

GOVERNMENT CODE

TITLE 4. EXECUTIVE BRANCH

SUBTITLE F. COMMERCE AND INDUSTRIAL DEVELOPMENT

CHAPTER 490I. BROADBAND DEVELOPMENT OFFICE

Sec. 490I.0101. THRESHOLD SPEED FOR BROADBAND SERVICE.

(a) For purposes of this chapter, subject to Subsection (b), "broadband service" means Internet service with the capability of providing:

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

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

(b) If the Federal Communications Commission 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), the comptroller may 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) 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," the broadband development office shall publish on the comptroller's Internet website the adjusted minimum download and upload speeds. Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

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

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

(c) The broadband development office:

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

(2) shall promote the policies enumerated in this

chapter; and

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

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

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

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

(1) advertise in any available media; and

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

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

Sec. 490I.0104. PARTICIPATION IN PROCEEDINGS OF FEDERAL COMMUNICATIONS COMMISSION. (a) The broadband development office may monitor, participate in, and provide input in proceedings of the Federal Communications Commission related to the geographic

availability and deployment of broadband service in this state to ensure that:

(1) the information available to the commission reflects the current status of geographic availability and deployment of broadband service in this state; and

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

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

(c) The office shall establish procedures and a data collection process in accordance with rules established by the Federal Communications Commission that will enable the office to participate in the process described by Subsection (b).

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

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

(1) an eligible area, if:

(A) fewer than 80 percent of the addresses in the designated area have access to broadband service; and

(B) the federal government has not awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area; or

(2) an ineligible area, if:

(A) 80 percent or more of the addresses in the designated area have access to broadband service; or

(B) the federal government has awarded funding under a competitive process to support the deployment of broadband service to addresses in the designated area.

(b) The comptroller by rule may determine the scope of a

designated area under Subsection (a).

(c) After creation of the initial map described in Subsection (a), the office may evaluate the usefulness of the standards for eligible and ineligible areas outlined in Subsection (a) and, if appropriate, make a recommendation to the legislature to revise the standards.

(d) The map required by Subsection (a) must display:

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

(2) 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

(3) each public school campus in this state with an indication of whether the public school campus has access to broadband service.

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

(f) Except as provided by Subsection (g), the office shall use information available from the Federal Communications Commission to create or update the map.

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

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

(i) The office may 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.

(j) The office may release information reported under Subsection (g) to a contractor providing services under Subsection (i). The contractor shall:

(1) keep the information confidential; and

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

(A) the date the contract expires;

(B) the date the contract is terminated; or

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

(k) A person who contracts under Subsection (i) may not provide services for a broadband provider in this state before the second anniversary of the last day the contract is in effect.

(l) The office shall establish criteria for determining whether a designated area should be reclassified as an eligible area or an ineligible area. The criteria must include an evaluation of Internet speed test data and information on end user addresses. The criteria may also include community surveys regarding the reliability of Internet service, where available.

(m) A designated area that is classified as an ineligible area on account of the existence of federal funding to support broadband service deployment in the area may be reclassified as an eligible area if:

(1) funding from the federal government is forfeited or the recipient of the funding is disqualified from receiving the funding; and

(2) the designated area otherwise meets the qualifications of an eligible area.

(n) A broadband service provider or political subdivision may petition the office to reclassify a designated area on the map as an eligible area or ineligible area. The office shall 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.

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

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

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

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

(2) meets the requirements of Subsection (d).

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) The broadband development office shall 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) The office shall establish and publish criteria for making awards under Subsection (a). The office shall:

(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; and

(3) 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) Notwithstanding Subsection (b)(2), the office may establish criteria that take into account a cost benefit analysis for awarding money to the eligible areas described by that subdivision.

(d) The office may not:

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

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

(3) award 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) take into consideration distributions from the state universal service fund established under Section [56.021](#), Utilities Code, when deciding to award grants, loans, or other financial incentives.

(e) The office shall:

(1) post on the comptroller's Internet website information about the application process and the receipt of awards and shall 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.

(f) During the 30-day posting period described by Subsection (e) for an application, the office shall 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.

(g) Notwithstanding any deadline for submitting an application, if the office upholds a protest submitted under Subsection (f) on the grounds that one or more of the addresses in

an eligible area subject to the application have access to broadband service, the applicant may resubmit the application without the challenged addresses not later than 30 days after the date that the office upheld the protest.

(h) The office shall establish and publish criteria for award recipients. The criteria must 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.

(i) 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

Sec. 490I.0107. STATE BROADBAND PLAN. (a) The broadband development office shall 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) In developing the state broadband plan, the office shall:

(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](#), 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](#), 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.

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

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

(b) The account consists of:

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

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

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

(c) The comptroller shall 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) Money in the account may be appropriated only to the broadband development 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 and equipment.

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

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

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

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.

Sec. 490I.0110. BOARD OF ADVISORS. (a) In this section:

(1) "Rural area" means a county with a population of less than 100,000 that is not adjacent to a county with a population of more than 350,000.

(2) "Urban area" means a county with a population of more than one million.

(b) The broadband development office board of advisors is composed of 10 members, appointed as follows:

(1) two members appointed by the governor, including:

(A) one member to represent the Texas Economic Development and Tourism Office; and

(B) one member to represent nonprofit corporations that work on the expansion, adoption, affordability, and use of broadband service;

(2) three members appointed by the lieutenant governor, including:

(A) one member who resides in an urban area;

(B) one member to represent the public primary and secondary education community; and

(C) one member who resides in a county that:

(i) is adjacent to an international border;

(ii) is located not more than 150 miles from the Gulf of Mexico; and

(iii) has a population of more than 60,000;

(3) three members appointed by the speaker of the house of representatives, including:

(A) one member who resides in a rural area;

(B) one member to represent the health and telemedicine industry; and

(C) one member to represent the public higher education community;

(4) the comptroller or the comptroller's designee; and

(5) one nonvoting member appointed by the broadband development office to represent the office.

(c) The comptroller or the comptroller's designee serves as the presiding officer of the board of advisors.

(d) Members of the board of advisors 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), and (5) expiring February 1 of each even-numbered year. A member may serve more than one term.

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

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

(g) The board of advisors shall provide guidance to the broadband development office regarding the expansion, adoption, affordability, and use of broadband service and the programs administered by the office.

(h) Beginning one year after the effective date of the Act enacting this chapter, the board of advisors shall meet at least once every other month with representatives from the broadband development office for the purpose of advising the work of the office in implementing the provisions of this chapter.

(i) A person who is professionally affiliated with a person serving as a member of the board of advisors is not eligible for funding from the broadband development program under Section

490I.0106.

(j) The board of advisors may consult with stakeholders with technical expertise in the area of broadband and telecommunication technology.

(k) Meetings of the board of advisors are subject to Chapter 551.

Added by Acts 2021, 87th Leg., R.S., Ch. 625 (H.B. 5), Sec. 5, eff. June 15, 2021.