



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND^{SEVEN}

AN ACT ESTABLISHING AND FUNDING THE MASSACHUSETTS BROADBAND INSTITUTE

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to establish and fund the Massachusetts Broadband Institute, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The general court finds and declares that:

(a) high-speed internet, or broadband, access is essential in a knowledge-based, information economy and provides significant benefits to the commonwealth, including, but not limited to, increased access to employment opportunities, workforce training programs, and educational resources; reduced demand on the commonwealth's transportation systems through telecommuting; more efficient delivery of health care; and more effective delivery of government services;

(b) affordable broadband access has been shown to create jobs, assist small business development, and increase property values and tax receipts, and states that ensure affordable, ubiquitous access to broadband can dramatically stimulate their economies;

(c) many communities across the commonwealth have unacceptably low levels of broadband access, and this lack of access undermines economic development and hinders the delivery of essential government services throughout the commonwealth; further, this lack of access has negative effects not only on businesses and residents, but also on governmental functions;

(d) promoting affordable, ubiquitous broadband access to enhance the competitive position of the commonwealth in vital sectors of the economy, and to improve the health, safety, education, quality of life and quality of economic opportunity for the citizens of the commonwealth, is a clear public purpose and governmental function;

(e) public support for, and promotion of, affordable, ubiquitous broadband access will have significant benefits for the commonwealth and its citizens;

(f) the purpose of this act is to establish a Massachusetts broadband institute with the requisite powers (i) to assess and improve broadband access conditions in the commonwealth, with particular focus upon communities with no access, and (ii) to promote increased availability of, and competition for, broadband access and related services; and

(g) the investments of the Massachusetts broadband institute are intended to support future statewide, comprehensive strategies to create conditions that encourage economic competitiveness and growth.

SECTION 1A. To provide for a program of capital improvements to achieve the deployment of affordable and ubiquitous broadband access for every citizen of the

commonwealth, the sum set forth in section 2 of this act, for the several purposes and subject to the conditions specified in this act, is hereby made available, subject to the laws regulating the disbursement of public funds.

SECTION 2.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

1599-7060	For a reserve to provide funds to the Massachusetts Broadband Incentive Fund established by section 6B of chapter 40J of the General Laws.....\$25,000,000
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SECTION 3. To meet the expenditures necessary to carry out section 2, the state treasurer shall, upon request of the governor, issue and sell bonds of the commonwealth in an amount to be specified by the governor from time to time but not exceeding, in the aggregate, \$25,000,000. All these bonds issued by the commonwealth shall be designated on their face, Massachusetts Broadband Incentive Fund Loan, Act of 2007, and shall be issued for a maximum term of years, not exceeding 30 years, that the governor may recommend to the general court pursuant to Section 3 of Article LXII of the Amendments to the Constitution. All such bonds shall be payable not later than June 30, 2042. All interest and payments on account of principal of such obligations shall be payable from the General Fund. Bonds issued under the authority of this section shall be general obligations of the commonwealth.

SECTION 4. Upon the effective date of this act, the Massachusetts Technology Park Corporation shall transfer all moneys held in the Wireless and Broadband Development Fund established by section 6C of chapter 40J of the General Laws, as inserted by section 40 of chapter 123 of the acts of 2006, to the Massachusetts Broadband Incentive Fund established by section 6B of chapter 40J of the General Laws and shall expend them in accordance with section 6B.

SECTION 5. Section 3 of chapter 23A of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out, in lines 23 and 24, the words “wireless broadband development council established pursuant to section 6B of chapter 40J” and inserting in place thereof the following words:- Massachusetts broadband institute.

SECTION 6. Section 3 of chapter 23A, as so appearing, is hereby further amended by striking out, in lines 62 to 64, the words “wireless broadband development council, established pursuant to section 6A of chapter 40J of the General Laws” and inserting in place thereof the following words:- Massachusetts broadband institute.

SECTION 7. Section 3 of chapter 23A, as so appearing, is hereby further amended by striking out, in lines 87 and 88, the words “wireless broadband development council established pursuant to section 6A of chapter 40J of the General Laws” and inserting in place thereof the following words:- Massachusetts broadband institute.

SECTION 8. Chapter 40J of the General Laws is hereby amended by striking out sections 6B and 6C, as so appearing, and inserting in place thereof the following 2 sections:-

Section 6B. (a) As used in this section and in section 6C the following words shall, unless the context clearly requires otherwise, have the following meanings:—

“Board”, the governing board of the Massachusetts broadband institute established pursuant to subsection (d).

“Broadband”, high-speed internet access.

“Fund”, the Massachusetts Broadband Incentive Fund established pursuant to subsection (c).

“Internet”, the global electronic communications network of computer networks which operates world-wide using a common set of communications protocols.

“Institute”, the Massachusetts broadband institute established pursuant to subsection (b).

(b) The corporation shall establish an institute for investment in broadband infrastructure in the commonwealth, to be known as the Massachusetts broadband institute. The purpose of the institute shall be to achieve the deployment of affordable and ubiquitous broadband access for every citizen of the commonwealth. The particular objectives of the institute shall be: (i) to assess and improve broadband access conditions in communities that have no access or have limited or insufficient access; (ii) to promote robust broadband access for essential state and local governmental services, including without limitation public safety, health, and education; (iii) to promote increased availability of, and competition for, broadband access and related services; and (iv) to

create conditions that will encourage economic competitiveness and growth. The first priority of the institute shall be to assess and improve the conditions in the commonwealth's communities that have no broadband access.

(c) The corporation shall establish a fund to be known as the Massachusetts Broadband Incentive Fund. The corporation shall hold the fund separate and apart from its other funds, to finance the activities of the institute. The corporation shall credit to the fund any appropriations, bond proceeds or other moneys authorized by the general court and specifically designated to be credited to the fund, and any other moneys legally available to the corporation which the board of the corporation may determine to deposit in the fund.

(d) There shall be a governing board for the institute to assist the corporation in matters related to the institute and the fund. The board shall consist of the following 9 members: the secretary of administration and finance, the secretary of housing and economic development, the commissioner of telecommunications and cable, the executive director of the corporation, and the chairman of the governing board of the John Adams Innovation Institute, all of whom shall serve *ex officio*, and 4 individuals appointed by the governor who shall have knowledge and experience in one or more of the following areas: telecommunications, broadband infrastructure, public-private partnership development, information technology, or other fields of experience consistent with the mission of the institute. The governor shall from time to time designate one of the board's members to chair the board. Each member of the board serving *ex officio* may appoint a designee under section 6A of chapter 30. The members of the board shall be considered directors for purposes of the fourth, fifth and seventh

paragraphs of section 3. Each member appointed by the governor shall serve a term of 4 years and thereafter until his successor is duly appointed and qualified, except that in making the initial appointments the governor shall appoint 1 member to serve 1 year, 1 to serve 2 years, 1 to serve 3 years and 1 to serve 4 years. Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for only the unexpired term of such member. Any appointed member shall be eligible for reappointment. Any appointed member may be removed by the governor for cause.

(e) Five members of the board shall constitute a quorum, and the affirmative vote of a majority of the members present and eligible to vote at a meeting shall be necessary for any action to be taken by the board. The members shall serve without compensation, but each member shall be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties. The board shall meet at least 4 times in each year.

(f) Any action of the board may take effect immediately and need not be published or posted unless otherwise provided by law. Meetings of the board shall be subject to section 11A½ of chapter 30A, but section 11A½ shall not apply to any meeting of members of the board serving *ex officio* in the exercise of their duties as officers of the commonwealth so long as no matters relating to the official business of the board are discussed and decided at the meeting. Subject to subsection (g), records pertaining to the activities of the institute shall be subject to section 42 of chapter 30 and section 10 of chapter 66. The operations of the institute shall be subject to chapter 268B and all other

operational or administrative standards or requirements to the same extent as the office of the state treasurer.

(g) Any documentary materials or data whatsoever made or received by any member of the board or director or employee of the corporation and consisting of, or to the extent that such materials or data consist of, trade secrets or commercial or financial information regarding the operation of any business conducted by any entity with which the institute or corporation engages in furtherance of the purposes of the institute, shall not be public records of the institute or the corporation and specifically shall not be subject to section 10 of chapter 66. Any discussion or consideration of such trade secrets or commercial or financial information may be held by the board or the board of the corporation, or by any subcommittee of either board, in executive sessions closed to the public notwithstanding the provisions of section 11A½ of chapter 30A, but the purpose of any such executive session shall be set forth in the official minutes, and no business which is not directly related to such purpose shall be transacted nor shall any vote be taken during such executive session. The board shall have the authority to establish standards and procedures for the management of any such confidential information.

(h) From a list of nominees submitted by the executive director of the corporation, the board shall appoint a qualified individual as director to manage the affairs of the institute and shall fix his compensation and conditions of employment by the corporation.

(i) The board shall consult with the joint committees on telecommunications, utilities and energy and economic development and emerging technologies during the preparation of a detailed plan for the operation of the institute and the fund. This plan

shall be subject to the approval of the secretary of housing and economic development and the secretary of administration and finance. Upon approval of this plan by those secretaries and by the board of the corporation, the corporation board shall delegate to the board whatever authority it considers appropriate to implement the plan.

(j) Before the beginning of each fiscal year, the board shall adopt an operating plan governing disbursements from the fund, and to the extent the plan provides for disbursement of appropriations or other moneys authorized by the general court, the plan shall be subject to the approval of the secretary of housing and economic development.

Section 6C. (a) In furtherance of its purposes as described in section 6B, the institute shall leverage private sector and federal investment by financing the construction and acquisition of broadband infrastructure, including without limitation conduit, fiber and towers, to promote the development of broadband access. Any equipment or other property financed by the institute shall be owned by the corporation, the commonwealth or one or more other public entities, but may be leased or licensed by the institute, for a fee or otherwise, for use by not-for-profit or for-profit private-sector entities. Any such transaction shall constitute a transaction with the commonwealth for the purpose of chapter 30B. The lessee or licensee shall pay any lease or license fees to the corporation, which shall credit them to the fund. The institute may provide and pay for such advisory services and technical assistance as may be necessary or desired to carry out its purposes. The institute may work in collaboration with the corporation and other quasi-public and not-for-profit entities and state agencies, and may provide advisory assistance to local entities, local authorities, public bodies and private corporations for the purposes of maximizing opportunities for the expansion of

broadband access in the commonwealth and fostering innovative approaches to broadband access in the commonwealth.

(b) The board shall issue findings, directives and guidelines for the purpose of further defining terms such as “affordable”, “broadband”, “telecommunications”, “ubiquitous”, “underserved”, and “un-served”, establishing metrics and measures necessary to carry out the purposes of the institute, and any other purpose consistent with the institute’s mission.

(c) The board shall collect any and all information from reasonably available sources, including but not limited to municipalities and other public entities and agencies of the commonwealth, local and regional non-profit entities, and telecommunications and broadband service providers, to develop and maintain, with all possible specificity, an inventory of: (i) locations at which telecommunications and broadband services are not available within the commonwealth; (ii) locations where telecommunications and broadband infrastructure is available or is reasonably likely to be available to support the provision of services to un-served and underserved areas; (iii) locations where new infrastructure may be necessary for the provision of services to un-served and underserved areas; (iv) the quality of such services, including but not limited to speed of data transmission and cost of such services; and (v) any other relevant information.

(d) The board shall review and recommend changes in laws, rules, programs, and policies of the commonwealth and its agencies and subdivisions to further financing, infrastructure and development for broadband access within the commonwealth.

(e) The board shall prepare, publish and distribute, with or without charge, as the institute may determine, such studies, reports and bulletins and other material as the institute deems appropriate.

(f) Insofar as apt, in the determination of the board of the corporation, the provisions of this chapter that apply to centers and to the center fund shall apply to the institute and the fund, respectively.

(g) The institute shall file an annual report of its activities with the governor, the joint committee on telecommunications, utilities and energy, the joint committee on economic development and emerging technologies, and the house and senate committees on ways and means.