account of the existence of federal funding to support broadband service deployment in the area, which is a classification that makes the area ineligible for program funds under current law, to be reclassified as an eligible area under certain circumstances. The office, in administering the broadband development program, is instead prohibited from awarding a grant, loan, or other financial incentive for deployment of last-mile broadband service for a location that is subject to a federal commitment to deploy qualifying broadband service on the date the application is submitted or during the application process, except that the office may award a grant, loan, or other financial incentive for deployment of last-mile broadband service for such a location if federal funding is forfeited or the recipient of the federal funding is disqualified from receiving the funding and the location otherwise is eligible for funding under the program.

C.S.S.B. 1238 does the following with respect to the broadband development program:

- requires an applicant for program funding that has been awarded federal funding directly and has entered into an enforceable commitment to deploy broadband services in a location to provide to the office information the office may require regarding the existing enforceable commitment and the proposed deployment of broadband;
- removes the prohibition against the office awarding program funding to a broadband provider that does not report any information requested by the office relating to the broadband development map;
- clarifies that the office is required only to post online information from each application that is actually accepted by the office; and
- clarifies that the prohibition against the office providing funding to a noncommercial provider of broadband service for an area, if a commercial broadband provider has submitted an application for the area, applies with respect to broadband serviceable locations and only if an eligible commercial provider has submitted an application for the same location.

### **State Broadband Plan**

C.S.S.B. 1238 removes the requirement for the office to consider policy recommendations of the governor's broadband development council in developing the state broadband plan.

## **Broadband Development Office Board of Advisors**

C.S.S.B. 1238 revises the membership of the office's board of advisors to remove the member appointed to represent nonprofit corporations that work on the expansion, adoption, affordability, and use of broadband service with a public member with experience in telecommunications or broadband service. The bill changes the minimum required frequency of the board's meetings from once every other month to semiannually.

### **Repealed Provisions**

C.S.S.B. 1238 repeals Sections 490I.0101(c) and 490I.0105(m), Government Code.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1238 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute omits provisions from the engrossed requiring that preference be given to broadband infrastructure projects involving the use of fiber optic facilities.

Whereas the engrossed repealed provisions relating to the governor's broadband development council, the substitute does not.