

BILL ANALYSIS

Senate Research Center
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S.B. 5
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Transportation
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID 19 pandemic has highlighted, more than ever, the critical importance of a robust broadband infrastructure network to maintaining basic quality of life. Remote learning, access to telemedicine, economic development, and other facets of life all hinge on the availability of quality high speed internet. Hundreds of thousands of Texans are currently without access to quality broadband and this bill seeks to move Texas forward to bridging the digital divide.

1. **Office:** Creation of a State Broadband Development Office that is administratively attached to the University of Texas System. The purpose of the Office is to promote the expansion of access to broadband in Texas.
 - a. Office is governed by an 11-member Board of Advisors who will serve staggered two-year terms.
 - b. The bill directs the Office to serve as a resource for broadband service information and engage in outreach to communities regarding the expansion and adoption of broadband service.
 - c. The bill places one representative from the Office on the existing Governor's Broadband Development Council (established by 86th Legislature) as a non-voting member. It also updates the mission of the Governor's Broadband Council to ensure coordination among the Council and the Office.

2. **Map:** Directs the State Broadband Office to create and publish a map that identifies areas where 80% of the addresses have access to broadband and those areas where they do not.
 - a. The map will display the number of service providers providing service in an area and also identify where there may be service at a speed of less than 25/3.
 - b. Directs the Office to use information available from the Federal Communications Commission (FCC) where possible to create and update the map. If the information is not available, the Office can request that information from providers. The Office cannot require a provider to report data in a manner significantly different from FCC reporting.
 - c. Includes a clause that if the FCC publishes a map which already meets the requirements of the bill then the Office does not have to produce the map.

3. **Broadband Development Program:** The bill directs the Office to establish a Broadband Development Program to award grants, low-interest loans, and other financial incentives to expand access to and adoption of broadband.
 - a. The Office will develop and publish eligibility criteria for awards under the Program, which must require that awards are for capital expenses only.
 - b. The Program must be technology neutral, and award money only to commercial providers unless no commercial provider is available.
 - c. The Program will not award money to providers that do not participate in data requests by the Office for its mapping efforts.
 - d. The Program will not discriminate against providers that receive USF funding.

4. **Broadband Development Account:** The bill creates a Broadband Development Account which will consist of any legislative appropriations as well as any federal funds.

5. **State Broadband Plan:** The bill directs the Office to create and adopt a State Broadband Plan within a year of the effective date of the bill, collaborating with industry and other

stakeholders and state agencies, and incorporating the recommendations of the Governor's Broadband Development Council.

As proposed, S.B. 5 amends current law relating to the expansion of broadband services to certain areas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the State Broadband Development Office in SECTION 3 (Section 490I.0108, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 490H.002(a), Government Code, to provide that, in addition to 17 voting members, the governor's broadband development council (council) includes one nonvoting member appointed by the State Broadband Development Office (office).

SECTION 2. Amends Section 490H.006(a), Government Code, as follows:

(a) Requires the council to:

- (1) research the progress of, among other things, deployment of broadband services statewide;
- (2) makes no changes to this subdivision;
- (3) study, among other things, industry and technology trends in broadband services;
- (4) makes a nonsubstantive change; and
- (5) study the outcomes of programs administered by the office.

SECTION 3. Amends Subtitle F, Title 4, Government Code, by adding Chapter 490I, as follows:

CHAPTER 490I. STATE BROADBAND DEVELOPMENT OFFICE

Sec. 490I.0101. DEFINITION. Defines "broadband service."

Sec. 490I.0102. OFFICE. (a) Provides that the office is established to promote the expansion of access to broadband service in Texas.

(b) Provides that the office is administratively attached to The University of Texas (UT) System. Authorizes the UT system to employ additional employees necessary for the discharge of the duties of the office.

(c) Provides that the office:

- (1) is under the direction and control of the board of advisors established by Section 490I.0104;
- (2) is required to promote the policies enumerated in this chapter; and
- (3) is authorized to perform any action authorized by state or federal law.

Sec. 490I.0103. POWERS AND DUTIES. Requires the office to serve as a resource for information regarding broadband service in Texas and to engage in outreach to communities regarding the expansion and adoption of broadband service and the programs administered by the office.

Sec. 490I.0104. BOARD OF ADVISORS. (a) Defines "rural area."

(b) Provides that the office board of advisors (board) is composed of 11 members, appointed as follows:

(1) three members appointed by the lieutenant governor, including one member who resides in a rural area and one member representing the education community;

(2) three members appointed by the speaker of the house of representatives, including one member who resides in a rural area and one member representing the health and telemedicine industry;

(3) one member appointed by the governor;

(4) one member appointed by the board of regents of the University of Houston System;

(5) one member appointed by the board of regents of The Texas A&M University System;

(6) one member appointed by the board of regents of the Texas Tech University System; and

(7) one member appointed by the board of regents of The UT System.

(c) Provides that members of the board serve at the pleasure of the appointing authority for staggered two-year terms, with the terms of the members described by Subsections (b)(1) and (2) expiring February 1 of each odd-numbered year and the terms of the members described by Subsections (b)(3), (4), (5), (6), and (7) expiring February 1 of each even-numbered year. Authorizes a member to serve more than one term.

(d) Requires the appropriate appointing authority, not later than the 30th day after the date a member's term expires, to appoint a replacement in the same manner as the original appointment.

(e) Requires the appropriate appointing authority, if a vacancy occurs on the board, to appoint a successor in the same manner as the original appointment to serve for the remainder of the unexpired term. Requires the appropriate appointing authority to appoint the successor not later than the 30th day after the date the vacancy occurs.

(f) Requires the board to meet at least once per month with representatives from the office for the purpose of directing and overseeing the work of the office in implementing the provisions of this chapter.

(g) Provides that meetings of the board of advisors are subject to Chapter 551 (Open Meetings).

Sec. 490I.0105. BROADBAND DEVELOPMENT MAP. (a) Requires the office to develop and maintain a public Internet website.

(b) Requires the office to create, update annually, and publish on the office's Internet website a map designating each census block in this state as an eligible area, if fewer than 80 percent of the addresses in the block have access to broadband service; or an ineligible area, if 80 percent or more of the addresses in the block have access to broadband service.

(c) Requires that the map display the number of broadband service providers that serve each census block and, for each 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.

(d) Requires the office, except as provided by Subsection (e), to use information available from the Federal Communications Commission (FCC) to create or update the map.

(e) Authorizes the office, if information from the FCC is not sufficient for the office to create or update the map, to request the necessary information from a political subdivision or broadband service provider, and requires the subdivision or provider to report the information to the office. Prohibits the office from requiring a subdivision or provider to report information in a format that is substantially different from the format required by the FCC.

(f) Provides that information a broadband service provider reports to the office under Subsection (e) is confidential and not subject to disclosure under Chapter 552 (Public Information). Prohibits the office from sharing information reported under Subsection (e) with a third party or contracting with a third party to collect, analyze, or use information reported under Subsection (e).

(g) Authorizes a broadband service provider or political subdivision to petition the office to redesignate a census block on the map as an eligible area or ineligible area. Requires the office to provide notice of the petition to each broadband service provider that provides broadband service to the census block and to post notice of the petition on the office's Internet website.

(h) Requires a broadband provider, not later than the 45th day after the date that the provider receives notice under Subsection (g), to provide information to the office showing whether the census block should or should not be redesignated.

(i) Requires the office, not later than the 75th day after the date that a broadband provider receives notice under Subsection (g), to determine whether to redesignate the census block on the map and update the map as necessary. Provides that a determination made by the office under this subsection is not a contested case for purposes of Chapter 2001 (Administrative Procedure).

(j) Provides that the office is not required to create, update, or publish a map under this section if the FCC produces a map that enables the office to identify eligible and ineligible areas, as described by Subsection (b), and meets the requirements of Subsection (c).

Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) Requires the office to 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 census blocks determined to be eligible areas by the office under Section 490I.0105.

(b) Requires the office to establish and publish eligibility criteria for award recipients. Requires that the criteria require that grants, loans, and other financial incentives awarded through the program 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.

(c) Prohibits the office from:

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

(2) awarding grants, loans, or other financial incentives to a broadband provider that does not report information requested by the office under Section 490I.0105;

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

(4) taking into consideration distributions from the state universal service fund established under Chapter 56 (Telecommunications Assistance and Universal Service Fund), Utilities Code, when deciding to award grants, loans, or other financial incentives.

(d) Provides that an award granted under this section does not affect distributions received by a broadband provider from the state universal service fund established under Chapter 56, Utilities Code.

Sec. 490I.0107. BROADBAND DEVELOPMENT ACCOUNT. (a) Provides that the broadband development account is an account in the general revenue fund.

(b) Provides that the account consists of appropriations of money to the account by the legislature; gifts, donations, and grants, including federal grants; and interest earned on the investment of the money in the account.

(c) Requires the Comptroller of Public Accounts of the State of Texas to deposit to the credit of the account federal money received by the state for the purpose of broadband development, to the extent permitted by state and federal law.

(d) Authorizes that money in the account be appropriated only to the office for purposes of administering the broadband development program or creating or updating the map described by Section 490I.0105.

(e) Provides that the account is exempt from the application of Section 404.071 (Disposition of Interest on Investments).

Sec. 490I.0108. RULEMAKING. Authorizes the office to adopt rules necessary to implement this chapter. Requires that rules be proposed and adopted according to Chapter 2001 and approved by a majority vote of the board.

SECTION 4. Requires each appointing authority, not later than November 1, 2021, to appoint the members of the board as required by Section 490I.0104, Government Code, as added by this Act. Prohibits the board from taking action until a majority of the members have taken office.

SECTION 5. (a) Requires the office established by Section 490I.0102, Government Code, as added by this Act, not later than the first anniversary of the effective date of this Act, to prepare a state broadband plan that establishes long-term goals for greater access to and adoption of broadband service in Texas.

(b) Requires the office, in developing the state broadband plan, to collaborate, to the extent possible, with state agencies, political subdivisions, broadband industry stakeholders and representatives, and community organizations that focus on broadband services; incorporate the policy recommendations of the council; favor policies that are technology-neutral and protect all members of the public; and explore state and regional approaches to broadband development.

SECTION 6. (a) Requires the office established by Section 490I.0102, Government Code, as added by this Act, to publish the map required by Section 490I.0105, Government Code, as added by this Act, on the office's Internet website not later than September 1, 2022.

(b) Requires the office, not later than January 1, 2022, to publish on the office's Internet website:

(1) a map created by the FCC that displays the number of broadband service providers that serve each census block; or

(2) a link to a map described by Subdivision (1) of this subsection.

(c) Requires the office, for the purpose of administering the broadband development program established by Section 490I.0106, Government Code, as added by this Act, to use a map described by Subsection (b) of this section to determine whether an area is eligible until the office publishes the map required by Section 490I.0105, Government Code, as added by this Act.

SECTION 7. Effective date: upon passage or September 1, 2021.