S.B. No. 1238

AN ACT

relating to broadband development.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Sections 490I.0101(a) and (b), Government Code, are amended to read as follows:

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

(1)  [~~a download~~] speed of not less than 25 megabits per second for a download [~~or faster~~]; [~~and~~]

(2)  [~~an upload~~] speed of not less than three megabits per second for an upload; and

(3)  network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements [~~or faster~~].

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

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

(a)  The broadband development office shall create, update annually, and publish on the comptroller's Internet website a map classifying each broadband serviceable location [~~designated area~~] in this state as:

(1)  an unserved location [~~eligible area,~~] if[~~:~~

[~~(A)  fewer than 80 percent of the addresses in~~] the location does not [~~designated area~~] have access to reliable broadband service capable of providing the speeds described by Section 490I.0101(a); [~~and~~

[~~(B)  the federal government has not awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area; or~~]

(2)  an underserved location [~~ineligible area,~~] if the location is not an unserved location but does not[~~:~~

[~~(A)  80 percent or more of the addresses in the designated area~~] 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 [~~(B) the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area~~].

(b)  The comptroller by rule may 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) [~~determine the scope of a designated area under Subsection (a)~~].

(c)  After creation of the initial map described in Subsection (a), the office may evaluate the usefulness of the standards for unserved and underserved locations [~~eligible and ineligible areas~~] outlined in Subsection (a) and, if appropriate, make a recommendation to the legislature to revise the standards.

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

(1)  the number of broadband service providers that serve the [~~each designated~~] 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; and

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

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

(k)  A person who contracts under Subsection (i) may not provide services in this state to [~~for~~] a broadband provider [~~in this state~~] before the second anniversary of the last day the contract is in effect.

(l)  The office shall establish criteria for determining whether a broadband serviceable location [~~designated area~~] should be reclassified as an unserved or underserved location [~~eligible area or an ineligible area~~]. The criteria must include an evaluation of Internet speed test and reliability 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 broadband serviceable location [~~designated area on the map as an eligible area or ineligible area~~]. The office shall provide notice of each accepted [~~the~~] petition to each affected broadband service provider and political subdivision by posting [~~that provides broadband service to the designated area and post~~] notice of the petition on the comptroller's Internet website.

(o)  Not later than the 45th day after the date that the office posts [~~a broadband provider receives~~] notice under Subsection (n), each affected broadband service [~~the~~] provider or political subdivision may [~~shall~~] provide information to the office showing whether the broadband serviceable location [~~designated area~~] should or should not be reclassified.

(p)  Not later than the 75th day after the date that the office posts the [~~a broadband provider receives~~] notice under Subsection (n), the office shall determine whether to reclassify the broadband serviceable location [~~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.

SECTION 3.  Section 490I.0106, Government Code, is amended to read as follows:

Sec. 490I.0106.  BROADBAND DEVELOPMENT PROGRAM. (a) The 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.0105~~].

(a-1)  The office may 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. For the purposes of this subsection, 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.

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

(a-3)  The office may 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)  The office shall establish eligibility and award [~~and publish~~] criteria for making awards under this chapter for each applicable notice of funds availability. The comptroller by rule may prescribe the manner in which the office shall provide notice to applicants of the applicable criteria [~~Subsection (a)~~]. In establishing eligibility and award criteria, the [~~The~~] office shall:

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

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

(3)  prioritize the applications of applicants that will expand access to broadband service in public and private primary and secondary schools and institutions of higher education;

(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)  Notwithstanding Subsection (b)(2), the office may establish 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)  except as provided by Section 490I.01062, 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.0105;~~

[~~(3)~~]  award a grant, loan, or other financial incentive to a noncommercial provider of broadband service for a broadband serviceable location [~~an eligible area~~] if an eligible [~~a~~] commercial provider of broadband service has submitted an application for the same location; [~~eligible area; or~~]

(3) [~~(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; or

(4)  except as provided by Section 490I.01061, 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 on the date the application is submitted or during the application process.

(e)  The office shall:

(1)  post on the comptroller's Internet website information about the application process and the receipt of awards and shall update that information as necessary; 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[~~, for a period of at least 30 days before the office makes a decision on the application~~].

(f)  During the 30-day posting period described by Subsection (e) for an application, the office shall 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.01061, 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)  Notwithstanding any deadline for submitting an application, 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 [~~addresses in an eligible area subject to the application have access to broadband service~~], the applicant may resubmit the application without the challenged locations [~~addresses~~] not later than 30 days after the date that the office upheld the protest.

(h)  The office shall establish and publish criteria for award recipients. The criteria must include requirements that grants, loans, and other financial incentives awarded through the program for the deployment of broadband infrastructure may 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.

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

SECTION 4.  Chapter 490I, Government Code, is amended by adding Sections 490I.01061 and 490I.01062 to read as follows:

Sec. 490I.01061.  EXISTING FEDERAL FUNDING; REPORTING REQUIREMENTS. (a) The broadband development office may 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 may receive funding under the program.

(b)  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 shall 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) The broadband development office shall 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 shall determine for each applicable notice of funds availability.

(b)  The office may 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; or

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

SECTION 5.  Section 490I.0107(b), Government Code, is amended to read as follows:

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

(1)  to the extent possible, collaborate with state agencies, political subdivisions, broadband industry stakeholders and representatives, and community organizations that focus on broadband services and technology access;

(2)  [~~consider the policy recommendations of the governor's broadband development council;~~

[~~(3)~~]  favor policies that are technology-neutral and protect all members of the public;

(3)  [~~(4)~~]  explore state and regional approaches to broadband development; and

(4)  [~~(5)~~]  examine broadband service needs related to:

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

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

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

SECTION 6.  Sections 490I.0110(b), (h), and (i), Government Code, are amended to read as follows:

(b)  The broadband development office board of advisors is composed of 10 members, appointed as follows:

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

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

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

(2)  three members appointed by the lieutenant governor, including:

(A)  one member who resides in an urban area;

(B)  one member to represent the public primary and secondary education community; and

(C)  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;

(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 to represent the health and telemedicine industry; and

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

(4)  the comptroller or the comptroller's designee; and

(5)  one nonvoting member appointed by the broadband development office to represent the office.

(h)  The [~~Beginning one year after the effective date of the Act enacting this chapter, the~~] board of advisors shall meet at least semiannually [~~once every other month~~] with representatives from the broadband development office for the purpose of advising the work of the office in implementing the provisions of this chapter.

(i)  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 under Section 490I.0106 if the member is involved in decisions regarding the award of grants, loans, or other financial incentives under that section.

SECTION 7.  The following provisions of the Government Code are repealed:

(1)  Section 490I.0101(c); and

(2)  Section 490I.0105(m).

SECTION 8.  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, 2023.

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I hereby certify that S.B. No. 1238 passed the Senate on April 5, 2023, by the following vote:  Yeas 31, Nays 0; May 4, 2023, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 5, 2023, House granted request of the Senate; May 17, 2023, Senate adopted Conference Committee Report by the following vote:  Yeas 31, Nays 0.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 1238 passed the House, with amendments, on May 2, 2023, by the following vote:  Yeas 132, Nays 7, one present not voting; May 5, 2023, House granted request of the Senate for appointment of Conference Committee; May 15, 2023, House adopted Conference Committee Report by the following vote:  Yeas 131, Nays 13, one present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_            Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor