

By: Nichols, Hagenbuch

S.B. No. 1405

A BILL TO BE ENTITLED

AN ACT

relating to increasing access to and reducing taxation of Internet services.

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

SECTION 1. Section 403.553(o), Government Code, is amended to read as follows:

(o) Not later than November 1 of each year ~~[the 60th day after the date the pole replacement fund receives money for the pole replacement program]~~, the comptroller shall ~~[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 ~~[remaining in the pole replacement fund]~~.

SECTION 2. Section 490I.0101(a), Government Code, is amended to read as follows:

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

1 providing a:

2 (1) speed of not less than 100 ~~[25]~~ megabits per second
3 for a download;

4 (2) speed of not less than 20 ~~[three]~~ megabits per
5 second for an upload; and

6 (3) network round-trip latency of less than or equal
7 to 100 milliseconds based on the 95th percentile of speed
8 measurements.

9 SECTION 3. Sections 490I.0105(a), (c), (f), and (q),
10 Government Code, are amended to read as follows:

11 (a) The broadband development office shall create, update
12 annually, and publish on the comptroller's Internet website a map
13 classifying each broadband serviceable location in this state as:

14 (1) an unserved location if the location:

15 (A) does not have access to reliable broadband
16 service capable of providing ~~[the]~~ speeds matching standards
17 adopted by the Federal Communications Commission if required by the
18 comptroller under Section 490I.0101(b), or if the comptroller has
19 not exercised the comptroller's authority under that subsection,
20 speeds described by Section 490I.0101(a); or

21 (B) is a public school or community anchor
22 institution and does not have access to reliable broadband service
23 capable of providing symmetrical upload and download speeds of at
24 least one gigabit per second with a network round-trip latency of
25 less than or equal to 100 milliseconds based on the 95th percentile
26 of speed measurements;

27 (2) an underserved location if the location is not an

1 unserved location but does not have access to reliable broadband
2 service with the capability of providing:

3 (A) a speed of not less than 250 ~~[100]~~ megabits
4 per second for a download;

5 (B) a speed of not less than 25 ~~[20]~~ megabits per
6 second for an upload; and

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

10 (3) a served location if the location is neither an
11 unserved nor an underserved location.

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

17 (f) The ~~[Except as provided by Subsection (g), the]~~ office
18 shall use the best available data, including information available
19 from the Federal Communications Commission, to create or update the
20 map.

21 (q) The office is not required to create, update, or publish
22 a map under this section if the office adopts a map produced by the
23 Federal Communications Commission ~~[produces a map]~~ that~~+~~

24 ~~[(1)]~~ enables the office to identify unserved,
25 underserved, and served locations ~~[eligible and ineligible areas,~~
26 as described by Subsection (a) ~~], and~~

27 ~~[(2)] meets the requirements of Subsection (d)].~~

1 SECTION 4. Sections 490I.0106, Government Code, is amended
2 by amending Subsections (a), (a-1), (a-2), (a-3), (b), (d), (f),
3 and (h) and adding Subsection (h-1) to read as follows:

4 (a) The broadband development office shall establish a
5 program to award grants, low-interest loans, and other financial
6 incentives [~~to applicants~~] for the purpose of expanding access to
7 and adoption of broadband service.

8 (a-1) The office may award grants, low-interest loans, and
9 other financial incentives [~~to applicants~~] for eligible broadband
10 infrastructure projects designed to provide qualifying broadband
11 service to unserved and underserved locations. For the purposes of
12 this subsection, an eligible broadband infrastructure project
13 includes a project in which not less than 80 percent of the
14 broadband serviceable locations to be served by the project are
15 unserved and underserved locations.

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

19 (a-3) The office may award grants, low-interest loans, and
20 other financial incentives [~~to applicants~~] for projects not
21 involving the deployment of broadband infrastructure that expand
22 the accessibility, affordability, or adoption of broadband
23 service, including education, training, community outreach, remote
24 learning or telehealth facilities, equipment purchases, or any
25 other use permitted by the applicable funding source.

26 (b) The office shall establish eligibility and award
27 criteria for making awards under this chapter for each applicable

1 notice of funds availability. The comptroller by rule may
2 prescribe the manner in which the office shall provide notice [~~to~~
3 ~~applicants~~] of the applicable criteria. In establishing
4 eligibility and award criteria, the office shall:

5 (1) take into consideration grants and other financial
6 incentives awarded by the federal government for the deployment of
7 broadband service;

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

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

15 (4) give preference to an applicant that provided the
16 information requested by the office under Section [~~490I.0105 or~~]
17 [490I.01061](#); ~~[and]~~

18 (5) take into consideration whether an applicant has
19 forfeited federal funding for defaulting on a project to deploy
20 qualifying broadband service; and

21 (6) take into consideration whether an applicant has
22 repeatedly used private property in an unauthorized manner or
23 caused damage to private property, as demonstrated by affidavits
24 submitted to the office by property owners affected by that
25 conduct.

26 (d) The office may not:

27 (1) except as provided by Section [490I.01062](#), favor a

1 particular broadband technology in awarding grants, loans, or other
2 financial incentives;

3 (2) award a grant, loan, or other financial incentive
4 to a noncommercial provider of broadband service for a broadband
5 serviceable location if an eligible commercial provider of
6 broadband service has submitted an application for the same
7 location;

8 (3) take into consideration distributions from the
9 state universal service fund established under Section 56.021,
10 Utilities Code, when deciding to award grants, loans, or other
11 financial incentives; or

12 (4) except as provided by Section 490I.01061, award a
13 grant, loan, or other financial incentive for deployment of
14 last-mile broadband service for a location that is subject to an
15 existing ~~[a]~~ federal commitment to deploy qualifying broadband
16 service on the date the application is submitted or during the
17 application process.

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 an ~~[the]~~
23 application submitted for a grant, loan, or other financial
24 incentive under Subsection (a-1) relating to whether the
25 broadband-serviceable locations contained in the application are
26 eligible to receive funding ~~[applicant or project is eligible for~~
27 ~~an award or should not receive an award based on the criteria~~

~~prescribed by the office].~~

(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:

(1) 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; and

(2) 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.

(h-1) The comptroller by rule shall establish a process for determining whether a financial incentive is subject to withdrawal under Subsection (h) that:

(1) provides for the submission of a notarized affidavit by an affected property owner; and

(2) requires the office to notify an award recipient of the potential withdrawal and provide the recipient an opportunity to respond before taking action.

SECTION 5. Sections 151.00394(b) and (c), Tax Code, are amended to read as follows:

(b) "Internet access service" does not include ~~[and the exemption under Section 151.325 does not apply to]~~ any ~~[other]~~ taxable service listed in Section 151.0101(a), unless the taxable service is provided in conjunction with and is merely incidental to

the provision of Internet access service.

(c) ~~[On and after October 1, 1999,]~~ "Internet access service" is not included in the definitions of "data processing service" and "information service."

SECTION 6. Section 151.0101(a), Tax Code, is amended to read as follows:

(a) "Taxable services" means:

- (1) amusement services;
- (2) cable television services;
- (3) personal services;
- (4) motor vehicle parking and storage services;
- (5) the repair, remodeling, maintenance, and restoration of tangible personal property, except:

- (A) aircraft;
 - (B) a ship, boat, or other vessel, other than:
 - (i) a taxable boat or motor as defined by Section 160.001;
 - (ii) a sports fishing boat; or
 - (iii) any other vessel used for pleasure;
 - (C) the repair, maintenance, and restoration of a motor vehicle; and
 - (D) the repair, maintenance, creation, and restoration of a computer program, including its development and modification, not sold by the person performing the repair, maintenance, creation, or restoration service;
- (6) telecommunications services;
 - (7) credit reporting services;

- (8) debt collection services;
- (9) insurance services;
- (10) information services;
- (11) real property services;
- (12) data processing services;
- (13) real property repair and remodeling;
- (14) security services;
- (15) telephone answering services; and
- (16) ~~[Internet access service; and~~

~~[(17)]~~ a sale by a transmission and distribution utility, as defined in Section 31.002, Utilities Code, of transmission or delivery of service directly to an electricity end-use customer whose consumption of electricity is subject to taxation under this chapter.

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

(a) In this section, "qualifying broadband grant" means a grant for broadband deployment in this state received by a taxable entity:

- (1) under the Broadband Equity, Access, and Deployment Program established under 47 U.S.C. Section 1702;
- (2) under the State Digital Equity Capacity Grant Program established under 47 U.S.C. Section 1723;
- (3) under the Digital Equity Competitive Grant Program established under 47 U.S.C. Section 1724;
- (4) under the provisions of 47 U.S.C. Section 1741

1 providing for middle mile grants;

2 (5) under the broadband loan and grant pilot program
3 authorized under Section 779, Title VII, Div. A, Consolidated
4 Appropriations Act, 2018 (Pub. L. No. 115-141, 132 Stat. 399), from
5 funds made available for that program under the heading "Distance
6 Learning, Telemedicine, and Broadband Program," "Rural Utilities
7 Service," "Rural Development Programs" in Title I, Infrastructure
8 Investments and Jobs Appropriations Act (Title I, Div. J, Pub. L.
9 No. 117-58, 135 Stat. 1351);

10 (6) under Section 905, Division N, Consolidated
11 Appropriations Act, 2021 (Pub. L. No. 116-260, 134 Stat. 2136);
12 ~~[or]~~

13 (7) from a state, territory, tribal government, or
14 unit of local government to the extent the grant was:

15 (A) funded by amounts provided under 42 U.S.C.
16 Section 802, 803, or 804; and

17 (B) provided for the stated purposes of making
18 investments in broadband infrastructure; or

19 (8) from the comptroller under Subchapter S, Chapter
20 403, Government Code, or Chapter 490I of that code.

21 (a-1) For purposes of Subsection (a)(8), a reimbursement
22 award received by a taxable entity under Subchapter S, Chapter 403,
23 Government Code, is considered a grant for broadband development in
24 this state.

25 SECTION 8. The following provisions are repealed:

26 (1) Chapter 490H, Government Code;

27 (2) Sections 490I.0105(g), (h), (i), (j), (k), (l),

1 (n), (o), and (p), Government Code; and

2 (3) Section 151.325, Tax Code.

3 SECTION 9. The changes in law made by this Act do not affect
4 tax liability accruing before the effective date of this Act. That
5 liability continues in effect as if this Act had not been enacted,
6 and the former law is continued in effect for the collection of
7 taxes due and for civil and criminal enforcement of the liability
8 for those taxes.

9 SECTION 10. Section 171.10132, Tax Code, as amended by this
10 Act, applies only to a report originally due on or after January 1,
11 2026.

12 SECTION 11. This Act takes effect July 1, 2025, if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for effect on that
16 date, this Act takes effect September 1, 2025.