

BILL ANALYSIS

Senate Research Center
88R20237 DIO-F

C.S.S.B. 1238
By: Nichols
Business & Commerce
3/30/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, the Texas Legislature took a large step forward in connecting all Texans to high speed Internet with the passage of H.B. 5. H.B. 5 created the State Broadband Development Office and set up a Broadband Development Program and State Broadband Development Account. It also directed the Broadband Development Office to create and publish the state's first broadband map and plan (both of which are now publicly available). In essence, H.B. 5 established a framework for the study and deployment of broadband in Texas. Since the passage of H.B. 5 in the 87th Session, the broadband landscape has changed rapidly across the nation. The United States Congress has made historic amounts of broadband funding available to states, and the Federal Communications Commission has altered the basic standards of broadband mapping and availability.

S.B. 1238 adapts the framework established by H.B. 5 to better reflect this evolved landscape. Specifically, it updates the definition of broadband access and adopts standards for what constitutes served, underserved, and unserved locations for that purpose. It also revises the metrics to be utilized for the creation of the state's broadband map in recognition of the fact that we now have, for the first time, location-based broadband data available. Finally, it alleviates conflicts in state statute with federal guidelines for deployment of federal funds, where necessary.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1238 amends current law relating to broadband development.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 490I.0101, Government Code) and SECTION 3 (Section 490I.0106, Government Code) of this bill.

Rulemaking authority previously granted to the Comptroller of Public Accounts of the State of Texas is modified in SECTION 2 (Section 490I.0101, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 490I.0101(a) and (b), Government Code, as follows:

(a) Defines, for the purposes of this chapter, subject to Subsection (b), "broadband service" as Internet service with the capability of providing a:

- (1) speed of not less than 25 megabits per second for a download, rather than a download speed of 25 megabits per second or faster;
- (2) speed of not less than three megabits per second for an upload, rather than an upload speed of three megabits per second or faster; and
- (3) network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements.

(b) Authorizes the Comptroller of Public Accounts of the State of Texas (comptroller) by rule to require Internet service to be capable of matching the federal standards, rather than capable of providing download or upload speeds that match the federal threshold, in order to qualify under Chapter 490I (Broadband Development Office) as "broadband service" if the Federal Communications Commission (FCC) adopts standards, rather than upload or download threshold speeds, for advanced telecommunications capability under 47. U.S.C. Section 1302 that are different from those specified by Subsection (a).

SECTION 2. Amends Sections 490I.0105(a), (b), (c), (d), (f), (k), (l), (n), (o), and (p), Government Code, as follows:

(a) Requires the broadband development office (office) to create, update annually, and publish on the comptroller's Internet website a map classifying each broadband serviceable location, rather than each designated area, in this state as:

(1) an unserved location if the location does not have access to reliable broadband service capable of providing the speeds described by Subdivisions (2);

(2) an underserved location if the location is not an unserved location, but does not have access to reliable broadband service with the capability of providing:

(A) a speed of not less than 100 megabits per second for a download;

(B) a speed of not less than 20 megabits per second for an upload; and

(C) a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements; or

(3) a served location if the location is neither an unserved nor an underserved location.

Deletes existing text designating an area as eligible if fewer than 80 percent of the addresses in the designated area have access to broadband service or the federal government has not awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area. Deletes existing text designating an area as an ineligible area if 80 percent or more of the addresses in the designated area have access to broadband service or if the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area

(b) 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 under Section 490I.0101(b), rather than authorizing the comptroller by rule to determine the scope of a designated area under Subsection (a).

(c) Authorizes the office to evaluate the usefulness of the standards for unserved and underserved locations, rather than eligible and ineligible areas, outlined in Subsection (a) after creation of the initial map described in Subsection (a) and, if appropriate, to make a recommendation to the legislature to revise the standards.

(d) Requires that the map required by Subsection (a) organize broadband serviceable locations into designated areas and display for each area:

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

(2) 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;

(3) each public school campus, rather than each public school campus in this state, with an indication of whether the public school campus has access to broadband service;

(4) the number and percentage of unserved, underserved, and served locations within an area.

Makes a nonsubstantive change.

(f) Requires the office to use the best available data, including information available from the FCC, to create or update the map, except as provided by Subsection (g) (relating to authorizing the office to request necessary information from a political subdivision or broadband service provider if the information from the FCC is not available or is insufficient).

(k) Prohibits a person who contracts under Subsection (i) (relating to authorizing the office to contract with a private consultant or other appropriate person who is not associated with a commercial broadband provider to provide technical or administrative assistance to the office for the purpose of creating or updating the map) from providing services in this state to a broadband provider, rather than for a broadband provider in this state, before the second anniversary of the last day the contract is in effect.

(l) Requires the office to establish criteria for determining whether a broadband serviceable location, rather than a designated area, should be reclassified as an unserved or underserved location, rather than an eligible area or an ineligible area. Requires the criteria to include an evaluation of Internet speed test and reliability data. Deletes existing text requiring criteria to include information on end user addresses. Deletes existing text authorizing the criteria to also include community surveys regarding the reliability of Internet service where available.

(n) Authorizes a broadband service provider or political subdivision to petition the office to reclassify a broadband serviceable location, rather than a designated area on the map as an eligible area or ineligible area. Requires the office to provide notice of each accepted petition to each affected broadband service provider and political subdivision, rather than each broadband service provider that provides broadband service to the designated area, by posting notice of the petition on the comptroller's Internet website. Makes nonsubstantive changes.

(o) Authorizes, rather than requires, each affected broadband service provider or political subdivision to provide information to the office showing whether the broadband serviceable location should or should not be reclassified, not later than not later than the 45th day after the date that the office posts notice under Subsection (n). Makes conforming changes.

(p) Makes conforming changes to this subsection.

SECTION 3. Amends Section 490I.0106, Government Code, as follows:

Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) Requires the office to 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. Deletes existing text specifying the grants, loans, and other financial incentives be used in designated areas determined to be eligible areas by the office under Section 490I.0105 (Broadband Development Map).

(a-1) Authorizes the office 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. Provides that an eligible broadband infrastructure project, for the purposes of this

subsection, 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.

(a-2) Authorizes the office to award grants, low-interest loans, and other financial incentives to applicants for middle-mile broadband infrastructure projects.

(a-3) Authorizes the office to award grants, low-interest loans, and other financial incentives to applicants for projects not involving the deployment of broadband infrastructure 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.

(b) Requires the office to establish eligibility and award criteria, rather than publish criteria, for making awards under this chapter rather than under Subsection (a) for each applicable notice of funds availability. Authorizes the comptroller by rule to prescribe the manner in which the office is required to provide notice to applicants of the applicable criteria. Requires the office, in establishing the eligibility and award criteria, to:

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

(2) prioritize the applications of applicants that will expand access to and adoption of broadband service in designated area in which the highest percentage of broadband serviceable locations are unserved or underserved locations, rather than eligible areas in which the lowest percentage of addresses have access to broadband service;

(3) makes a nonsubstantive change to this subdivision;

(4) give preference to an applicant that provided the information requested by the office under Section 490I.0105 or 490I.01061; and

(5) take into consideration whether an applicant has forfeited federal funding for defaulting on a project to deploy qualifying broadband service.

(c) Authorizes the office to establish criteria that take into account a cost benefit analysis for awarding money to the areas, rather than the eligible areas, described by Subsection (b)(2), notwithstanding that subdivision.

(d) Prohibits the office from:

(1) except as provided by Section 490I.01062, favoring a particular broadband technology in awarding grants, loans, or other financial incentives;

(2) awarding a grant, loan or other financial incentive to a noncommercial provider of broadband service for a broadband serviceable location if an eligible area commercial provider of broadband service has submitted an application for the same location. Makes conforming changes;

(3) makes a nonsubstantive change to this subdivision; or

(4) except as provided by Section 490I.01061, 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.

Deletes existing text prohibiting the office from awarding grants, loans, or financial incentives to a broadband provider that does not report information requested by the office under Section 490I.0105.

(e) Requires the office to:

(1) makes no changes to this subdivision; and

(2) post on the comptroller's Internet website for at least 30 days information from each accepted application, including the applicant's name, the area targeted for expanded broadband service access or adoption by the application, and any other information the office considers relevant or necessary. Deletes existing text requiring that the information be posted for at least 30 days before the office makes a decision on the application.

(f) Requires the office to accept from any interested party, other than a broadband service provider that does not report information requested by the office under Section 490I.0105 or 490I.0106, during the 30-day posting period described by Subsection (e) for an application, 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.

(g) Authorizes the applicant to resubmit the application without the challenged locations, rather than addresses, not later than 30 days after the date that the office upheld the protest if the office upholds a protest submitted under Subsection (f) on the grounds that one or more of the broadband serviceable locations are not eligible to receive funding under this chapter, rather than addresses in an eligible area subject to the application have access to broadband service, notwithstanding any deadline for submitting an application.

(h) Requires that the criteria for award recipients include requirements that grants, loans, and other financial incentives awarded through the program for the deployment of broadband infrastructure are authorized to be used only for certain expenses that will facilitate the provision or adoption of broadband service.

(i) Makes no changes to this subsection.

SECTION 4. Amends Chapter 490I, Government Code, by adding Sections 490I.01061 and 490I.01062, as follows:

Sec. 490I.01061. EXISTING FEDERAL FUNDING; REPORTING REQUIREMENTS.

(a) Authorizes the office to award 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 if:

(1) federal funding is forfeited or the recipient of the federal funding is disqualified from receiving the funding; and

(2) the location otherwise is authorized to receive funding under the program.

(b) Requires an applicant for an award under this chapter 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:

(1) the existing enforceable commitment; and

(2) the proposed deployment of broadband.

Sec. 490I.01062. FIBER OPTIC PREFERENCE. (a) Requires the office to prioritize broadband infrastructure projects that connect each end-user location using end-to-end fiber optic facilities that meet speed, latency, reliability, consistency, scalability, and related criteria as the office is required to determine for each applicable notice of funds availability.

(b) Authorizes the office to consider an application for a broadband infrastructure project that does not employ end-to-end fiber optic facilities if the use of an alternative technology:

(1) is proposed for a high cost area;

(2) may be deployed at a lower cost; and

(3) meets the criteria established by the office under Subsection (a).

SECTION 5. Amends Section 490I.0107(b), Government Code, as follows:

(b) Requires the office, in developing the state broadband plan, to:

(1) makes no changes to this subdivision;

(2) deletes existing text requiring the office to consider the policy recommendations of the governor's broadband development council. Redesignates existing Subdivision (3) as Subdivision (2), and

(3)-(4) Redesignates existing Subdivision (4) and (5) as Subdivisions (3) and (4).

SECTION 6. Amends Section 490I.0110(b) and (h), Government Code, as follows:

(b) Provides that the office's board of advisors is composed of 10 members, appointed as follows:

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

(A) makes no changes to this paragraph; and

(B) one member of the public with experience in telecommunications or broadband service, rather than one member to represent nonprofit corporations that work on the expansion, adoption, affordability, and use of broadband service;

(2)-(5) makes no changes to these subdivisions.

(h) Requires the office's board of advisors to meet at least semiannually, rather than once every other month, with representatives from the office for the purpose of advising the work of the office in implementing the provisions of this chapter. Deletes existing text requiring the office's board of advisors to meet with representatives from the office beginning one year after the effective date of the Act enacting this chapter.

SECTION 7. Repealer: Chapter 490H (Governor's Broadband Development Council), Government Code.

Repealer: Section 490I.0101(c) (relating to requiring the office to publish on the comptroller's website the adjusted minimum download and upload speeds qualifying as "broadband service"), Government Code.

Repealer: Section 490I.0105(m) (relating to authorizing a designated area classified as an ineligible on account of the existence of federal funding to support broadband service deployment to be reclassified an eligible in certain circumstances), Government Code.

SECTION 8. Effective date: upon passage or September 1, 2023.