

## BILL ANALYSIS

Senate Research Center

H.B. 5  
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Transportation  
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Engrossed

### 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 (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. The 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 to 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 (council) established by the 86th Legislature as a non-voting member. It also updates the mission of the council to ensure coordination among the council and the office.
  
2. **Map:** Directs the office to create and publish a map that identifies areas where 80 percent 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 that 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 (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 Universal Service Fund (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 council.

H.B. 5 amends current law relating to the expansion of broadband services to certain areas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 5 (Sections 490I.0105 and 490I.0109, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 490H.002, Government Code, as follows:

Sec. 490H.002. COMPOSITION. (a) Provides that the governor's broadband development council (council) is composed of one nonvoting member appointed by the broadband development office and the following voting members appointed by the governor, rather than is composed of the following 17 voting members:

(1)-(8) makes nonsubstantive changes to these subdivisions;

(8-a) one county clerk of a county with a population of less than 60,000;

(8-b) one sheriff of a county with a population of less than 60,000;

(9)-(12) makes nonsubstantive changes to these subdivisions;

(13) one hospital administrator employed by a licensed hospital located in a county with a population of less than 60,000, rather than one member of the Texas House of Representatives (house) appointed by the speaker of the house;

(14) one representative from an electric cooperative providing broadband, rather than one state senator appointed by the lieutenant governor;

(15) one representative of a school district with a territory that includes all or part of a county with a population of more than 500,000; and

(16) one representative of a nonprofit organization that has a demonstrated history of facilitating broadband adoption by offering digital literacy training or providing access to broadband technology.

Makes nonsubstantive changes.

(b) Requires the entities making appointments under Subsection (a) to, to the greatest extent practicable, ensure that the composition of the council reflects the racial and ethnic composition of the state.

(c) and (d) Creates these subsections from existing text and makes no further changes.

SECTION 2. Amends Section 490H.003, Government Code, as follows:

Sec. 490H.003. New heading: COUNCIL OFFICERS; COMMITTEES. (a) Creates this subsection from existing text. Requires the governor to designate from the members of the council a chair and vice chair of the council for two-year terms, rather than requires the governor to designate the presiding officer of the council.

(b) Requires the chair and the vice chair each to reside in a county with a population of less than 100,000, or more than 250,000.

(c) Requires the governor, when designating a chair or vice chair, to ensure that:

(1) during a term when the chair resides in a county with a population of more than 250,000, the vice chair resides in a county with a population of less than 100,000;

(2) during a term when the chair resides in a county with a population of less than 100,000, the vice chair resides in a county with a population of more than 250,000;

(3) persons described by Subdivision (1) are immediately succeeded by persons described by Subdivision (2); and

(4) persons described by Subdivision (2) are immediately succeeded by persons described by Subdivision (1).

(d) Authorizes the chair to appoint subcommittees and technical advisory committees to assist with the duties of the council.

SECTION 3. Amends Section 490H.004, Government Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Requires the council to convene at the call of the chair or, if the chair is unable to call a meeting or does not call at least one meeting to meet the requirements of Subsection (a) (relating to requiring the council to convene at least once every quarter), at the call of the vice chair, rather than to convene at the call of the presiding officer.

(c) Requires the council to post the agenda for each council meeting on the council's Internet website at least 48 hours before the meeting, and, not later than the 14th day after the date of each meeting, post on the council's Internet website the minutes or recording of the meeting required under Section 551.021 (Minutes or Recording of Open Meeting Required).

(d) Authorizes the council, as an exception to Chapter 551 (Open Meetings) and other law, to meet by use of video conference call. Provides that this subsection applies for purposes of constituting a quorum, for purposes of voting, and for any other purpose allowing a member of the council to fully participate in any meeting of the council. Requires that a meeting held by use of video conference call:

(1) be open to the public, which includes a video broadcast of the meeting in real time through the council's Internet website;

(2) specify in the meeting notice the link to the video broadcast described by Subdivision (1); and

(3) provide two-way video communication between all council members attending the meeting.

SECTION 4. Amends Sections 490H.006(a) and (b), Government Code, as follows:

(a) Requires the council to:

(1) research the progress of:

(A) creates this paragraph from existing text and makes a nonsubstantive change;

- (B) deployment of broadband statewide;
- (C) purchase of broadband by residential and commercial customers; and
- (D) patterns and discrepancies in access to broadband;

(2) makes no changes to this subdivision;

(3) study:

(A) creates this paragraph from existing text and makes no further changes;

(B) industry and technology trends in broadband; and

(4) makes no changes to this subdivision.

(b) Authorizes the council to research another matter related to broadband, rather than research another matter related to broadband only if a majority of the council approves researching the matter.

SECTION 5. Amends Subtitle F, Title 4, Government Code, by adding Chapter 490I, as follows:

#### CHAPTER 490I. BROADBAND DEVELOPMENT OFFICE

Sec. 490I.0101. THRESHOLD SPEED FOR BROADBAND SERVICE. (a) Defines, for purposes of this chapter, subject to Subsection (b), "broadband service."

(b) Authorizes the Comptroller of Public Accounts of the State of Texas (comptroller), if the Federal Communications Commission (FCC) adopts 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), to require Internet service to be capable of providing download or upload speeds that match that federal threshold in order to qualify under this chapter as "broadband service."

(c) Requires the broadband development office, not later than the 60th day after the date the comptroller adjusts the minimum download or upload speeds required for Internet service to qualify as "broadband service," to publish on the comptroller's Internet website the adjusted minimum download and upload speeds.

Sec. 490I.0102. OFFICE. (a) Provides that the broadband development office (office) is an office within the comptroller's office.

(b) Authorizes the comptroller 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 comptroller;

(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. (a) Requires the office to:

(1) serve as a resource for information regarding broadband service and digital connectivity in this state;

(2) engage in outreach to communities regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office; and

(3) serve as an information clearinghouse in relation to:

(A) federal programs providing assistance to local entities with respect to broadband service; and

(B) addressing barriers to digital connectivity.

(b) Provides that the office has the powers necessary to carry out the duties of the office under this chapter, including the power to enter into contracts and other necessary instruments.

(c) Provides that this chapter does not grant the comptroller authority to regulate broadband services or broadband service providers or, except as required of an applicant or recipient under Section 490I.0106, to require broadband service providers to submit information to the comptroller.

(d) Authorizes the office, for the purpose of carrying out a duty or power of the office under this chapter, to advertise in any available media, and promote the office's programs and functions.

Sec. 490I.0104. PARTICIPATION IN PROCEEDINGS OF THE FEDERAL COMMUNICATIONS COMMISSION. (a) Authorizes the office to monitor, participate in, and provide input in proceedings of the FCC related to the geographic availability and deployment of broadband service in this state to ensure that the information available to the FCC reflects the current status of geographic availability and deployment of broadband service in this state, and to ensure that this state is best positioned to benefit from broadband service deployment programs administered by federal agencies.

(b) Authorizes the office to participate in a process established by the FCC allowing governmental entities to challenge the accuracy of the FCC's information regarding the geographic availability and deployment of broadband service.

(c) Requires the office to establish procedures and a data collection process in accordance with rules established by the FCC for the Digital Opportunity Data Collection that will enable the office to participate in the process described by Subsection (b).

Sec. 490I.0105. BROADBAND DEVELOPMENT MAP. (a) Requires the office to create, update annually, and publish on the comptroller's Internet website a map classifying each designated area in this state as an eligible area, if fewer than 80 percent of the addresses in the designated area have access to broadband service, or as an ineligible area, if 80 percent or more of the addresses in the designated area have access to broadband service.

(b) Authorizes the comptroller by rule to determine the scope of a designated area under Subsection (a).

(c) Requires that the map required by Subsection (a) display the number of broadband service providers that serve each designated area; 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; and each public preschool or primary or secondary school in this state and an indication of whether the school has access to broadband service.

- (d) Requires the office to create, update, and publish the map in a manner consistent with the most current mapping methodology adopted by the FCC.
- (e) Requires the office, except as provided by Subsection (c), to use information available from the FCC to create or update the map.
- (f) Authorizes the office, if information from the 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, and authorizes 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 different from the format required by the most current mapping methodology adopted by the FCC.
- (g) Provides that information a broadband service provider reports to the office under Subsection (f) and information provided by the FCC, if not publicly available, is confidential and not subject to disclosure under Chapter 552 (Public Information).
- (h) Authorizes 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.
- (i) Authorizes the office to release information reported under Subsection (f) to a contractor providing services under Subsection (h). Requires the contractor to keep the information confidential, and to return the information to the office on the earliest of the following dates: the date the contract expires; the date the contract is terminated; or the date the mapping project for which the contractor is providing services is complete.
- (j) Prohibits a person who contracts under Subsection (h) from providing services for a broadband provider in this state before the second anniversary of the last day the person was under the contract.
- (k) Requires the office to establish criteria for determining whether a designated area should be reclassified as an eligible area or an ineligible area. Requires that the criteria include an evaluation of Internet speed test data and information on end user addresses.
- (l) Authorizes a broadband service provider or political subdivision to petition the office to reclassify a designated area 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 designated area and post notice of the petition on the comptroller's Internet website.
- (m) Requires the provider, not later than the 45th day after the date that a broadband provider receives notice under Subsection (l), to provide information to the office showing whether the designated area should or should not be reclassified.
- (n) Requires the office, not later than the 75th day after the date that a broadband provider receives notice under Subsection (l), to determine whether to reclassify the designated area 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).
- (o) 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 (a), and that 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 designated areas determined to be eligible areas by the office under Section 490I.0105.

(b) Requires the office to establish and publish criteria for making awards under Subsection (a). Requires the office to:

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

(2) prioritize the applications of applicants that will expand access to and adoption of broadband service in eligible areas in which the lowest percentage of addresses have access to broadband service;

(3) prioritize an applicant that the broadband provided by the applicant will maintain a program to, by default, block access to pornographic or other obscene materials; and

(4) prioritize the applications of applicants that will expand access to broadband service in public and private primary and secondary schools and institutions of higher education.

(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 Section 56.021 (Universal Service Fund Established), Utilities Code, when deciding to award grants, loans, or other financial incentives.

(d) Requires the office to:

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

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

(e) Requires the office, during the 30-day posting period described by Subsection (d) for an application, to accept from any interested party 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.

(f) Authorizes the applicant, notwithstanding any deadline for submitting an application, if the office upholds a protest submitted under Subsection (e) on the grounds that one or more of the addresses in an eligible area subject to the application have access to broadband service, to resubmit the application without the challenged addresses not later than 30 days after the date that the office upheld the protest.

(g) Requires the office to establish and publish criteria for award recipients. Requires that the criteria include requirements 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.

(h) Provides that an award granted under this section does not affect the eligibility of a telecommunications provider to receive support from the state universal service fund under Section 56.021, Utilities Code.

Sec. 490I.0107. STATE BROADBAND PLAN. (a) Requires the office to prepare, update, and publish on the comptroller's Internet website a state broadband plan that establishes long-term goals for greater access to and adoption, affordability, and use of broadband service in this state.

(b) Requires the office, in developing the state broadband plan, to:

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

(2) consider the policy recommendations of the governor's broadband development council;

(3) favor policies that are technology-neutral and protect all members of the public;

(4) explore state and regional approaches to broadband development; and

(5) examine broadband service needs related to:

(A) public safety, including the needs of state agencies involved in the administration of criminal justice, as that term is defined by Article 66.001 (Definitions), Code of Criminal Procedure;

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

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

Sec. 490I.0108. 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 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 federal law.

(d) Provides that money in the account may be appropriated only to the office for purposes of:

(1) creating or updating the map described by Section 490I.0105;

(2) administering the broadband development program under Section 490I.0106;

(3) creating or updating the state broadband plan under Section 490I.0107; or

(4) engaging in outreach to communities regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office.

(e) Provides that the account is exempt from the application of Sections 403.095 (Use of Dedicated Revenue), 403.0956 (Reallocation of Interest Accrued on Certain Dedicated Revenue), and 404.071 (Disposition of Interest on Investments).

Sec. 490I.0109. RULEMAKING. Authorizes the comptroller to adopt rules as necessary to implement this chapter.

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 comptroller's Internet website not later than September 1, 2022.

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

(1) a map created by the FCC that displays the number of broadband service providers that serve each designated area; 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. Requires the office established by Section 490I.0102, Government Code, as added by this Act, to prepare the initial state broadband plan required by Section 490I.0107, Government Code, as added by this Act, not later than September 1, 2022.

SECTION 8. Effective date: September 1, 2021.