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S.B. No. 1238

Substitute the following for S.B. No. 1238:

By: Metcalf

C.S.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), (b), (c), (d), (f), (k),

1 (l), (n), (o), and (p), Government Code, are amended to read as  
2 follows:

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

7 (1) an unserved location [~~eligible area~~], if [~~+~~  
8 [~~(A) fewer than 80 percent of the addresses in~~  
9 the location does not [~~designated area~~] have access to reliable  
10 broadband service capable of providing the speeds described by  
11 Section 490I.0101(a); [~~and~~

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

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

17 [~~(A) 80 percent or more of the addresses in the~~  
18 ~~designated area~~] have access to reliable broadband service with the  
19 capability of providing:

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

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

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

27 (3) a served location if the location is neither an

1 unserved nor an underserved location [~~(B) the federal government~~  
2 ~~has awarded funding under a competitive process to support the~~  
3 ~~deployment of broadband service to addresses in the designated~~  
4 ~~area~~].

5 (b) The comptroller by rule may establish new threshold  
6 speeds for a location to qualify as an underserved location if the  
7 comptroller has required Internet service to be capable of matching  
8 federal standards to qualify as broadband service under Section  
9 490I.0101(b) [~~determine the scope of a designated area under~~  
10 ~~Subsection (a)~~].

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

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

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

21 (2) [~~for each eligible area,~~] an indication of whether  
22 the area has access to Internet service that is not broadband  
23 service, regardless of the technology used to provide the service;  
24 [~~and~~]

25 (3) each public school campus [~~in this state~~] with an  
26 indication of whether the public school campus has access to  
27 broadband service; and

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

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

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

10          (l) The office shall establish criteria for determining  
11 whether a broadband serviceable location ~~[designated area]~~ should  
12 be reclassified as an unserved or underserved location ~~[eligible~~  
13 ~~area or an ineligible area]~~. The criteria must include an  
14 evaluation of Internet speed test and reliability data ~~[and~~  
15 ~~information on end user addresses. The criteria may also include~~  
16 ~~community surveys regarding the reliability of Internet service,~~  
17 ~~where available]~~.

18          (n) A broadband service provider or political subdivision  
19 may petition the office to reclassify a broadband serviceable  
20 location ~~[designated area on the map as an eligible area or~~  
21 ~~ineligible area]~~. The office shall provide notice of each accepted  
22 ~~[the]~~ petition to each affected broadband service provider and  
23 political subdivision by posting ~~[that provides broadband service~~  
24 ~~to the designated area and post]~~ notice of the petition on the  
25 comptroller's Internet website.

26          (o) Not later than the 45th day after the date that the  
27 office posts ~~[a broadband provider receives]~~ notice under

1 Subsection (n), each affected broadband service ~~[the]~~ provider or  
2 political subdivision may ~~[shall]~~ provide information to the office  
3 showing whether the broadband serviceable location ~~[designated~~  
4 ~~area]~~ should or should not be reclassified.

5 (p) Not later than the 75th day after the date that the  
6 office posts the ~~[a broadband provider receives]~~ notice under  
7 Subsection (n), the office shall determine whether to reclassify  
8 the broadband serviceable location ~~[designated area]~~ on the map and  
9 update the map as necessary. A determination made by the office  
10 under this subsection is not a contested case for purposes of  
11 Chapter 2001.

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

14 Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) The  
15 broadband development office shall establish a program to award  
16 grants, low-interest loans, and other financial incentives to  
17 applicants for the purpose of expanding access to and adoption of  
18 broadband service ~~[in designated areas determined to be eligible~~  
19 ~~areas by the office under Section 490I.0105]~~.

20 (a-1) The office may award grants, low-interest loans, and  
21 other financial incentives to applicants for eligible broadband  
22 infrastructure projects designed to provide qualifying broadband  
23 service to unserved and underserved locations. For the purposes of  
24 this subsection, an eligible broadband infrastructure project  
25 includes a project in which not less than 80 percent of the  
26 broadband serviceable locations to be served by the project are  
27 unserved and underserved locations.

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

4        (a-3) The office may award grants, low-interest loans, and  
5 other financial incentives to applicants for projects not involving  
6 the deployment of broadband infrastructure that expand the  
7 accessibility, affordability, or adoption of broadband service,  
8 including education, training, community outreach, remote learning  
9 or telehealth facilities, equipment purchases, or any other use  
10 permitted by the applicable funding source.

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

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

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

27            (3) prioritize the applications of applicants that

1 will expand access to broadband service in public and private  
2 primary and secondary schools and institutions of higher education;

3 (4) give preference to an applicant that provided the  
4 information requested by the office under Section 490I.0105 or  
5 490I.01061; and

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

9 (c) Notwithstanding Subsection (b)(2), the office may  
10 establish criteria that take into account a cost benefit analysis  
11 for awarding money to the ~~[eligible]~~ areas described by that  
12 subdivision.

13 (d) The office may not:

14 (1) favor a particular broadband technology in  
15 awarding grants, loans, or other financial incentives;

16 (2) ~~[award grants, loans, or other financial~~  
17 ~~incentives to a broadband provider that does not report information~~  
18 ~~requested by the office under Section 490I.0105,~~

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

24 (3) ~~[(4)]~~ take into consideration distributions from  
25 the state universal service fund established under Section 56.021,  
26 Utilities Code, when deciding to award grants, loans, or other  
27 financial incentives; or

1           (4) except as provided by Section 490I.01061, award a  
2 grant, loan, or other financial incentive for deployment of  
3 last-mile broadband service for a location that is subject to a  
4 federal commitment to deploy qualifying broadband service on the  
5 date the application is submitted or during the application  
6 process.

7           (e) The office shall:

8           (1) post on the comptroller's Internet website  
9 information about the application process and the receipt of awards  
10 and shall update that information as necessary; and

11           (2) post on the comptroller's Internet website for at  
12 least 30 days information from each accepted application, including  
13 the applicant's name, the area targeted for expanded broadband  
14 service access or adoption by the application, and any other  
15 information the office considers relevant or necessary[~~, for a~~  
16 ~~period of at least 30 days before the office makes a decision on the~~  
17 ~~application].~~

18           (f) During the 30-day posting period described by  
19 Subsection (e) for an application, the office shall accept from any  
20 interested party, other than a broadband service provider that does  
21 not report information requested by the office under Section  
22 490I.0105 or 490I.01061, a written protest of the application  
23 relating to whether the applicant or project is eligible for an  
24 award or should not receive an award based on the criteria  
25 prescribed by the office.

26           (g) Notwithstanding any deadline for submitting an  
27 application, if the office upholds a protest submitted under



1 Subsection (f) on the grounds that one or more of the broadband  
2 serviceable locations are not eligible to receive funding under  
3 this chapter [~~addresses in an eligible area subject to the~~  
4 ~~application have access to broadband service~~], the applicant may  
5 resubmit the application without the challenged locations  
6 [~~addresses~~] not later than 30 days after the date that the office  
7 upheld the protest.

8 (h) The office shall establish and publish criteria for  
9 award recipients. The criteria must include requirements that  
10 grants, loans, and other financial incentives awarded through the  
11 program for the deployment of broadband infrastructure may be used  
12 only for capital expenses, purchase or lease of property, and other  
13 expenses, including backhaul and transport, that will facilitate  
14 the provision or adoption of broadband service.

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

19 SECTION 4. Chapter 490I, Government Code, is amended by  
20 adding Section 490I.01061 to read as follows:

21 Sec. 490I.01061. EXISTING FEDERAL FUNDING; REPORTING  
22 REQUIREMENTS. (a) The broadband development office may award a  
23 grant, loan, or other financial incentive for deployment of  
24 last-mile broadband service for a location that is subject to a  
25 federal commitment to deploy qualifying broadband service if:

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

1           (2) the location otherwise may receive funding under  
2 the program.

3           (b) An applicant for an award under this chapter that has  
4 been awarded federal funding directly and has entered into an  
5 enforceable commitment to deploy broadband services in a location  
6 shall provide to the office information the office may require  
7 regarding:

8           (1) the existing enforceable commitment; and

9           (2) the proposed deployment of broadband.

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

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

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

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

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

22           (3) ~~[(4)]~~ explore state and regional approaches to  
23 broadband development; and

24           (4) ~~[(5)]~~ examine broadband service needs related  
25 to:

26           (A) public safety, including the needs of state  
27 agencies involved in the administration of criminal justice, as

1 that term is defined by Article 66.001, Code of Criminal Procedure;

2 (B) public education and state and local  
3 education agencies, including any agency involved in the electronic  
4 administration of an assessment instrument required under Section  
5 39.023, Education Code; and

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

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

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

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

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

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

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

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

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

26 (C) one member who resides in a county that:

27 (i) is adjacent to an international border;

1 (ii) is located not more than 150 miles from  
2 the Gulf of Mexico; and

3 (iii) has a population of more than 60,000;

4 (3) three members appointed by the speaker of the  
5 house of representatives, including:

6 (A) one member who resides in a rural area;

7 (B) one member to represent the health and  
8 telemedicine industry; and

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

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

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

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

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

22 (1) Section [490I.0101\(c\)](#); and

23 (2) Section [490I.0105\(m\)](#).

24 SECTION 8. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section [39](#), Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2023.