

BILL ANALYSIS

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S.B. 1405
By: Nichols
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Broadband Development Office (BDO), which operates within the Office of the Comptroller of Public Accounts (comptroller), awards grants, low-interest loans, and incentives to Internet providers and local governments that expand access to broadband service in underserved areas across the state.

S.B. 1405 aims to address the evolving broadband landscape, granting the BDO more flexibility in leveraging \$1.5 billion in state funds and managing various federal programs that enhance infrastructure and digital skills statewide.

S.B. 1405 seeks to expand broadband access and reduce taxes on Internet services by making key amendments to the state's broadband framework (Chapter 490I, Government Code) and the Tax Code. S.B. 1405 updates speed definitions, streamlines grant application processes, improves mapping strategies, and alleviates tax liability associated with Internet service and broadband grant awards.

Key Changes in S.B. 1405:

- Amends Section 403.553(o), Government Code—POLE REPLACEMENT PROGRAM REPORTING to require the comptroller to submit an annual report on program statistics by November 1 only if there was fund activity in the previous fiscal year.
- Amends Section 490I.0101(a), Government Code, BROADBAND SERVICE DEFINITION, raising the definition of minimum "broadband service" speed from 25/3 Mbps to 100/20 Mbps to align with FCC standards and program rules.
- Amends Sections 490I.0105(a), (c), (f), and (q), Government Code—BROADBAND DEVELOPMENT MAP, allowing BDO to adopt FCC mapping instead of requiring annual Texas map updates. Texas' map will include additional data on public schools' broadband availability, setting the "underserved" threshold at 250/20 Mbps for homes and businesses and Gig over Gig service for public schools and community institutions.
- Amends Sections 490I.0106(a), (a-1), (a-2), (a-3), (b), (d), and (f), Government Code—BROADBAND DEVELOPMENT PROGRAM, to remove the reference to "applicants" in the process of awarding grants, loans, or other financial incentives by the BDO. S.B. 1405 amends the application challenge process to provide that it does not apply to middle-mile projects or non-infrastructure, digital opportunity projects.
- Amends Sections 151.00394 and 151.0101, Tax Code—LIMITED SALES, EXCISE, AND USE TAX PROVISIONS RELATED INTERNET ACCESS SERVICE, removes "Internet access service" from the list of taxable services. Maintains that other taxable services provided with Internet access are only exempt if they are "merely incidental."
- Amends Section 171.10132, Tax Code—FRANCHISE TAX PROVISIONS RELATED TO CERTAIN GRANTS RECEIVED FOR BROADBAND DEPLOYMENT IN TEXAS, expanding "qualifying broadband grants" to include state-funded grants under Chapter 490I and pole replacement program reimbursements. Preserves existing tax liability for amounts due before the effective date.

Repeals:

- Government Code Chapter 490H (Governor's Broadband Development Council)
- Government Code Sections 490I.0105(g-p) (Requirements associated with state map)
- Tax Code Section 151.325 (Internet Access Service Fee)

As proposed, S.B. 1405 amends current law relating to increasing access to and reducing taxation of Internet services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 405.553(o), Government Code, as follows:

(o) Requires the Comptroller of Public Accounts of the State of Texas (comptroller), not later than November 1 of each year, rather than the 60th day after the date the pole replacement fund receives money for the pole replacement program, to publish, rather than maintain and publish, on the comptroller's Internet website:

(1) statistics on the number of applications received, processed, and rejected by the program in the preceding state fiscal year;

(2) statistics on the size, number, and status of reimbursements awarded by the program in the preceding state fiscal year, including the retail broadband service providers and pole owners receiving reimbursements; and

(3) the estimated amount of money available for grants from the program as of the last day of the preceding state fiscal year, rather than remaining in the pole replacement fund.

SECTION 2. Amends Section 490I.0101(a), Government Code, to redefine "broadband service."

SECTION 3. Amends Sections 490I.0105(a), (c), (f), and (q), 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 in this state as:

(1) an unserved location if the location:

(A) does not have access to reliable broadband service capable of providing speeds matching standards adopted by the Federal Communications Commission if required by the comptroller under Section 490I.0101(b) (relating to authorizing the comptroller by rule to require Internet service to be capable of matching the federal standards in order to qualify under this chapter as "broadband service"), or if the comptroller has not exercised the comptroller's authority under that subsection, speeds described by Section 490I.0101(a); or

(B) 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;

(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 certain network speeds, including a speed of not less than 250, rather than 100, megabits per second for a download; or

(3) makes no changes to this subdivision.

Makes nonsubstantive changes to this subsection.

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

(f) Deletes existing text creating an exception under Subsection (g) (relating to authorizing the office, if information from FCC is not available or not sufficient for the office to create or update the map, to request the necessary information from a political subdivision or broadband service provider).

(q) Provides that the office is not required to create, update, or publish a map under Section 490I.0105 (Broadband Development Map) if the office adopts a map produced by FCC that enables the office to identify unserved, underserved, and served locations as described by Subsection (a). Deletes existing text providing that the office is not required to create, update, or publish a map under this section if FCC produces a map that enables the office to identify eligible and ineligible areas, as described by Subsection (a) and meets the requirements of Subsection (d) (relating to requiring that the map required by Subsection (a) organize broadband serviceable locations into designated areas and display certain data for each area). Makes nonsubstantive changes.

SECTION 4. Amends Sections 490I.0106(a), (a-1), (a-2), (a-3), (b), (d), and (f), Government Code, as follows:

(a) Requires the office to establish a program to award grants, low-interest loans, and other financial incentives for the purpose of expanding access to and adoption of broadband service, rather than to applicants for the purpose of expanding access to and adoption of broadband service.

(a-1)-(a-3) Makes conforming changes to these subsections.

(b) Requires the office, in establishing eligibility and award criteria, to perform certain actions, including giving preference to an applicant that provided the information requested by the office under Section 490I.01061 (Existing Federal Funding; Reporting Requirements), rather than Section 490I.0105 or 490I.01061. Makes conforming changes.

(d) Prohibits the office from taking certain actions, including, 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 an existing federal commitment to deploy qualifying broadband service on the date the application is submitted or during the application process. Makes a nonsubstantive change.

(f) Requires the office, during the 30-day posting period described by Subsection (e) (relating to requiring the office to post certain information on the comptroller's Internet website) for an application, to accept from any interested party, other than a broadband service provider that does not report information requested by the office under Section 490I.01061, rather than Section 490I.0105 or 490I.01061, a written protest of an application submitted for a grant, loan, or other financial incentive under Subsection (a-1) relating to whether the broadband-serviceable locations contained in the application are eligible to receive funding, rather than 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.

SECTION 5. Amends Sections 151.00394(b) and (c), Tax Code, as follows:

(b) Provides that "Internet access service" does not include any, rather than "Internet access service" does not include and the exemption under Section 151.325 (Basic Fee for Internet Access Service) does not apply to any other, taxable service listed in Section 151.0101(a) (relating to the definition of "taxable services"), unless the taxable service is provided in conjunction with and is merely incidental to the provision of Internet access service.

(c) Deletes existing text providing that "Internet access service" is excluded from definitions of "data processing service" and "information service" on or after October 1, 1999.

SECTION 6. Amends Section 151.0101(a), Tax Code, to redefine "taxable services."

SECTION 7. Amends Section 171.10132, Tax Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Redefines "qualifying broadband grant."

(a-1) Provides that, for purposes of Subsection (a)(8) (relating to the definition of "qualifying broadband grant"), a reimbursement award received by a taxable entity under Subchapter S (Infrastructure and Broadband Funding), Chapter 403 (Comptroller of Public Accounts), Government Code, is considered a grant for broadband development in this state.

SECTION 8. Repealer: Chapter 490H (Governor's Broadband Development Council), Government Code.

Repealers: Sections 490I.0105(g) (relating to authorizing the office to request certain information) and (h) (relating to providing that information a broadband service provider reports to the office and information provided by FCC is confidential and not subject to disclosure), Government Code.

Repealers: Sections 490I.0105(i) (relating to authorizing the office to contract with certain persons to provide technical or administrative assistance to the office for the purpose of creating or updating the map) and (j) (relating to authorizing the office to release certain information to a contractor providing certain services), Government Code.

Repealers: Sections 490I.0105(k) (relating to prohibiting a person who contracts under Subsection (i) from providing services in this state to a broadband provider before the second anniversary of the last day the contract is in effect) and (l) (relating to requiring the office to establish criteria for determining whether a broadband serviceable location should be reclassified as an unserved or underserved location), Government Code.

Repealers: Sections 490I.0105(n) (relating to authorizing a broadband service provider or political subdivision to petition the office to reclassify a broadband serviceable location) and (o) (relating to authorizing each affected broadband service provider or political subdivision, not later than the 45th day after the date that the office posts notice under Subsection (n), to provide information to the office showing whether the broadband serviceable location should or should not be reclassified), Government Code.

Repealer: Section 490I.0105(p) (relating to requiring the office, not later than the 75th day after the date that the office posts the notice under Subsection (n), to determine whether to reclassify the broadband serviceable location on the map and update the map as necessary), Government Code.

Repealer: Section 151.325 (Basic Fee for Internet Access Service), Tax Code.

SECTION 9. Provides that the changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. Provides that that liability continues in effect as if this Act 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.

SECTION 10. Provides that Section 171.10132 (Provisions Related to Certain Grants Received for Broadband Deployment in Texas), Tax Code, as amended by this Act, applies only to a report originally due on or after January 1, 2026.

SECTION 11. Effective date: July 1, 2025, or September 1, 2025.