

## **BILL ANALYSIS**

C.S.S.B. 1405  
By: Nichols  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Broadband Development Office (BDO), which operates within the office of the comptroller of public accounts, awards grants, low-interest loans, and incentives to Internet service providers and local governments that expand access to broadband service in underserved areas across the state. The bill sponsor has informed the committee that it is important to address the evolving broadband landscape and grant the BDO more flexibility in both leveraging \$1.5 billion in state funds and managing various federal programs that enhance infrastructure and digital skills statewide. C.S.S.B. 1405 seeks to expand broadband access and reduce taxes on Internet services by making key amendments to the state's broadband framework, streamlining grant application processes, improving mapping strategies, and alleviating tax liability associated with Internet service and broadband grant awards.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1405 amends the Government Code to revise statutory provisions relating to the Texas Broadband Pole Replacement Program, broadband speed thresholds, the state broadband development map, and the broadband development program and amends the Tax Code to make certain changes relating to sales and use tax for Internet access service and franchise tax liability in connection with qualifying broadband grants. The bill also eliminates the governor's broadband development council.

#### **Texas Broadband Pole Replacement Program**

C.S.S.B. 1405 makes the following changes to the requirement for the comptroller of public accounts, not later than the 60th day after the date the pole replacement fund receives money for the Texas Broadband Pole Replacement Program, to maintain and publish on the comptroller's website certain statistics on applications and awards under the program and the estimated amount of money remaining in the pole replacement fund:

- replaces the 60-day deadline with a deadline of November 1 of each year;
- removes the specification that the comptroller maintains the information in addition to publishing it;
- specifies that the statistics are from the preceding state fiscal year; and

- changes the estimated amount that must be published from the estimated amount of money remaining in the fund to the estimated amount of money available for grants from the program as of the last day of the preceding state fiscal year.

## **Broadband Speed**

C.S.S.B. 1405 makes the following changes to the minimum download and upload speeds that Internet service must be capable of providing to be considered "broadband service" for purposes of provisions relating to the broadband development office:

- increases from 25 to 100 the minimum megabits per second for a download; and
- increases from three to 20 the minimum megabits per second for an upload.

The bill removes the definition of "qualifying broadband service" for purposes of the Texas Broadband Pole Replacement Program and instead defines that term by reference to these provisions regarding broadband speed.

## **State Broadband Development Map**

C.S.S.B. 1405 revises the conditions a location must satisfy to be considered an unserved location for purposes of the state broadband development map as follows:

- with respect to the existing condition that the location does not have access to reliable broadband service capable of providing the speeds prescribed under state law for Internet service to qualify as broadband service, specifies the following:
  - the speed standards under state law apply only if the comptroller has not exercised the authority to require Internet service to meet standards adopted by the FCC that differ from those in state law to qualify as broadband service; and
  - if the comptroller does exercise that authority, the federal speed standards are the threshold for designation purposes; and
- provides for a location that is a public school or community anchor institution to be designated as unserved if the location does not have access to reliable gigabit-level broadband service.

C.S.S.B. 1405 replaces the provision establishing that the broadband development office is not required to create, update, or publish a broadband development map as required by state law if the FCC produces a map that enables the office to identify eligible and ineligible areas and meets certain requirements for map organization with a provision establishing that the office is not required to create, update, or publish a map if the office adopts a map produced by the FCC that enables the office to identify unserved, underserved, and served locations.

C.S.S.B. 1405 repeals the following statutory provisions relating to the development of the map by the office:

- the authorization for the office to request necessary information from a political subdivision or broadband service provider if information from the FCC is not available or not sufficient for the office to create or update the map and provisions relating to the reporting of information pursuant to such a request;
- the authorization for the office to contract with a private consultant or other appropriate person who is not associated or affiliated with a commercial broadband provider, including a local governmental entity, to provide technical or administrative assistance to the office for the purpose of creating or updating the map and provisions relating to such a contractor;
- the requirement for the office to establish criteria, which must include an evaluation of Internet speed test and reliability data, for determining whether a broadband serviceable location should be reclassified as an unserved or underserved location; and
- the authorization for a broadband service provider or political subdivision to petition the office to reclassify a broadband serviceable location and provisions relating to such a petition.

## **Broadband Development Program**

C.S.S.B. 1405 removes provisions that require the office to establish eligibility and award criteria for making awards under the program for each applicable notice of funds availability and that authorize the comptroller by rule to prescribe the manner in which the office must provide notice to applicants of the applicable criteria. The bill replaces the requirement for the office to take certain actions in establishing eligibility and awarding criteria with a requirement for the office, in making an award under the program, to take those actions to the extent applicable.

C.S.S.B. 1405 does the following with respect to the broadband development program:

- specifies that provisions relating to grants, loans, or financial incentives awarded under the program also apply to contracts awarded for such purposes; and
- removes the specification that contracts, grants, loans, or financial incentives awarded under the program are awarded to applicants.

The bill makes a person who is professionally affiliated with a person serving as a member of the board of advisors ineligible for funding from the program if the member is involved in decisions regarding the award of contracts.

C.S.S.B. 1405 changes the type of protest that the broadband development office is required to accept from any interested party, other than a broadband service provider that does not report certain information requested by the office, regarding an accepted program application during the 30-day period that information about the application is posted on the comptroller's website by doing the following:

- removing the requirement to accept a written protest of an 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; and
- replacing it with a requirement to accept a written protest of an application submitted for a contract, grant, loan, or other financial incentive for an eligible broadband infrastructure project designed to provide qualifying broadband service to unserved and underserved locations relating to whether the broadband-serviceable locations contained in the application are eligible to receive funding.

C.S.S.B. 1405, with respect to the prohibition against the office awarding a contract, grant, loan, or other financial incentive to a noncommercial provider of broadband service for a broadband serviceable location if an eligible commercial provider of broadband service has submitted an application for the same location, clarifies that such financial incentives are for the deployment of last-mile broadband service. The bill specifies that the prohibition against the office awarding a contract, 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 applies only with respect to an existing federal commitment.

C.S.S.B. 1405 requires the office to publish on the comptroller's website information regarding each grant awarded under the program, including the grant recipient's name, the area targeted for expanded broadband service access, the amount of the grant award, the status of the grant award, including incremental completion status, and any other information the office considers relevant.

## **Sales and Use Tax for Internet Access Service**

C.S.S.B. 1405 amends the Tax Code to remove Internet access service from the list of taxable services subject to the sales and use tax. The bill accordingly repeals the sales and use tax exemption for the first \$25 of a monthly charge for such service.

## **Franchise Tax Provisions Regarding Qualifying Broadband Grant**

C.S.S.B. 1405 expands the definition of "qualifying broadband grant," for purposes of franchise tax provisions that exclude proceeds of such a grant from a taxable entity's total revenue and allow for certain related expenses to be included as a cost of goods or as compensation, by including a grant for broadband deployment in Texas received by a taxable entity from the comptroller under Government Code provisions relating to infrastructure and broadband funding or to the broadband development office. For such purposes, a reimbursement award received by a taxable entity under the provisions relating to infrastructure and broadband funding is considered a grant for broadband development in Texas. These provisions of the bill apply only to a franchise tax report originally due on or after January 1, 2026.

## **Governor's Broadband Development Council Repealed**

C.S.S.B. 1405 repeals Government Code provisions relating to the establishment and administration of the governor's broadband development council.

## **Repealers**

C.S.S.B. 1405 repeals the following provisions:

- Chapter 490H, Government Code;
- Sections 490I.0105(g), (h), (i), (j), (k), (l), (n), (o), and (p), Government Code; and
- Section 151.325, Tax Code.

## **Transition Provision**

C.S.S.B. 1405 does not affect tax liability accruing before the bill's effective date. That liability continues in effect as if the bill had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

## **EFFECTIVE DATE**

July 1, 2025, or, if the bill does not receive the necessary vote, September 1, 2025.

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

While C.S.S.B. 1405 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 engrossed provided for a location to be designated as unserved for purposes of the state broadband development map if the location is a public school or community anchor institution and does not have access to reliable broadband service capable of providing symmetrical upload and download speeds of at least one gigabit per second with a network round-trip latency of less than or equal to 100 milliseconds based on the 95th percentile of speed measurements, whereas the substitute provides for a location to be designated as unserved if the location is a public school or community anchor institution and does not have access to reliable gigabit-level broadband service.

The substitute omits provisions in the engrossed that did the following with respect to the conditions under which a location is designated as underserved:

- revised the condition that the location does not have access to reliable broadband service with the capability of providing a download speed of not less than 100 megabits per second by increasing the minimum number of megabits to 250; and

- revised the condition that the location does not have access to reliable broadband service with the capability of providing an upload speed of not less than 20 megabits per second by increasing the minimum number of megabits to 25.

The substitute specifies that provisions relating to grants, loans, or financial incentives awarded under the broadband development program also apply to contracts awarded for such purposes, whereas the engrossed did not. The substitute includes a provision absent from the engrossed providing that 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 program if the member is involved in decisions regarding the award of contracts.

The substitute removes provisions in the engrossed that did the following:

- required the office to establish eligibility and award criteria for making awards under the program for each applicable notice of funds availability; and
- authorized the comptroller by rule to prescribe the manner in which the office must provide notice to applicants of the applicable criteria.

The substitute replaces the requirement in the engrossed for the office to take certain actions in establishing eligibility and award criteria with a requirement for the office, in making an award under the program, to take those actions to the extent applicable.

The substitute omits the following provisions in the engrossed:

- the requirement for the office, in establishing eligibility and award criteria for the broadband development program, to take into consideration whether an applicant has repeatedly used private property in an unauthorized manner or caused damage to private property, as demonstrated by affidavits submitted to the office by property owners affected by that conduct;
- with respect to the criteria for award recipients the office must establish and publish, the requirement for the criteria to include requirements that grants, loans, and other financial incentives awarded through the program for the deployment of broadband infrastructure may be subject to withdrawal if the award recipient is found, in accordance with rules adopted by the office, to have repeatedly used private property in an unauthorized manner or caused damage to private property; and
- the requirement for the comptroller by rule to establish a process for determining whether a financial incentive is subject to withdrawal that does the following:
  - provides for the submission of a notarized affidavit by an affected property owner; and
  - requires the office to notify an award recipient of the potential withdrawal and provide the recipient an opportunity to respond before taking action.

The substitute, with respect to the prohibition against the office awarding a contract, grant, loan, or other financial incentive to a noncommercial provider of broadband service for a broadband serviceable location if an eligible commercial provider of broadband service has submitted an application for the same location, clarifies that such financial incentives are for the deployment of last-mile broadband service, whereas the engrossed does not.

The substitute includes a provision absent from the engrossed that requires the office to publish on the comptroller's website information regarding each grant awarded under the program, including the grant recipient's name, the area targeted for expanded broadband service access, the amount of the grant award, the status of the grant award, including incremental completion status, and any other information the office considers relevant.