88R11075 DIO-F

By:  Nichols S.B. No. 1238

A BILL TO BE ENTITLED

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), (c), (d), (f), (k), (l), and (n), 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 designated area in this state as:

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

[~~(A)~~] fewer than 80 percent of the broadband serviceable locations [~~addresses~~] in the designated area have access to broadband service; [~~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 [~~ineligible~~] area, if the area is not an unserved area and fewer than[~~:~~

[~~(A)~~] 80 percent [~~or more~~] of the broadband serviceable locations [~~addresses~~] in the designated area have access to broadband service capable of delivering threshold speeds the comptroller establishes by rule; or

(3)  a served area if the designated area is neither an unserved nor an underserved area [~~(B) the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area~~].

(c)  After creation of the initial map described in Subsection (a), the office may evaluate the usefulness of the standards for unserved [~~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 display:

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

(2)  for each designated [~~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.

(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 designated area should be reclassified as an unserved [~~eligible~~] area or an underserved [~~ineligible~~] area. The criteria must include an evaluation of Internet speed test 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 designated area on the map as an unserved [~~eligible~~] area or underserved [~~ineligible~~] area. The office shall provide notice of the petition to each broadband service provider that provides broadband service to the designated area and post notice of the petition on the comptroller's Internet website.

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 the deployment of eligible broadband infrastructure projects located in:

(1)  an area classified by the office as unserved or underserved; or

(2)  an area classified by the office as served if the proposed broadband infrastructure project is targeted to deploy broadband services to locations within the designated area that do not have access to broadband service.

(a-2)  The office may award grants 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 and publish criteria for making awards under this chapter [~~Subsection (a)~~]. 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 lowest percentage of broadband serviceable 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.

(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)  accept an application from or award grants, loans, or other financial incentives to a broadband provider that does not report information requested by the office under Section 490I.0105 or 490I.01061;

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

(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

(5)  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.

(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 [~~addresses~~] in a designated [~~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 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 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; and

(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.  Section 490I.0110(h), Government Code, is amended to read as follows:

(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.

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

(1)  Chapter 490H;

(2)  Section 490I.0101(c); and

(3)  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.