

HOUSE No. 4311

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

October 18, 2007.

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached legislative proposal, entitled, "An Act Establishing and Funding the Massachusetts Broadband Institute."

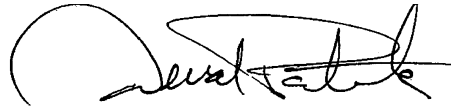
To retain its competitive edge and fuel the Commonwealth's economic development strategy we must ensure affordable and available broadband access statewide. Broadband access has a proven track record of stimulating economic growth, creating jobs, and increasing property values and tax receipts. This bill will create and fund the Massachusetts Broadband Institute, which will make strategic and targeted public investments with the objective of providing high-speed Internet, or broadband, service to all currently un-served communities by 2010.

To leverage existing expertise at the John Adams Innovation Institute and permit us to meet these aggressive goals in a timely and cost-effective manner, the Massachusetts Broadband Institute will be part of the Massachusetts Technology Collaborative. The Institute will seed public-private partnerships to develop broadband infrastructure and target the citizens and businesses in un-served areas that currently have no broadband access. Also, the Institute will measure existing

broadband access conditions and create a central plan to address access deficiencies while investing public funds into essential, long-lived infrastructure such as fiber and wireless towers to lower overall cost of deployment for private providers. In addition, this bill contains a \$25 million bond allocation to create the Massachusetts Broadband Incentive Fund, which will be managed by the Institute to leverage private investments and provide complete broadband solutions where deficiencies exist.

This proposal will enhance our competitive position in vital sectors of the economy and improve the health, safety, education, and quality of life for the citizens of the Commonwealth. Accordingly, I urge your prompt and favorable consideration of this bill to help promote affordable and available broadband access to all corners of the Commonwealth.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Deval Patrick', with a large, sweeping flourish on the left side.

DEVAL L. PATRICK,
Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT ESTABLISHING AND FUNDING THE MASSACHUSETTS BROADBAND INSTITUTE.

1 *Whereas*, The deferred operation of this act would tend to
2 defeat its purpose, which is forthwith to establish and fund the
3 Massachusetts Broadband Institute, therefore it is hereby declared
4 to be an emergency law, necessary for the immediate preservation
5 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:

1 SECTION 1. The general court finds and declares that:—

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

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

14 (c) many communities across the Commonwealth have unac-
15 ceptably low levels of broadband access, and this lack of access
16 undermines economic development and hinders the delivery of
17 essential government services throughout the Commonwealth; fur-
18 ther, this lack of access has negative effects not only on busi-
19 nesses and residents, but also on governmental functions;

20 (d) promoting affordable, ubiquitous broadband access to
21 enhance the competitive position of the Commonwealth in vital
22 sectors of the economy, and to improve the health, safety, educa-
23 tion, quality of life and quality of economic opportunity for the

24 citizens of the Commonwealth, is a clear public purpose and gov-
25 ernmental function;

26 (e) public support for, and promotion of, affordable, ubiquitous
27 broadband access will have significant benefits for the Common-
28 wealth and its citizens;

29 (f) the purpose of this act is to establish a Massachusetts broad-
30 band institute with the requisite powers (i) to assess and improve
31 broadband access conditions in the Commonwealth, with partic-
32 ular focus upon communities with no access, and (ii) to promote
33 increased availability of, and competition for, broadband access
34 and related services; and

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

1 SECTION 1A. To provide for a program of capital improve-
2 ments to achieve the deployment of affordable and ubiquitous
3 broadband access for every citizen of the Commonwealth, the sum
4 set forth in Section 2 of this act, for the several purposes and sub-
5 ject to the conditions specified in this act, is hereby made avail-
6 able, subject to the laws regulating the disbursement of public
7 funds.

1 SECTION 2.

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE.

| | | |
|-----------|---|------------|
| 1599-7060 | For a reserve to provide funds to the Massachusetts Broad- band Incentive Fund established by Section 6B of Chapter 40J of the General Laws | 25,000,000 |
|-----------|---|------------|

1 SECTION 3. To meet the expenditures necessary to carry out
2 Section 2, the state treasurer shall, upon request of the governor,
3 issue and sell bonds of the Commonwealth in an amount to be
4 specified by the governor from time to time but not exceeding, in
5 the aggregate, \$25,000,000. All these bonds issued by the Com-
6 monwealth shall be designated on their face, Massachusetts
7 Broadband Incentive Fund Loan, Act of 2007, and shall be issued
8 for a maximum term of years, not exceeding 30 years, that the

9 governor may recommend to the general court pursuant to Section
10 3 of Article LXII of the Amendments to the Constitution. All such
11 bonds shall be payable not later than June 30, 2042. All interest
12 and payments on account of principal of such obligations shall be
13 payable from the General Fund. Bonds issued under the authority
14 of this section shall be general obligations of the Commonwealth.

1 SECTION 4. Upon the effective date of this act, the Massachu-
2 setts Technology Park Corporation shall transfer all moneys held
3 in the Wireless and Broadband Development Fund established by
4 Section 6C of Chapter 40J of the General Laws, as inserted by
5 Section 40 of Chapter 123 of the acts of 2006, to the Massachu-
6 setts Broadband Incentive Fund established by Section 6B of
7 Chapter 40J of the General Laws and shall expend them in accor-
8 dance with Section 6B.

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

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

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

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

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

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

9 “Broadband”, high-speed internet access.

10 “Fund”, the Massachusetts Broadband Incentive Fund estab-
11 lished pursuant to subsection (c).

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

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

17 (b) The corporation shall establish an institute for investment in
18 broadband infrastructure in the Commonwealth, to be known as
19 the Massachusetts broadband institute. The purpose of the insti-
20 tute shall be to achieve the deployment of affordable and ubiqui-
21 tous broadband access for every citizen of the Commonwealth.
22 The particular objectives of the institute shall be:—

23 (i) to assess and improve broadband access conditions in com-
24 munities that have no access or have limited or insufficient access;

25 (ii) to promote robust broadband access for essential state and
26 local governmental services, including without limitation public
27 safety, health, and education;

28 (iii) to promote increased availability of, and competition for,
29 broadband access and related services; and

30 (iv) to create conditions that will encourage economic competi-
31 tiveness and growth. The first priority of the institute shall be to
32 assess and improve the conditions in the Commonwealth’s com-
33 munities that have no broadband access.

34 (c) The corporation shall establish a fund to be known as the
35 Massachusetts Broadband Incentive Fund. The corporation shall
36 hold the fund separate and apart from its other funds, to finance
37 the activities of the institute. The corporation shall credit to the
38 fund any appropriations, bond proceeds or other moneys autho-
39 rized by the general court and specifically designated to be cred-

40 ited to the fund, and any other moneys legally available to the cor-
41 poration which the board of the corporation may determine to
42 deposit in the fund.

43 (d) There shall be a governing board for the institute to assist
44 the corporation in matters related to the institute and the fund. The
45 board shall consist of the following 9 members:— the secretary of
46 administration and finance, the secretary of housing and economic
47 development, the commissioner of telecommunications and cable,
48 the executive director of the corporation, and the chairman of the
49 governing board of the John Adams Innovation Institute, all of
50 whom shall serve ex officio, and 4 individuals appointed by the
51 governor who shall have knowledge and experience in one or
52 more of the following areas:— telecommunications, broadband
53 infrastructure, public-private partnership development, informa-
54 tion technology, or other fields of experience consistent with the
55 mission of the institute. The governor shall from time to time des-
56 ignate one of the board's members to chair the board. Each
57 member of the board serving ex officio may appoint a designee
58 under Section 6A of Chapter 30. The members of the board shall
59 be considered directors for purposes of the fourth, fifth and sev-
60 enth paragraphs of Section 3. Each member appointed by the gov-
61 ernor shall serve a term of 4 years and thereafter until his
62 successor is duly appointed and qualified, except that in making
63 the initial appointments the governor shall appoint 1 member to
64 serve 1 year, 1 to serve 2 years, 1 to serve 3 years and 1 to serve 4
65 years. Any person appointed to fill a vacancy in the office of a
66 member of the board shall be appointed in a like manner and shall
67 serve for only the unexpired term of such member. Any appointed
68 member shall be eligible for reappointment. Any appointed
69 member may be removed by the governor for cause.

70 (e) Five members of the board shall constitute a quorum, and
71 the affirmative vote of a majority of the members present and eli-
72 gible to vote at a meeting shall be necessary for any action to be
73 taken by the board. The members shall serve without compensa-
74 tion, but each member shall be entitled to reimbursement for
75 actual and necessary expenses incurred in the performance of offi-
76 cial duties. The board shall meet at least 4 times in each year.

77 (f) Any action of the board may take effect immediately and
78 need not be published or posted unless otherwise provided by law.

79 Meetings of the board shall be subject to Section 11A½ of Chapter
80 30A, but Section 11A½ shall not apply to any meeting of mem-
81 bers of the board serving ex officio in the exercise of their duties
82 as officers of the Commonwealth so long as no matters relating to
83 the official business of the board are discussed and decided at the
84 meeting. Subject to subsection (g), records pertaining to the activ-
85 ities of the institute shall be subject to Section 42 of Chapter 30
86 and Section 10 of Chapter 66. The operations of the institute shall
87 be subject to Chapter 268B and all other operational or adminis-
88 trative standards or requirements to the same extent as the office
89 of the state treasurer.

90 (g) Any documentary materials or data whatsoever made or
91 received by any member of the board or director or employee of
92 the corporation and consisting of, or to the extent that such mate-
93 rials or data consist of, trade secrets or commercial or financial
94 information regarding the operation of any business conducted by
95 any entity with which the institute or corporation engages in fur-
96 therance of the purposes of the institute, shall not be public
97 records of the institute or the corporation and specifically shall not
98 be subject to Section 10 of Chapter 66. Any discussion or consid-
99 eration of such trade secrets or commercial or financial informa-
100 tion may be held by the board or the board of the corporation, or
101 by any subcommittee of either board, in executive sessions closed
102 to the public notwithstanding the provisions of Section 11A½ of
103 Chapter 30A, but the purpose of any such executive session shall
104 be set forth in the official minutes, and no business which is not
105 directly related to such purpose shall be transacted nor shall any
106 vote be taken during such executive session. The board shall have
107 the authority to establish standards and procedures for the man-
108 agement of any such confidential information.

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

113 (i) The board shall consult with the joint committees on
114 telecommunications, utilities and energy and economic develop-
115 ment and emerging technologies during the preparation of a
116 detailed plan for the operation of the institute and the fund. This
117 plan shall be subject to the approval of the secretary of housing

118 and economic development and the secretary of administration
119 and finance. Upon approval of this plan by those secretaries and
120 by the board of the corporation, the corporation board shall dele-
121 gate to the board whatever authority it considers appropriate to
122 implement the plan.

123 (j) Before the beginning of each fiscal year, the board shall
124 adopt an operating plan governing disbursements from the fund,
125 and to the extent the plan provides for disbursement of appropria-
126 tions or other moneys authorized by the general court, the plan
127 shall be subject to the approval of the secretary of housing and
128 economic development. Section 6C. (a) In furtherance of its pur-
129 poses as described in Section 6B, the institute shall leverage pri-
130 vate sector and federal investment by financing the construction
131 and acquisition of broadband infrastructure, including without
132 limitation conduit, fiber and towers, to promote the development
133 of broadband access. Any equipment or other property financed
134 by the institute shall be owned by the corporation, the Common-
135 wealth or one or more other public entities, but may be leased or
136 licensed by the institute, for a fee or otherwise, for use by not-for-
137 profit or for-profit private-sector entities. Any such transaction
138 shall constitute a transaction with the Commonwealth for the pur-
139 pose of Chapter 30B. The lessee or licensee shall pay any lease or
140 license fees to the corporation, which shall credit them to the
141 fund. The institute may provide and pay for such advisory serv-
142 ices and technical assistance as may be necessary or desired to
143 carry out its purposes. The institute may work in collaboration
144 with the corporation and other quasi-public and not-for-profit enti-
145 ties and state agencies, and may provide advisory assistance to
146 local entities, local authorities, public bodies and private corpora-
147 tions for the purposes of maximizing opportunities for the expan-
148 sion of broadband access in the Commonwealth and fostering
149 innovative approaches to broadband access in the Commonwealth.

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

156 (c) The board shall collect any and all information from reason-
157 ably available sources, including but not limited to municipalities
158 and other public entities and agencies of the Commonwealth, local
159 and regional non-profit entities, and telecommunications and
160 broadband service providers, to develop and maintain, with all
161 possible specificity, an inventory of:—

162 (i) locations at which telecommunications and broadband serv-
163 ices are not available within the Commonwealth;

164 (ii) locations where telecommunications and broadband infra-
165 structure is available or is reasonably likely to be available to sup-
166 port the provision of services to un-served and underserved areas;

167 (iii) locations where new infrastructure may be necessary for
168 the provision of services to un-served and underserved areas;

169 (iv) the quality of such services, including but not limited to
170 speed of data transmission and cost of such services; and

171 (v) any other relevant information.

172 (d) The board shall review and recommend changes in laws,
173 rules, programs, and policies of the Commonwealth and its agen-
174 cies and subdivisions to further financing, infrastructure and
175 development for broadband access within the Commonwealth.

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

180 (f) Insofar as apt, in the determination of the board of the cor-
181 poration, the provisions of this Chapter that apply to centers and
182 to the center fund shall apply to the institute and the fund, respec-
183 tively.

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