

**HOUSE . . . . . No. 4715**

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**The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, May 1, 2008.

The committee on Bonding, Capital Expenditures and State Assets to whom was referred the message from His Excellency the Governor recommending legislation relative to establishing and funding the Massachusetts broadband institute (House, No. 4311), reports recommending that the accompanying bill (House, No. 4715) ought to pass.

For the committee,

DAVID L. FLYNN.

**The Commonwealth of Massachusetts**

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In the Year Two Thousand and Eight.

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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  
30 broadband institute with the requisite powers (i) to assess and  
31 improve broadband access conditions in the commonwealth, with  
32 particular focus upon communities with no access, and (ii) to pro-  
33 mote increased availability of, and competition for, broadband  
34 access 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; provided that \$15,000,000 shall be expended for expansion of broad- band access in regions of the commonwealth that are currently underserved by broadband .....	40,000,000.
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1 SECTION 3. To meet the expenditures necessary in carrying  
2 out section 2, the state treasurer shall, upon request of the  
3 governor, issue and sell bonds of the commonwealth in an amount  
4 to be specified by the governor from time to time but not  
5 exceeding, in the aggregate, \$40,000,000. All bonds issued by the

6 commonwealth, as aforesaid, shall be designated on their face,  
7 Massachusetts Broadband Incentive Fund Loan Act of 2008, and  
8 shall be issued for a maximum term of years, not exceeding 20  
9 years, as the governor may recommend to the general court pur-  
10 suant to Section 3 of Article LXII of the Amendments to the Con-  
11 stitution; provided, however, that all such bonds shall be payable  
12 not later than June 30, 2033. All interest and payments on  
13 account of principal on such obligations shall be payable from the  
14 General Fund. Bonds and interest thereon issued under the  
15 authority of this section shall, notwithstanding any other provi-  
16 sions of this act, 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 Massachusetts  
6 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 words:—  
6 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:— Massachusetts  
6 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  
4 pursuant to section 6A of chapter 40J of the General Laws” and

5 inserting in place thereof the following words:— Massachusetts  
6 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: (i) to assess and  
23 improve broadband access conditions in communities that have no  
24 access or have limited or insufficient access; (ii) to promote  
25 robust broadband access for essential state and local governmental  
26 services, including without limitation public safety, health, and  
27 education; (iii) to promote increased availability of, and competi-  
28 tion for, broadband access and related services; and (iv) to create  
29 conditions that will encourage economic competitiveness and  
30 growth. The first priority of the institute shall be to assess and  
31 improve the conditions in the commonwealth's communities that  
32 have no broadband access.

33 (c) The corporation shall establish a fund to be known as the  
34 Massachusetts Broadband Incentive Fund. The corporation shall  
35 hold the fund separate and apart from its other funds, to finance  
36 the activities of the institute. The corporation shall credit to the

37 fund any appropriations, bond proceeds or other moneys autho-  
38 rized by the general court and specifically designated to be cred-  
39 ited to the fund, and any other moneys legally available to the  
40 corporation which the board of the corporation may determine to  
41 deposit in the fund.

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

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

76 (f) All action of the board may take effect immediately and  
77 shall be required to be published and posted. Meetings of the  
78 board shall be subject to section 11A½ of chapter 30A. Any doc-  
79 umentary materials, records, or data whatsoever made or received  
80 by any member of the board or director or employee of the corpo-  
81 ration including such materials or data consisting of commercial  
82 or financial information regarding the operation of any business  
83 conducted by any entity with which the institute or corporation  
84 engages in furtherance of the purposes of the institute, shall be  
85 public records of the institute or the corporation and specifically  
86 shall be subject to Section 10 of Chapter 66. The operations of  
87 the institute shall be subject to chapter 268A and chapter 268B.

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

92 (h) The board shall consult with the joint committees on  
93 telecommunications, utilities and energy and economic develop-  
94 ment and emerging technologies during the preparation of a  
95 detailed plan for the operation of the institute and the fund. This  
96 plan shall be subject to the approval of the secretary of housing  
97 and economic development and the secretary of administration  
98 and finance. Upon approval of this plan by those secretaries and  
99 by the board of the corporation, the corporation board shall dele-  
100 gate to the board whatever authority it considers appropriate to  
101 implement the plan.

102 (i) Before the beginning of each fiscal year, the board shall  
103 adopt an operating plan governing disbursements from the fund,  
104 and to the extent the plan provides for disbursement of appropria-  
105 tions or other moneys authorized by the general court, the plan  
106 shall be subject to the approval of the secretary of housing and  
107 economic development.

108 Section 6C. (a) In furtherance of its purposes as described in  
109 section 6B, the institute shall leverage private sector and federal  
110 investment by financing the construction and acquisition of broad-  
111 band infrastructure, including without limitation conduit, fiber and  
112 towers, to promote the development of broadband access. Any  
113 equipment or other property financed by the institute shall be  
114 owned by the corporation, the commonwealth or one or more

115 other public entities. The institute may contract to lease or license  
116 the equipment or property for use by not-for-profit or for-profit  
117 private-sector entities; provided, however., that all such contracts  
118 shall be subject to the requirements of chapters 7, 30 and 149 of  
119 the General Laws. The lessee or licensee shall pay any lease or  
120 license fees to the corporation, which shall credit them to the  
121 General Fund. The institute may provide and pay for such advisory  
122 services and technical assistance as may be necessary or  
123 desired to carry out its purposes; provided, that such activity shall  
124 be subject to the public bidding and procurement laws of  
125 chapters 7, 30 and 149 of the General Laws, and related statutes.

126 The institute may work in collaboration with the corporation  
127 and other quasi-public and not-for-profit entities and state agencies,  
128 and may provide advisory assistance to local entities, local  
129 authorities, public bodies and private corporations for the purposes  
130 of maximizing opportunities for the expansion of broadband  
131 access in the commonwealth and fostering innovative approaches  
132 to broadband access in the commonwealth. All such collaboration  
133 or assistance shall be made in conjunction with the institute and  
134 considered public transactions of the institute for the purposes of  
135 this act; provided further, that all such collaborations and assistance  
136 shall be reduced to written contracts and subject to public  
137 bidding laws applicable to the institute, the public records laws  
138 and the open meeting law; and provided further, that any exemption  
139 or exception from public bidding laws, open meeting laws or  
140 public records law provided for in chapter 40J of the General  
141 Laws shall not apply to this act.

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

148 (c) The board shall collect any and all information from reasonably  
149 available sources, including but not limited to municipalities  
150 and other public entities and agencies of the commonwealth, local  
151 and regional non-profit entities, and telecommunications and  
152 broadband service providers, to develop and maintain, with all  
153 possible specificity, an inventory of: (i) locations at which

154 telecommunications and broadband services are not available  
155 within the commonwealth; (ii) locations where telecommunica-  
156 tions and broadband infrastructure is available or is reasonably  
157 likely to be available to support the provision of services to un-  
158 served and underserved areas; (iii) locations where new infrastruc-  
159 ture may be necessary for the provision of services to un-served  
160 and underserved areas; (iv) the quality of such services, including  
161 but not limited to speed of data transmission and cost of such  
162 services; and (v) any other relevant information.

163 (d) The board shall review and recommend changes in laws,  
164 rules, programs, and policies of the commonwealth and its agen-  
165 cies and subdivisions to further financing, infrastructure and  
166 development for broadband access within the commonwealth.

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

171 (f) Insofar as apt, in the determination of the board of the cor-  
172 poration, the provisions of this chapter that apply to centers and to  
173 the center fund shall apply to the institute and the fund, respec-  
174 tively.

175 (g) The institute shall file an annual report of its activities with  
176 the governor, the secretary of administration and finance, the joint  
177 committee on telecommunications, utilities and energy, the joint  
178 committee on economic development and emerging technologies,  
179 the house and senate committees on ways and means and the joint  
180 committee on bonding, capital expenditures and state assets.