

## **BILL ANALYSIS**

C.S.H.B. 5  
By: Ashby  
State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

It has been noted that in many areas of Texas access to modern, reliable Internet service has not kept pace with the growing need for online connectivity. The increasing reliance on high-speed Internet for school, work, and personal needs has raised concerns that rural Texans are being left behind in terms of access. Moreover, studies indicate that even Texans who live in urban or suburban areas with improved access to high-speed Internet service could use additional resources and knowledge on accessing and utilizing that service. C.S.H.B. 5 seeks to close the digital divide in Texas by providing for greater access to and adoption and affordability of broadband service, thus allowing more Texans to realize the advancements of our modern society.

### **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 rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 3 of this bill.

### **ANALYSIS**

C.S.H.B. 5 amends the Government Code to set out provisions for the expansion of broadband services in Texas.

#### **Creation of Broadband Development Office**

C.S.H.B. 5 establishes the broadband development office within the office of the comptroller of public accounts to do the following:

- serve as a resource for information regarding broadband service in Texas;
- engage in outreach to communities regarding the expansion, adoption, and affordability of broadband service and the programs administered by the broadband office; and
- serve as an information clearinghouse in relation to federal programs providing assistance to local entities with respect to broadband service.

C.S.H.B. 5 specifies that the broadband office is under the comptroller's direction and control and authorizes the comptroller to employ additional employees necessary for the discharge of the broadband office's duties. The bill requires the broadband office to promote certain specified policies and authorizes the broadband office to perform any action authorized by state or federal law. The bill grants the broadband office the powers necessary to carry out its duties under the bill, including the power to enter into contracts and other necessary instruments. The bill expressly does not grant the comptroller authority to regulate broadband services or broadband

service providers or, except as required under certain bill provisions, to require providers to submit information to the comptroller.

### **Broadband Service Threshold Speeds**

C.S.H.B. 5 sets out the minimum upload and download threshold speeds for Internet service to qualify as broadband service and authorizes the comptroller by rule to adjust those threshold speeds to match any threshold speeds the FCC adopts for advanced telecommunications capability that are different than those set out by the bill. The bill provides for the publication of adjusted threshold speeds on the comptroller's website.

### **Participation in FCC Proceedings**

C.S.H.B. 5 authorizes the broadband office to monitor, participate in, and provide input in FCC proceedings related to the geographic availability and deployment of broadband service in Texas to ensure the following:

- the information available to the FCC reflects the current status of that availability and deployment; and
- Texas is best positioned to benefit from broadband service deployment programs administered by federal agencies.

The bill authorizes the broadband office to participate in a process established by the FCC allowing governmental entities to challenge the accuracy of FCC information regarding the geographic availability and deployment of broadband service. The broadband office is required to establish procedures and a data collection process in accordance with applicable FCC rules that will enable the office to participate in such a process.

### **Broadband Development Map**

C.S.H.B. 5 requires the broadband office to create and publish on the comptroller's website not later than September 1, 2022, a map classifying each designated area in Texas as either:

- an eligible area, if fewer than 80 percent of the addresses in the area have access to broadband service; or
- an ineligible area, if 80 percent or more of the addresses in the area have access to broadband service.

The bill authorizes the comptroller by rule to determine the scope of a designated area and requires the broadband office to update the map annually. The bill sets out provisions relating to the map and its creation, including with respect to the following:

- information the map must display relating to the number of broadband providers in each designated area, access to non-broadband service for each eligible area, and public school broadband access;
- use and collection of information from the FCC or otherwise and the required mapping methodology for the map's creation, updating, and publication;
- confidentiality protections for information reported by broadband service providers and for certain information provided by the FCC;
- authorization to contract for technical or administrative assistance to create or update the map;
- the authorized release of certain information released to a contractor providing that assistance and related requirements for a contractor that receives the information;
- restrictions on such a contractor's ability to provide services for a broadband provider; and
- criteria for reclassification of a designated area and a process for a broadband provider or political subdivision to petition for an area to be reclassified, including deadlines by which a broadband provider is to provide information relating to the reclassification and by which the broadband office is to make a reclassification determination.

The broadband office is not required to create, update, or publish a map if the FCC produces a map that enables the broadband office to identify eligible and ineligible areas and meets the map display requirements.

### **Broadband Development Program**

C.S.H.B. 5 requires the broadband 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. With respect to the program, the bill does the following:

- sets out provisions relating to criteria for making awards, the application process, and criteria for award recipients;
- sets out certain prohibited actions with respect to the broadband office's administration of the program; and
- specifies that an award granted under the program does not affect a telecommunications provider's eligibility to receive support from the state universal service fund.

The bill requires the broadband office to publish on the comptroller's website not later than January 1, 2022, either an FCC map that displays the number of broadband service providers that serve each designated area or, alternatively, a link to such a map. The bill requires the broadband office to use that map to determine whether an area is eligible for an award until the broadband office publishes the required broadband development map.

### **State Broadband Plan**

C.S.H.B. 5 requires the broadband office to prepare, update, and publish on the comptroller's website a state broadband plan that establishes long-term goals for greater access to and adoption and affordability of broadband service in Texas. The bill sets out requirements for the broadband office in developing the plan, including the requirement to favor policies that are technology-neutral and protect all members of the public, and requires the initial plan to be developed not later than September 1, 2022.

### **Broadband Development Account**

C.S.H.B. 5 creates the broadband development account in the general revenue fund and sets out the composition of the account. With respect to the account, the bill does the following:

- 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;
- restricts the appropriation of money in the account to the broadband office for certain prescribed purposes; and
- exempts the account from certain statutory provisions relating to the management of funds in the state treasury and from statutory provisions governing the disposition of interest on investments of money in funds and accounts in the comptroller's charge.

### **Comptroller Rulemaking**

C.S.H.B. 5 authorizes the comptroller to adopt rules as necessary to implement the bill's provisions relating to the broadband office and its activities.

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

C.S.H.B. 5 expands the membership of the governor's broadband development council to include one representative appointed by the governor who is from an electric cooperative providing broadband and one nonvoting member appointed by the broadband office. The bill requires the council to do the following:

- research the progress of deployment of broadband statewide and purchase of broadband by residential and commercial customers; and
- study industry and technology trends in broadband.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 5 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include a provision authorizing the comptroller to adjust the threshold upload and download speeds for broadband service to exceed speeds set by the FCC.

The substitute provides for the consideration of the affordability of broadband service in the broadband office's community outreach and the state broadband plan.

With respect to the broadband development program, the substitute does the following:

- replaces a requirement for the broadband office, in making awards under the program, to take into consideration grants and other financial incentives received by an applicant for the deployment of broadband service in a designated area with a requirement to take into consideration grants and other financial incentives awarded by the federal government for such deployment; and
- does not require an award recipient to prioritize eligible areas in which the lowest percentage of addresses have access to broadband service but includes instead a requirement for the broadband office to prioritize the applications of applicants that will expand access to and adoption of broadband service in those areas.

With respect to the development of the state broadband plan, the substitute does the following:

- changes the type of community organizations with which the broadband office is required to collaborate, to the extent possible, from organizations that focus on broadband services to organizations that focus on broadband services and technology access; and
- requires the broadband office to examine broadband needs related to public health, public safety, and public education and state and local education agencies.

The substitute replaces the requirement for the broadband office to publish on the comptroller's website an FCC map that displays the number of providers that serve each census block with a requirement to publish an FCC map that displays the number of providers that serve each designated area.