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et al.

H.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to the expansion of broadband services to certain areas.

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

SECTION 1. Section 490H.002, Government Code, is amended to read as follows:

Sec. 490H.002. COMPOSITION. (a) The council is composed of one nonvoting member appointed by the broadband development office and the following [17] voting members appointed by the governor:

(1) two representatives of separate Internet service provider industry associations, including at least one representative of an association that primarily represents small providers, as defined by Section 56.032, Utilities Code [~~appointed by the governor~~];

(2) one representative of the health information technology industry [~~appointed by the governor~~];

(3) two representatives of unaffiliated nonprofit organizations that advocate for elderly persons statewide [~~appointed by the governor~~];

(4) two representatives of unaffiliated nonprofit organizations that have a demonstrated history of working with the legislature and the public to identify solutions for expanding broadband to rural, unserved areas of this state [~~appointed by the governor~~];

(5) one representative of an agricultural advocacy

1 organization in this state [~~appointed by the governor~~];

2 (6) one representative of a hospital advocacy  
3 organization in this state [~~appointed by the governor~~];

4 (7) one representative of a medical advocacy  
5 organization in this state [~~appointed by the governor~~];

6 (8) one county official who serves in an elected  
7 office of a county with a population of less than 35,000 [~~appointed  
8 by the governor~~];

9 (8-a) one county clerk of a county with a population of  
10 less than 60,000;

11 (8-b) one sheriff of a county with a population of less  
12 than 60,000;

13 (9) one municipal official who serves in an elected  
14 office of a municipality with a population of less than 20,000  
15 located in a county with a population of less than 60,000 [~~appointed by the governor~~];

17 (10) one representative of an institution of higher  
18 education that has its main campus in a county with a population of  
19 less than 60,000 [~~appointed by the governor~~];

20 (11) one representative of a school district with a  
21 territory that includes only counties with a population of less  
22 than 60,000 [~~appointed by the governor~~];

23 (12) one representative from a library association [~~appointed by the governor~~];

25 (13) one hospital administrator employed by a licensed  
26 hospital located in a county with a population of less than 60,000

27 [~~member of the house of representatives, appointed by the speaker~~

1 ~~of the house of representatives]; [and]~~

2           (14) one representative from an electric cooperative  
3 providing broadband ~~[state senator, appointed by the lieutenant~~  
4 ~~governor];~~

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

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

12           (b) The entities making appointments under Subsection (a)  
13 shall, to the greatest extent practicable, ensure that the  
14 composition of the council reflects the racial and ethnic  
15 composition of the state.

16           (c) [~~(b)~~] A member of the council appointed under  
17 Subsection (a) serves for a five-year term.

18           (d) [~~(c)~~] A vacancy on the council is filled in the same  
19 manner as the original appointment.

20           SECTION 2. Section 490H.003, Government Code, is amended to  
21 read as follows:

22           Sec. 490H.003. COUNCIL OFFICERS; COMMITTEES ~~[PRESIDING~~  
23 ~~OFFICER]~~. (a) The governor shall designate from the members of the  
24 council a chair and vice chair ~~[the presiding officer]~~ of the  
25 council for two-year terms.

26           (b) The chair and the vice chair each must reside in a county  
27 with a population of:

1           (1) less than 100,000; or

2           (2) more than 250,000.

3           (c) When designating a chair or vice chair, the governor  
4 shall ensure that:

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

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

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

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

15           (d) The chair may appoint subcommittees and technical  
16 advisory committees to assist with the duties of the council.

17           SECTION 3. Section 490H.004, Government Code, is amended by  
18 amending Subsection (b) and adding Subsections (c) and (d) to read  
19 as follows:

20           (b) The council shall convene at the call of the chair or, if  
21 the chair is unable to call a meeting or does not call at least one  
22 meeting to meet the requirements of Subsection (a), at the call of  
23 the vice chair [~~presiding officer~~].

24           (c) The council shall:

25           (1) post the agenda for each council meeting on the  
26 council's Internet website at least 48 hours before the meeting;

27 and

1           (2) not later than the 14th day after the date of each  
2 meeting, post on the council's Internet website the minutes or  
3 recording of the meeting required under Section 551.021.

4           (d) As an exception to Chapter 551 and other law, the  
5 council may meet by use of video conference call. This subsection  
6 applies for purposes of constituting a quorum, for purposes of  
7 voting, and for any other purpose allowing a member of the council  
8 to fully participate in any meeting of the council. A meeting held  
9 by use of video conference call:

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

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

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

17           SECTION 4. Sections 490H.006(a) and (b), Government Code,  
18 are amended to read as follows:

19           (a) The council shall:

20           (1) research the progress of:

21           (A) broadband development in unserved areas;

22           (B) deployment of broadband statewide;

23           (C) purchase of broadband by residential and  
24 commercial customers; and

25           (D) patterns and discrepancies in access to  
26 broadband;

27           (2) identify barriers to residential and commercial

1 broadband deployment in unserved areas;

2 (3) study:

3 (A) technology-neutral solutions to overcome  
4 barriers identified under Subdivision (2); and

5 (B) industry and technology trends in broadband;  
6 and

7 (4) analyze how statewide access to broadband would  
8 benefit:

9 (A) economic development;

10 (B) the delivery of educational opportunities in  
11 higher education and public education;

12 (C) state and local law enforcement;

13 (D) state emergency preparedness; and

14 (E) the delivery of health care services,  
15 including telemedicine and telehealth.

16 (b) The council may research another matter related to  
17 broadband [~~only if a majority of the council approves researching~~  
18 ~~the matter~~].

19 SECTION 5. Subtitle F, Title 4, Government Code, is amended  
20 by adding Chapter 490I to read as follows:

21 CHAPTER 490I. BROADBAND DEVELOPMENT OFFICE

22 Sec. 490I.0101. THRESHOLD SPEED FOR BROADBAND SERVICE. (a)  
23 For purposes of this chapter, subject to Subsection (b), "broadband  
24 service" means Internet service with the capability of providing:

25 (1) a download speed of 25 megabits per second or  
26 faster; and

27 (2) an upload speed of three megabits per second or

1 faster.

2 (b) If the Federal Communications Commission adopts upload  
3 or download threshold speeds for advanced telecommunications  
4 capability under 47 U.S.C. Section 1302 that are different than  
5 those specified by Subsection (a), the comptroller may require  
6 Internet service to be capable of providing download or upload  
7 speeds that match that federal threshold in order to qualify under  
8 this chapter as "broadband service."

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

14 Sec. 490I.0102. OFFICE. (a) The broadband development  
15 office is an office within the comptroller's office.

16 (b) The comptroller may employ additional employees  
17 necessary for the discharge of the duties of the broadband  
18 development office.

19 (c) The broadband development office:

20 (1) is under the direction and control of the  
21 comptroller;

22 (2) shall promote the policies enumerated in this  
23 chapter; and

24 (3) may perform any action authorized by state or  
25 federal law.

26 Sec. 490I.0103. POWERS AND DUTIES. (a) The broadband  
27 development office shall:

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

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

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

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

10                   (B) addressing barriers to digital connectivity.

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

14           (c) This chapter does not grant the comptroller authority to  
15 regulate broadband services or broadband service providers or,  
16 except as required of an applicant or recipient under Section  
17 490I.0106, to require broadband service providers to submit  
18 information to the comptroller.

19           (d) For the purpose of carrying out a duty or power of the  
20 office under this chapter, the office may:

21                   (1) advertise in any available media; and

22                   (2) promote the office's programs and functions.

23           Sec. 490I.0104. PARTICIPATION IN PROCEEDINGS OF THE FEDERAL  
24 COMMUNICATIONS COMMISSION. (a) The broadband development office  
25 may monitor, participate in, and provide input in proceedings of  
26 the Federal Communications Commission related to the geographic  
27 availability and deployment of broadband service in this state to



1 ensure that:

2 (1) the information available to the Federal  
3 Communications Commission reflects the current status of  
4 geographic availability and deployment of broadband service in this  
5 state; and

6 (2) this state is best positioned to benefit from  
7 broadband service deployment programs administered by federal  
8 agencies.

9 (b) The office may participate in a process established by  
10 the Federal Communications Commission allowing governmental  
11 entities to challenge the accuracy of the commission's information  
12 regarding the geographic availability and deployment of broadband  
13 service.

14 (c) The office shall establish procedures and a data  
15 collection process in accordance with rules established by the  
16 Federal Communications Commission for the Digital Opportunity Data  
17 Collection that will enable the office to participate in the  
18 process described by Subsection (b).

19 Sec. 490I.0105. BROADBAND DEVELOPMENT MAP. (a) The  
20 broadband development office shall create, update annually, and  
21 publish on the comptroller's Internet website a map classifying  
22 each designated area in this state as:

23 (1) an eligible area, if fewer than 80 percent of the  
24 addresses in the designated area have access to broadband service;  
25 or

26 (2) an ineligible area, if 80 percent or more of the  
27 addresses in the designated area have access to broadband service.

1       (b) The comptroller by rule may determine the scope of a  
2 designated area under Subsection (a).

3       (c) The map required by Subsection (a) must display:

4           (1) the number of broadband service providers that  
5 serve each designated area;

6           (2) for each eligible area, an indication of whether  
7 the area has access to Internet service that is not broadband  
8 service, regardless of the technology used to provide the service;  
9 and

10          (3) each public preschool or primary or secondary  
11 school in this state and an indication of whether the school has  
12 access to broadband service.

13       (d) The office must create, update, and publish the map in a  
14 manner consistent with the most current mapping methodology adopted  
15 by the Federal Communications Commission.

16       (e) Except as provided by Subsection (c), the office shall  
17 use information available from the Federal Communications  
18 Commission to create or update the map.

19       (f) If information from the Federal Communications  
20 Commission is not available or not sufficient for the office to  
21 create or update the map, the office may request the necessary  
22 information from a political subdivision or broadband service  
23 provider, and the subdivision or provider may report the  
24 information to the office. The office may not require a subdivision  
25 or provider to report information in a format different from the  
26 format required by the most current mapping methodology adopted by  
27 the Federal Communications Commission.

1       (g) Information a broadband service provider reports to the  
2 office under Subsection (f) and information provided by the Federal  
3 Communications Commission, if not publicly available, is  
4 confidential and not subject to disclosure under Chapter 552.

5       (h) The office may contract with a private consultant or  
6 other appropriate person who is not associated or affiliated with a  
7 commercial broadband provider, including a local governmental  
8 entity, to provide technical or administrative assistance to the  
9 office for the purpose of creating or updating the map.

10       (i) The office may release information reported under  
11 Subsection (f) to a contractor providing services under Subsection  
12 (h). The contractor shall:

13               (1) keep the information confidential; and

14               (2) return the information to the office on the  
15 earliest of the following dates:

16                       (A) the date the contract expires;

17                       (B) the date the contract is terminated; or

18                       (C) the date the mapping project for which the  
19 contractor is providing services is complete.

20       (j) A person who contracts under Subsection (h) may not  
21 provide services for a broadband provider in this state before the  
22 second anniversary of the last day the person was under the  
23 contract.

24       (k) The office shall establish criteria for determining  
25 whether a designated area should be reclassified as an eligible  
26 area or an ineligible area. The criteria must include an evaluation  
27 of Internet speed test data and information on end user addresses.

1       (l) A broadband service provider or political subdivision  
2 may petition the office to reclassify a designated area on the map  
3 as an eligible area or ineligible area. The office shall provide  
4 notice of the petition to each broadband service provider that  
5 provides broadband service to the designated area and post notice  
6 of the petition on the comptroller's Internet website.

7       (m) Not later than the 45th day after the date that a  
8 broadband provider receives notice under Subsection (l), the  
9 provider shall provide information to the office showing whether  
10 the designated area should or should not be reclassified.

11       (n) Not later than the 75th day after the date that a  
12 broadband provider receives notice under Subsection (l), the office  
13 shall determine whether to reclassify the designated area on the  
14 map and update the map as necessary. A determination made by the  
15 office under this subsection is not a contested case for purposes of  
16 Chapter 2001.

17       (o) The office is not required to create, update, or publish  
18 a map under this section if the Federal Communications Commission  
19 produces a map that:

20               (1) enables the office to identify eligible and  
21 ineligible areas, as described by Subsection (a); and

22               (2) meets the requirements of Subsection (c).

23       Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) The  
24 broadband development office shall establish a program to award  
25 grants, low-interest loans, and other financial incentives to  
26 applicants for the purpose of expanding access to and adoption of  
27 broadband service in designated areas determined to be eligible

1 areas by the office under Section 490I.0105.

2 (b) The office shall establish and publish criteria for  
3 making awards under Subsection (a). The office shall:

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

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

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

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

17 (c) The office may not:

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

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

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

27 (4) take into consideration distributions from the

1 state universal service fund established under Section 56.021,  
2 Utilities Code, when deciding to award grants, loans, or other  
3 financial incentives.

4 (d) The office shall:

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

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

14 (e) During the 30-day posting period described by  
15 Subsection (d) for an application, the office shall accept from any  
16 interested party a written protest of the application relating to  
17 whether the applicant or project is eligible for an award or should  
18 not receive an award based on the criteria prescribed by the office.

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

26 (g) The office shall establish and publish criteria for  
27 award recipients. The criteria must include requirements that

1 grants, loans, and other financial incentives awarded through the  
2 program be used only for capital expenses, purchase or lease of  
3 property, and other expenses, including backhaul and transport,  
4 that will facilitate the provision or adoption of broadband  
5 service.

6 (h) An award granted under this section does not affect the  
7 eligibility of a telecommunications provider to receive support  
8 from the state universal service fund under Section 56.021,  
9 Utilities Code.

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

15 (b) In developing the state broadband plan, the office  
16 shall:

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

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

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

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

27 (5) examine broadband service needs related to:

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

4           (B) public education and state and local  
5 education agencies, including any agency involved in the electronic  
6 administration of an assessment instrument required under Section  
7 39.023, Education Code; and

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

12           Sec. 490I.0108. BROADBAND DEVELOPMENT ACCOUNT. (a) The  
13 broadband development account is an account in the general revenue  
14 fund.

15           (b) The account consists of:

16               (1) appropriations of money to the account by the  
17 legislature;

18               (2) gifts, donations, and grants, including federal  
19 grants; and

20               (3) interest earned on the investment of the money in  
21 the account.

22           (c) The comptroller shall deposit to the credit of the  
23 account federal money received by the state for the purpose of  
24 broadband development, to the extent permitted by federal law.

25           (d) Money in the account may be appropriated only to the  
26 broadband development office for purposes of:

27               (1) creating or updating the map described by Section



1 490I.0105;

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

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

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

9 (e) The account is exempt from the application of Sections  
10 403.095, 403.0956, and 404.071.

11 Sec. 490I.0109. RULEMAKING. The comptroller may adopt  
12 rules as necessary to implement this chapter.

13 SECTION 6. (a) The broadband development office  
14 established by Section 490I.0102, Government Code, as added by this  
15 Act, shall publish the map required by Section 490I.0105,  
16 Government Code, as added by this Act, on the comptroller's  
17 Internet website not later than September 1, 2022.

18 (b) Not later than January 1, 2022, the office shall publish  
19 on the comptroller's Internet website:

20 (1) a map created by the Federal Communications  
21 Commission that displays the number of broadband service providers  
22 that serve each designated area; or

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

25 (c) For the purpose of administering the broadband  
26 development program established by Section 490I.0106, Government  
27 Code, as added by this Act, the office shall use a map described by

1 Subsection (b) of this section to determine whether an area is  
2 eligible until the office publishes the map required by Section  
3 490I.0105, Government Code, as added by this Act.

4 SECTION 7. The broadband development office established by  
5 Section 490I.0102, Government Code, as added by this Act, shall  
6 prepare the initial state broadband plan required by Section  
7 490I.0107, Government Code, as added by this Act, not later than  
8 September 1, 2022.

9 SECTION 8. This Act takes effect September 1, 2021.