

SUBJECT: Creating state broadband plan and program to fund expansion of services

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson

0 nays

1 absent — Smithee

WITNESSES: For — Kathy Green, AARP; Chance Sparks, American Planning Association Texas Chapter; John Mason, AT&T; Michael Ward and Shawntreae Hart, Austin Urban Technology Movement; Kevin Couch and JJ Mcgrath, Connect2educate; Bill Sproull, Richardson Chamber of Commerce; Luis Acuna, Texas 2036; Nora Belcher, Texas e-Health Alliance; Mike Williams, Texas Electric Cooperatives; Patrick Wade, Texas Grain Sorghum Association; Dan Finch, Texas Medical Association; Suzi Kennon, Texas PTA; Daniel Gibson, TSTCI; Randy Willis, Texas Rural Education Association, Texas Association of Community Schools, and TX Association of School Administrators; Ashley Harris, United Ways of Texas; Richard Lawson, Verizon; Michael Hunsucker, Windstream and Texas Telephone Association; (*Registered, but did not testify*: Priscilla Camacho, Alamo Colleges District; Robert Johnston, Anderson County; Kara Mayfieldi, Association of Rural Communities in Texas; Mark Wiggins, Association of Texas Professional Educators; Melissa Shannon, Bexar County Commissioners Court; Matt Matthews, Bexar County Education Coalition; Shayne Woodard, Big Bend Telephone Company and Brazoria Telephone Company; John T. Wright, Big Sandy Sand Company; Greg Jones, Cherokee County Electric Cooperative; Richard Lawson, Chevron; Eddie Solis, City of Arlington; Guadalupe Cuellar, City of El Paso; TJ Patterson, City of Fort Worth; Justin Till, City of Marfa and Monahans Chamber of Commerce; Kelly Barnes, City of Nacogdoches; Christine Wright, City of San Antonio; Richard Dennis, Coastal Bend College; Adam Haynes, Conference of Urban Counties; Jim Allison, County Judges and Commissioners

Association of Texas; Daniel Collins, County of El Paso; Charles Reed, Dallas County Commissioners Court; Ben Stratmann, Dallas Regional Chamber; Daniel Womack, Dow, Inc.; Nelson Nease, East Texas Electric Cooperative, Inc.; Craig Chick, Eastex Telephone Co-op; Beth Cubriel, Eric Rachel; Kate Kuhlmann, Fast Growth Schools Coalition; Richard Lawson, Frontier Communications; Traci Berry, Goodwill Central Texas; Lindsay Munoz, Greater Houston Partnership; Craig Chick, GVTC; Ender Reed, Harris County Commissioners Court; Kathi Calvert, Houston County Electric Cooperative; Stephen Scurlock, Independent Bankers Association of Texas; Mark Tamplin, Japer-Newton Electric Coop, Inc.; Cyrus Reed, Lone Star Chapter Sierra Club; Tom Oney, Lower Colorado River Authority; Myra Leo, Methodist Healthcare Ministries; John McCord, NFIB; Yvette Clay, North Texas Commission; Joel Romo, Nueces County; John Pitts, Project Lead the Way and Western Governors Association; Charles Gaines, Raise Your Hand Texas; Doug Turk, Sam Houston Electric Cooperative; Leticia Van de Putte, San Antonio Chamber of Commerce; Danielle Delgadillo, South Texas Electric Cooperative (STEC); Todd Morgan, T-Mobile; Russell Schaffner, Tarrant County; Maureen Milligan, Teaching Hospitals of Texas; Servando Esparza, TechNet; Josette Saxton, Texans Care for Children; Marshall Kenderdine, Texas Academy of Family Physicians; Jason Modglin, Texas Alliance of Energy Producers; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Grover Campbell, Texas Association of School Boards; Courtney Hoffman, Texas Association for Behavior Analysis Public Policy Group; Oscar Rodriguez, Texas Association of Broadcasters; J.D. Hale, Texas Association of Builders; Ray Sullivan, Texas Association of Business; Dustin Meador, Texas Association of Community Colleges; Barry Haenisch, Texas Association of Community Schools; Lori Henning, Texas Association of Goodwills; Katie Coleman, Texas Association of Manufacturers; Justin Yancy, Texas Business Leadership Council; Pamela McPeters, Texas Classroom Teachers Association; Jennifer Bergland, Texas Computer Education Association; Mark Terry, Texas Elementary Principals and Supervisors Association; Charlie Leal, Texas Farm Bureau; Rob Hughes, Texas Forestry Association; John Hawkins, Texas Hospital Association; Monty Wynn, Texas Municipal League; Ryan Skrobarczyk, Texas Nursery and

Landscape Association; Tray Bates, Daniel Gonzalez, and Julia Parenteau, Texas Realtors; Robert Scott, Texas Rural Broadband Coalition; Dee Carney, Texas School Alliance; Dale Craymer, Texas Taxpayers and Research Association; Dana Chiodo, Texas Technology Consortium; John Hubbard, Ian Randolph, and Mark Seale, Texas Telephone Association; Lauren Banister, TexPIRG; Dana Harris, The Greater Austin Chamber of Commerce; Julie Wheeler, Travis County Commissioners Court; Ashley Harris, United Ways of Texas; Cliff Campbell, Wood County Electric Cooperative; Russell Parish; Thomas Parkinson; Thomas Ratliff)

Against — None

On — Jennifer Harris, Connected Nation Texas; Johnny Kampis, Taxpayers Protection Alliance; Walt Baum, Texas Cable Association; Wynn Rosser, Texas Rural Funders and TLL Temple Foundation; (*Registered, but did not testify*: Harrison Hiner, Communications Workers of America; Will Counihan, Comptroller of Public Accounts)

BACKGROUND: Utilities Code sec. 56.021 establishes the universal service fund to assist telecommunication providers in providing basic local service at reasonable rates in high-cost areas, reimburse telecommunication carriers that provide statewide relay access service, and finance or reimburse other related services.

Government Code ch. 490H establishes the Governor's Broadband Development Council, composed of 17 voting members, and requires the council to research the progress of broadband development in unserved areas, identify barriers to deployment, study technology-neutral solutions, and analyze the benefits of statewide broadband access.

DIGEST: CSHB 5 would establish the Broadband Development Office, which would be tasked with preparing a state broadband plan, creating a map of areas with limited access to broadband service, and awarding financial incentives in those eligible areas to expand access to and adoption of service.

Broadband Development Office. The Broadband Development Office would be established within the comptroller's office to:

- serve as a resource for information on broadband service in the state;
- engage in outreach to communities on the expansion, adoption, and affordability of broadband service and the office's programs; and
- serve as an information clearinghouse on federal broadband assistance programs.

The office would have powers necessary to carry out its duties, including the power to enter into contracts.

The comptroller could employ additional employees necessary to discharge the duties of the office. The bill would not grant the comptroller authority to regulate broadband services or service providers.

State broadband plan. The bill would require the Broadband Development Office to prepare, update, and publish on the comptroller's website a state broadband plan that established long-term goals for greater access to and adoption and affordability of broadband service in the state.

In developing the plan, the office would have to:

- collaborate with state agencies, political subdivisions, broadband industry stakeholders, and related community organizations;
- consider the policy recommendations of the Governor's Broadband Development Council;
- favor policies that were technology-neutral and protected all members of the public;
- explore state and regional approaches to broadband development; and
- examine certain broadband service needs related to public safety, public education, public health, and related agencies.

Broadband development map. CSHB 5 would require the Broadband

Development Office to create, update annually, and publish on the comptroller's website a map classifying each designated area in the state as:

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

The comptroller by rule could determine the scope of a designated area.

The map would have to display the number of broadband service providers in each area, an indication of whether each area had access to internet service that was not broadband service, and each public school in the state and an indication of whether the school had access to broadband service.

The office would not have to create, update, or publish a map if the Federal Communications Commission (FCC) produced a map that enabled the office to identify eligible areas and met the above requirements.

Map information. The office would have to use information from the FCC to create the map and create, update, and publish the map in a manner consistent with the most recent FCC methodology. If information from the FCC was not available or sufficient, the office could request necessary information from a political subdivision or broadband service provider, but the office could not require an entity to report such information in different format than that required by FCC methodology.

Information reported by a broadband service provider to the office and information provided by the FCC, if not publicly available, would be confidential and not subject to public disclosure.

Contracting. The office could contract with a private consultant or other appropriate person who was not associated with a commercial broadband

provider, including a local government entity, to provide technical or administrative assistance to create or update the map.

The office could release information reported from a broadband service provider or the FCC to a contractor. The contractor would have to keep the information confidential and return it to the office on the date the contract expired or was terminated or the date the mapping project was completed, whichever was earliest.

Reclassification of designated areas. The office would have to establish criteria for determining whether a designated area should be reclassified as an eligible or ineligible area. The criteria would have to include an evaluation of internet speed test data and information on end user addresses.

The bill would allow a broadband service provider or political subdivision to petition to reclassify an area. The office would have to provide notice of a petition to each broadband service provider in the area and post notice of the petition on the comptroller's website.

Within 45 days of receiving notice of a petition, a provider would have to provide information to the office showing whether the designated area should or should not be reclassified. Within 75 days, the office would have to determine whether to reclassify the area and update the map. The bill would specify that a determination made by the office would not be considered a contested case by state law.

Broadband development program. The bill would require the Broadband Development 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 eligible areas.

The office would have to establish and publish criteria for making awards and would have to take into consideration any financial incentives awarded by the federal government in an area and prioritize applications

in areas with the lowest percentage of addresses with access to broadband service.

The bill would prohibit the office from:

- favoring a particular broadband technology in awarding financial incentives;
- awarding financial incentives to a provider that did not report requested information;
- awarding financial incentives to a noncommercial provider if a commercial provider had submitted an application for the area; or
- taking into consideration distributions from the state universal service fund when deciding to award financial incentives.

The office would have to post on the comptroller's website and update as necessary information about the application process and the receipt of awards. Each application would have to be available on the website for at least 30 days before the office made a decision on the application. During those 30 days, the office would have to accept from any interested party a written protest of the application.

The office would have to establish and publish criteria for award recipients, which would have to include requirements that the awards could be used only for capital expenses, purchase or lease of property, and other expenses that would facilitate the provision or adoption of broadband service, such as backhaul and transport.

An awarded granted by the office would not affect the eligibility of a telecommunications provider to receive support from the state universal service fund.

Broadband Development Account. The bill would establish the Broadband Development Account in the general revenue fund. The account would consist of legislative appropriations, gifts and grants, and interest on any invested money. The comptroller would have to deposit to the credit of the account federal money received by the state for the

purpose of broadband development.

Money in the account could be appropriated only to the Broadband Development Office for the purposes of creating or updating the eligibility map, administering the broadband development program, creating or updating the state broadband plan, or engaging in outreach to communities regarding broadband service and the office's programs.

The account would be exempt from certain state laws governing the management of funds in the state treasury and the disposition of interest on investments in funds and accounts in the comptroller's charge.

Threshold speed for broadband service. For the purposes of this bill, "broadband service" would mean Internet service with the capability of providing a download speed of at least 25 megabits per second and an upload speed of at least three megabits per second.

If the FCC adopted upload or download speeds for advanced telecommunications capability that were different from those above, the comptroller by rule could require internet service to be capable of providing speeds that matched that federal threshold to qualify as broadband service.

If the comptroller adjusted the threshold, the broadband development office would have to publish the adjusted minimum download and upload speeds on the comptroller's website within 60 days.

Participation in FCC proceedings. The Broadband Development Office could monitor, participate in, and provide input in FCC proceedings related to the geographic availability and deployment of broadband service in this state to ensure that the information available to FCC reflected the current status of service and the state was best positioned to benefit from federal broadband programs.

The office could participate in a federal process allowing governmental entities to challenge the accuracy of the FCC's information on the

geographic availability and deployment of broadband. The bill would require the office to establish procedures and a data collection process in accordance with FCC rules for the Digital Opportunity Data Collection to enable the office to participate in this process.

Governor's Broadband Development Council. CSHB 5 would expand the Governor's Broadband Development Council to include one nonvoting member appointed by the Broadband Development Office and one voting member appointed by the governor who was a representative from an electric cooperative providing broadband.

The bill also would expand the duties of the council to include researching the progress of deployment of broadband service statewide and purchase of broadband by residential and commercial customers and studying industry and technology trends.

Dates. The Broadband Development Office would have to publish the eligibility map required by this bill by September 1, 2022.

By January 1, 2022, the office would have to publish a map created by the FCC that displayed the number of broadband service providers in each designated area or a link to such map. The office would have to use this map to determine whether an area was eligible under the broadband development program until the office published its eligibility map.

The office would have to prepare the initial state broadband plan by September 1, 2022.

The bill would take effect September 1, 2021.

**SUPPORTERS
SAY:**

CSHB 5 would help expand broadband service across Texas in a way that was technologically neutral and holistic. Currently, there is a large gap between those who have broadband access and those who do not, creating economic and social disparities for underserved areas. One recent report estimated that nearly 900,000 Texans were unserved, mostly from rural areas. The COVID-19 pandemic has further exacerbated the issue as

public education, health care, and criminal justice services have been forced to move online.

CSHB 5 would help to bridge the gap by creating the Broadband Development Office, which would be tasked with implementing a state broadband plan and directing loans, grants, or other funds to certain underserved areas in the state for expanding access to and adoption of broadband. This would help the state draw down federal funds to allow providers to move into high-cost areas. The program would serve both rural areas affected by the lack of access to broadband infrastructure and urban areas with low adoption rates.

Broadband Development Office. The bill would create an office to oversee the expansion of broadband, conforming with recommendations from the Governor's Broadband Development Council. The office would best be placed within the comptroller's office because it would be tasked with awarding funds to unserved areas. The financial expertise, statewide presence, stakeholder relationships, and transparency of the comptroller's office make it the most appropriate location for the Broadband Development Office.

State broadband plan. Texas is currently one of just six states that do not have a statewide broadband plan, making the state less competitive in receiving certain federal funds. By requiring the creation of a statewide plan, the bill would establish goals to guide the development of and investment in broadband infrastructure and ensure no federal funds were left on the table, including a potential influx of money from recent federal stimulus bills. This provision also conforms with recommendations from the Governor's Broadband Development Council.

In developing the plan, the Broadband Development Office would have to favor technology-neutral policies so as not to interfere in private competition. There are several ways to deliver broadband, such as through cable internet, fiber, or wireless services, that may be appropriate in different areas of the state depending on the geography. By not favoring any single technology, the bill would not pick winners and losers but

would create a level playing field. Because the office would be technologically neutral, it also would be inclusive of any new innovations in technology, including satellite internet services.

The plan would also be holistic, as the office would have to collaborate with regional stakeholders and examine specific needs for public education, health, and criminal justice.

Broadband development program. The bill would establish a broadband expansion program, under which certain areas with less than 80 percent of broadband service could be eligible for funds. This program would help to build broadband infrastructure, addressing one of the biggest challenges to broadband access. The bill would require the Broadband Development Office to prioritize areas with the least service, ensuring dollars were not needlessly spent.

When awarding funds, the office could not favor a particular technology nor could it consider funding from the Universal Services Fund or award a noncommercial provider if a commercial provider had applied in the area. This provision would create a fair environment for awarding loans or grants that would encourage the expansion and adoption of services in a manner that was technology-neutral without tamping down private competition.

Concerns about overspending in areas served by broadband providers could be addressed with a floor amendment. If the Broadband Development Office upheld a protest on a program application on the grounds that addresses in an eligible area had access to broadband service, the amendment could allow the applicant to resubmit the application without those challenged addresses.

The bill should not be amended to allow, rather than require, broadband providers to respond to a protest to reclassify an area as eligible or ineligible under the broadband expansion program. This provision would ensure compliance so that funds were spent only where needed.

Broadband development map. The bill would require the Broadband Development Office to develop a map of areas throughout the state in which fewer than 80 percent of households could access broadband and that would be eligible for the broadband expansion program. The map would best identify where funds to build infrastructure should be sent. By creating its own eligibility map, Texas also has the opportunity to focus on even more granular data than that offered on a federal level. The bill would combine the preferred Federal Communications Commission (FCC) methodology on gathering data with the state's internal knowledge of its communities to best serve areas of need.

The map should not be expanded to include adoption rates, as it is important to keep uniformity with federal methodology so that the statewide map works correctly and interacts well with federal law. The office, in both the statewide plan and the broadband development program, would factor in the adoption rates and affordability of broadband in the state.

Concerns that the bill would create a state eligibility map that did not use FCC mapping data and methodologies are unfounded. The bill clearly states that the office would have to use information from the FCC to create the map in a manner consistent with the most recent FCC methodology.

Threshold speed for broadband service. The bill would adopt as the threshold speed for broadband service a download speed of at least 25 megabits per second and an upload speed of at least three megabits per second to conform with FCC speeds. It is important to maintain uniformity so that state maps and federal maps align and federal funds can be disbursed properly in the state. If the FCC did increase speed requirements, the bill would include a mechanism by which the comptroller by rule could increase the minimum speed for broadband services.

Governor's Broadband Development Council. The bill makes some changes to the council simply to include representation from the

Broadband Development Office to prevent a duplication of efforts. The bill also would add a representative from an electric cooperative to conform to changes made last legislative session, since cooperatives may now provide more broadband services. Otherwise, expanding the council is not within the scope of this bill and should be considered in other legislation.

CRITICS
SAY:

CSHB 5 should be amended to expand broadband in the state while ensuring appropriate oversight, protecting fair competition, and ensuring the best use of federal funds.

Broadband Development Office. The office created to expand broadband in the state should be overseen by a council including certain representatives from the telehealth medicine industry, public education, and rural and urban areas. This would ensure that regular, non-industry people had input in broadband expansion and would promote specific goals related to education and telehealth.

Broadband development map. Provisions of the bill on the state's eligibility map should be amended.

Adoption rates. The bill should include adoption rates of broadband services as part of the map, rather than only including access rates, to include more communities in the state program. This would ensure that the program served communities that did not lack access to broadband because of lack of infrastructure but because of a lack of adoption due to high cost or low digital literacy.

FCC methodology. The bill could create some issues regarding the development of the map of eligible areas under the state broadband expansion program. The Broadband Development Office should strictly adhere to the FCC map of unserved areas to ensure the data had been well vetted. If the state map diverged from the federal map, it could create customer confusion, imply a different definition of "unserved areas," and jeopardize federal funding.

Broadband development program. As written, the bill could lead to the Broadband Development Office sending funds to an area that had more service than the office was aware of. There should be a process by which broadband providers may protest the funds if they were serving households in the area, preventing overspending of taxpayer money.

The bill wrongly would require each broadband provider in an area to respond to a protest to reclassify an area as an eligible or ineligible area under the broadband expansion program. This provision should be permissive so as not to burden providers.

Threshold speed for broadband service. The bill should increase the minimum speeds for broadband service, as the current FCC standards may be inadequate for certain services such as remote learning and telehealth programs, especially if multiple users are connected. A 100 megabits per second download speed and 10 megabits per second upload speed would be a better threshold.

Governor's Broadband Development Council. The bill should expand the council to include other specialized members, such as representatives of urban communities, education institutions, or school districts, to be resources on the unique issues faced by those institutions.

OTHER
CRITICS
SAY:

CSHB 5 inappropriately would grow the size of government and cost taxpayers. Companies should bear the cost of developing broadband infrastructure if there is market demand in rural areas. Furthermore, technological innovations in broadband services may soon be made that could make any infrastructure developed under this program outdated.

NOTES:

According to the fiscal note, the bill is anticipated to result in a five year general revenue cost to the comptroller of \$3.8 million and require 5 additional FTEs to staff and perform the duties of the Broadband Development Office. The other fiscal implications of the bill cannot be determined and depend on the amount of financial incentives needed to expand broadband services in needed areas of the state.

The author plans to offer a floor amendment that would change the program application process if the Broadband Development Office upheld a protest against an application on the grounds that addresses in the eligible area had access to broadband service. In such a circumstance, the applicant could resubmit the application without the challenged addresses within 30 days of the date the office upheld the protest.