

1-1 By: Nichols S.B. No. 1238  
1-2 (In the Senate - Filed February 27, 2023; March 9, 2023,  
1-3 read first time and referred to Committee on Business & Commerce;  
1-4 March 31, 2023, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 11, Nays 0; March 31, 2023,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	<u>X</u>			
1-10	<u>X</u>			
1-11	<u>X</u>			
1-12	<u>X</u>			
1-13	<u>X</u>			
1-14	<u>X</u>			
1-15	<u>X</u>			
1-16	<u>X</u>			
1-17	<u>X</u>			
1-18	<u>X</u>			
1-19	<u>X</u>			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1238 By: Nichols

1-21 A BILL TO BE ENTITLED  
1-22 AN ACT

1-23 relating to broadband development.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Sections 490I.0101(a) and (b), Government Code,  
1-26 are amended to read as follows:

1-27 (a) For purposes of this chapter, subject to Subsection (b),  
1-28 "broadband service" means Internet service with the capability of  
1-29 providing a:

1-30 (1) [a download] speed of not less than 25 megabits per  
1-31 second for a download [or faster]; [and]

1-32 (2) [an upload] speed of not less than three megabits  
1-33 per second for an upload; and

1-34 (3) network round-trip latency of less than or equal  
1-35 to 100 milliseconds based on the 95th percentile of speed  
1-36 measurements [or faster].

1-37 (b) If the Federal Communications Commission adopts  
1-38 standards [upload or download threshold speeds] for advanced  
1-39 telecommunications capability under 47 U.S.C. Section 1302 that are  
1-40 different than those specified by Subsection (a), the comptroller  
1-41 by rule may require Internet service to be capable of matching the  
1-42 [providing download or upload speeds that match that] federal  
1-43 standards [threshold] in order to qualify under this chapter as  
1-44 "broadband service."

1-45 SECTION 2. Sections 490I.0105(a), (b), (c), (d), (f), (k),  
1-46 (l), (n), (o), and (p), Government Code, are amended to read as  
1-47 follows:

1-48 (a) The broadband development office shall create, update  
1-49 annually, and publish on the comptroller's Internet website a map  
1-50 classifying each broadband serviceable location [designated area]  
1-51 in this state as:

1-52 (1) an unserved location [eligible area,] if [+]  
1-53 [(-A) fewer than 80 percent of the addresses in]  
1-54 the location does not [designated area] have access to reliable  
1-55 broadband service capable of providing the speeds described by  
1-56 Subdivision (2); [and]

1-57 [(-B) the federal government has not awarded  
1-58 funding under a competitive process to support the deployment of  
1-59 broadband service to addresses in the designated area, or]

1-60 (2) an underserved location [ineligible area,] if the

2-1 location is not an unserved location but does not~~+~~  
2-2 [~~(A) 80 percent or more of the addresses in the~~  
2-3 ~~designated area]~~ have access to reliable broadband service with the  
2-4 capability of providing:  
2-5 (A) a speed of not less than 100 megabits per  
2-6 second for a download;  
2-7 (B) a speed of not less than 20 megabits per  
2-8 second for an upload; and  
2-9 (C) a network round-trip latency of less than or  
2-10 equal to 100 milliseconds based on the 95th percentile of speed  
2-11 measurements; or  
2-12 (3) a served location if the location is neither an  
2-13 unserved nor an underserved location [~~(B) the federal government~~  
2-14 ~~has awarded funding under a competitive process to support the~~  
2-15 ~~deployment of broadband service to addresses in the designated~~  
2-16 ~~area].~~  
2-17 (b) The comptroller by rule may establish new threshold  
2-18 speeds for a location to qualify as an underserved location if the  
2-19 comptroller has required Internet service to be capable of matching  
2-20 federal standards to qualify as broadband service under Section  
2-21 490I.0101(b) [~~determine the scope of a designated area under~~  
2-22 ~~Subsection (a)].~~  
2-23 (c) After creation of the initial map described in  
2-24 Subsection (a), the office may evaluate the usefulness of the  
2-25 standards for unserved and underserved locations [~~eligible and~~  
2-26 ~~ineligible areas]~~ outlined in Subsection (a) and, if appropriate,  
2-27 make a recommendation to the legislature to revise the standards.  
2-28 (d) The map required by Subsection (a) must organize  
2-29 broadband serviceable locations into designated areas and display  
2-30 for each area:  
2-31 (1) the number of broadband service providers that  
2-32 serve the [~~each designated]~~ area;  
2-33 (2) [~~for each eligible area,~~] an indication of whether  
2-34 the area has access to Internet service that is not broadband  
2-35 service, regardless of the technology used to provide the service;  
2-36 [~~and]~~  
2-37 (3) each public school campus [~~in this state]~~ with an  
2-38 indication of whether the public school campus has access to  
2-39 broadband service; and  
2-40 (4) the number and percentage of unserved,  
2-41 underserved, and served locations within the area.  
2-42 (f) Except as provided by Subsection (g), the office shall  
2-43 use the best available data, including information available from  
2-44 the Federal Communications Commission, to create or update the map.  
2-45 (k) A person who contracts under Subsection (i) may not  
2-46 provide services in this state to [~~for~~] a broadband provider [~~in~~  
2-47 ~~this state]~~ before the second anniversary of the last day the  
2-48 contract is in effect.  
2-49 (l) The office shall establish criteria for determining  
2-50 whether a broadband serviceable location [~~designated area]~~ should  
2-51 be reclassified as an unserved or underserved location [~~eligible~~  
2-52 ~~area or an ineligible area]~~. The criteria must include an  
2-53 evaluation of Internet speed test and reliability data [~~and~~  
2-54 ~~information on end user addresses. The criteria may also include~~  
2-55 ~~community surveys regarding the reliability of Internet service,~~  
2-56 ~~where available]~~.  
2-57 (n) A broadband service provider or political subdivision  
2-58 may petition the office to reclassify a broadband serviceable  
2-59 location [~~designated area on the map as an eligible area or~~  
2-60 ~~ineligible area]~~. The office shall provide notice of each accepted  
2-61 [~~the]~~ petition to each affected broadband service provider and  
2-62 political subdivision by posting [~~that provides broadband service~~  
2-63 ~~to the designated area and post]~~ notice of the petition on the  
2-64 comptroller's Internet website.  
2-65 (o) Not later than the 45th day after the date that the  
2-66 office posts [~~a broadband provider receives]~~ notice under  
2-67 Subsection (n), each affected broadband service [~~the]~~ provider or  
2-68 political subdivision may [~~shall]~~ provide information to the office  
2-69 showing whether the broadband serviceable location [~~designated~~

3-1 ~~area~~] should or should not be reclassified.

3-2 (p) Not later than the 75th day after the date that the  
3-3 office posts the [a broadband provider receives] notice under  
3-4 Subsection (n), the office shall determine whether to reclassify  
3-5 the broadband serviceable location [designated area] on the map and  
3-6 update the map as necessary. A determination made by the office  
3-7 under this subsection is not a contested case for purposes of  
3-8 Chapter 2001.

3-9 SECTION 3. Section 490I.0106, Government Code, is amended  
3-10 to read as follows:

3-11 Sec. 490I.0106. BROADBAND DEVELOPMENT PROGRAM. (a) The  
3-12 broadband development office shall establish a program to award  
3-13 grants, low-interest loans, and other financial incentives to  
3-14 applicants for the purpose of expanding access to and adoption of  
3-15 broadband service ~~[in designated areas determined to be eligible~~  
3-16 ~~areas by the office under Section 490I.0105].~~

3-17 (a-1) The office may award grants, low-interest loans, and  
3-18 other financial incentives to applicants for eligible broadband  
3-19 infrastructure projects designed to provide qualifying broadband  
3-20 service to unserved and underserved locations. For the purposes of  
3-21 this subsection, an eligible broadband infrastructure project  
3-22 includes a project in which not less than 80 percent of the  
3-23 broadband serviceable locations to be served by the project are  
3-24 unserved and underserved locations.

3-25 (a-2) The office may award grants, low-interest loans, and  
3-26 other financial incentives to applicants for middle-mile broadband  
3-27 infrastructure projects.

3-28 (a-3) The office may award grants, low-interest loans, and  
3-29 other financial incentives to applicants for projects not involving  
3-30 the deployment of broadband infrastructure that expand the  
3-31 accessibility, affordability, or adoption of broadband service,  
3-32 including education, training, community outreach, remote learning  
3-33 or telehealth facilities, equipment purchases, or any other use  
3-34 permitted by the applicable funding source.

3-35 (b) The office shall establish eligibility and award [and  
3-36 publish] criteria for making awards under this chapter for each  
3-37 applicable notice of funds availability. The comptroller by rule  
3-38 may prescribe the manner in which the office shall provide notice to  
3-39 applicants of the applicable criteria [Subsection (a)]. In  
3-40 establishing eligibility and award criteria, the [The] office  
3-41 shall:

3-42 (1) take into consideration grants and other financial  
3-43 incentives awarded by the federal government for the deployment of  
3-44 broadband service [in a designated area];

3-45 (2) prioritize the applications of applicants that  
3-46 will expand access to and adoption of broadband service in  
3-47 designated [eligible] areas in which the highest [lowest]  
3-48 percentage of broadband serviceable locations are unserved or  
3-49 underserved locations; [addresses have access to broadband  
3-50 service, and]

3-51 (3) prioritize the applications of applicants that  
3-52 will expand access to broadband service in public and private  
3-53 primary and secondary schools and institutions of higher education;

3-54 (4) give preference to an applicant that provided the  
3-55 information requested by the office under Section 490I.0105 or  
3-56 490I.01061; and

3-57 (5) take into consideration whether an applicant has  
3-58 forfeited federal funding for defaulting on a project to deploy  
3-59 qualifying broadband service.

3-60 (c) Notwithstanding Subsection (b)(2), the office may  
3-61 establish criteria that take into account a cost benefit analysis  
3-62 for awarding money to the [eligible] areas described by that  
3-63 subdivision.

3-64 (d) The office may not:

3-65 (1) except as provided by Section 490I.01062, favor a  
3-66 particular broadband technology in awarding grants, loans, or other  
3-67 financial incentives;

3-68 (2) [award grants, loans, or other financial  
3-69 incentives to a broadband provider that does not report information

4-1 ~~requested by the office under Section 490I.0105,~~  
4-2 ~~[(3)]~~ award a grant, loan, or other financial  
4-3 incentive to a noncommercial provider of broadband service for a  
4-4 broadband serviceable location ~~[an eligible area]~~ if an eligible  
4-5 ~~[a]~~ commercial provider of broadband service has submitted an  
4-6 application for the same location; ~~[eligible area, or]~~  
4-7 (3) ~~[(4)]~~ take into consideration distributions from  
4-8 the state universal service fund established under Section 56.021,  
4-9 Utilities Code, when deciding to award grants, loans, or other  
4-10 financial incentives; or  
4-11 (4) except as provided by Section 490I.01061, award a  
4-12 grant, loan, or other financial incentive for deployment of  
4-13 last-mile broadband service for a location that is subject to a  
4-14 federal commitment to deploy qualifying broadband service on the  
4-15 date the application is submitted or during the application  
4-16 process.  
4-17 (e) The office shall:  
4-18 (1) post on the comptroller's Internet website  
4-19 information about the application process and the receipt of awards  
4-20 and shall update that information as necessary; and  
4-21 (2) post on the comptroller's Internet website for at  
4-22 least 30 days information from each accepted application, including  
4-23 the applicant's name, the area targeted for expanded broadband  
4-24 service access or adoption by the application, and any other  
4-25 information the office considers relevant or necessary ~~[, for a~~  
4-26 ~~period of at least 30 days before the office makes a decision on the~~  
4-27 ~~application].~~  
4-28 (f) During the 30-day posting period described by  
4-29 Subsection (e) for an application, the office shall accept from any  
4-30 interested party, other than a broadband service provider that does  
4-31 not report information requested by the office under Section  
4-32 490I.0105 or 490I.01061, a written protest of the application  
4-33 relating to whether the applicant or project is eligible for an  
4-34 award or should not receive an award based on the criteria  
4-35 prescribed by the office.  
4-36 (g) Notwithstanding any deadline for submitting an  
4-37 application, if the office upholds a protest submitted under  
4-38 Subsection (f) on the grounds that one or more of the broadband  
4-39 serviceable locations are not eligible to receive funding under  
4-40 this chapter ~~[addresses in an eligible area subject to the~~  
4-41 ~~application have access to broadband service]~~, the applicant may  
4-42 resubmit the application without the challenged locations  
4-43 ~~[addresses]~~ not later than 30 days after the date that the office  
4-44 upheld the protest.  
4-45 (h) The office shall establish and publish criteria for  
4-46 award recipients. The criteria must include requirements that  
4-47 grants, loans, and other financial incentives awarded through the  
4-48 program for the deployment of broadband infrastructure may be used  
4-49 only for capital expenses, purchase or lease of property, and other  
4-50 expenses, including backhaul and transport, that will facilitate  
4-51 the provision or adoption of broadband service.  
4-52 (i) An award granted under this section does not affect the  
4-53 eligibility of a telecommunications provider to receive support  
4-54 from the state universal service fund under Section 56.021,  
4-55 Utilities Code.  
4-56 SECTION 4. Chapter 490I, Government Code, is amended by  
4-57 adding Sections 490I.01061 and 490I.01062 to read as follows:  
4-58 Sec. 490I.01061. EXISTING FEDERAL FUNDING; REPORTING  
4-59 REQUIREMENTS. (a) The broadband development office may award a  
4-60 grant, loan, or other financial incentive for deployment of  
4-61 last-mile broadband service for a location that is subject to a  
4-62 federal commitment to deploy qualifying broadband service if:  
4-63 (1) federal funding is forfeited or the recipient of  
4-64 the federal funding is disqualified from receiving the funding; and  
4-65 (2) the location otherwise may receive funding under  
4-66 the program.  
4-67 (b) An applicant for an award under this chapter that has  
4-68 been awarded federal funding directly and has entered into an  
4-69 enforceable commitment to deploy broadband services in a location

5-1 shall provide to the office information the office may require  
5-2 regarding:

- 5-3 (1) the existing enforceable commitment; and
- 5-4 (2) the proposed deployment of broadband.

5-5 Sec. 490I.01062. FIBER OPTIC PREFERENCE. (a) The  
5-6 broadband development office shall prioritize broadband  
5-7 infrastructure projects that connect each end-user location using  
5-8 end-to-end fiber optic facilities that meet speed, latency,  
5-9 reliability, consistency, scalability, and related criteria as the  
5-10 office shall determine for each applicable notice of funds  
5-11 availability.

5-12 (b) The office may consider an application for a broadband  
5-13 infrastructure project that does not employ end-to-end fiber optic  
5-14 facilities if the use of an alternative technology:

- 5-15 (1) is proposed for a high cost area;
- 5-16 (2) may be deployed at a lower cost; and
- 5-17 (3) meets the criteria established by the office under  
5-18 Subsection (a).

5-19 SECTION 5. Section 490I.0107(b), Government Code, is  
5-20 amended to read as follows:

5-21 (b) In developing the state broadband plan, the office  
5-22 shall:

5-23 (1) to the extent possible, collaborate with state  
5-24 agencies, political subdivisions, broadband industry stakeholders  
5-25 and representatives, and community organizations that focus on  
5-26 broadband services and technology access;

5-27 (2) ~~consider the policy recommendations of the~~  
5-28 ~~governor's broadband development council;~~

5-29 ~~[(3)]~~ favor policies that are technology-neutral and  
5-30 protect all members of the public;

5-31 (3) ~~[(4)]~~ explore state and regional approaches to  
5-32 broadband development; and

5-33 (4) ~~[(5)]~~ examine broadband service needs related  
5-34 to:

5-35 (A) public safety, including the needs of state  
5-36 agencies involved in the administration of criminal justice, as  
5-37 that term is defined by Article 66.001, Code of Criminal Procedure;

5-38 (B) public education and state and local  
5-39 education agencies, including any agency involved in the electronic  
5-40 administration of an assessment instrument required under Section  
5-41 39.023, Education Code; and

5-42 (C) public health, including the needs of state  
5-43 agencies involved in the administration of public health  
5-44 initiatives such as the Health and Human Services Commission and  
5-45 the Department of State Health Services.

5-46 SECTION 6. Sections 490I.0110(b) and (h), Government Code,  
5-47 are amended to read as follows:

5-48 (b) The broadband development office board of advisors is  
5-49 composed of 10 members, appointed as follows:

5-50 (1) two members appointed by the governor, including:

5-51 (A) one member to represent the Texas Economic  
5-52 Development and Tourism Office; and

5-53 (B) one member of the public with experience in  
5-54 telecommunications or ~~[to represent nonprofit corporations that~~  
5-55 ~~work on the expansion, adoption, affordability, and use of]~~  
5-56 broadband service;

5-57 (2) three members appointed by the lieutenant  
5-58 governor, including:

5-59 (A) one member who resides in an urban area;

5-60 (B) one member to represent the public primary  
5-61 and secondary education community; and

5-62 (C) one member who resides in a county that:

5-63 (i) is adjacent to an international border;

5-64 (ii) is located not more than 150 miles from  
5-65 the Gulf of Mexico; and

5-66 (iii) has a population of more than 60,000;

5-67 (3) three members appointed by the speaker of the  
5-68 house of representatives, including:

5-69 (A) one member who resides in a rural area;

6-1 (B) one member to represent the health and  
6-2 telemedicine industry; and

6-3 (C) one member to represent the public higher  
6-4 education community;

6-5 (4) the comptroller or the comptroller's designee; and

6-6 (5) one nonvoting member appointed by the broadband  
6-7 development office to represent the office.

6-8 (h) ~~The [Beginning one year after the effective date of the~~  
6-9 ~~Act enacting this chapter, the]~~ board of advisors shall meet at  
6-10 least semiannually [~~once every other month~~] with representatives  
6-11 from the broadband development office for the purpose of advising  
6-12 the work of the office in implementing the provisions of this  
6-13 chapter.

6-14 SECTION 7. The following provisions of the Government Code  
6-15 are repealed:

6-16 (1) Chapter 490H;

6-17 (2) Section 490I.0101(c); and

6-18 (3) Section 490I.0105(m).

6-19 SECTION 8. This Act takes effect immediately if it receives  
6-20 a vote of two-thirds of all the members elected to each house, as  
6-21 provided by Section 39, Article III, Texas Constitution. If this  
6-22 Act does not receive the vote necessary for immediate effect, this  
6-23 Act takes effect September 1, 2023.

6-24 \* \* \* \* \*