



The Commonwealth of Massachusetts

In the Year Two Thousand and Eight.

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 and 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 with small business development, increase property values and tax receipts, and, in states that ensure affordable, ubiquitous access to broadband, stimulate state 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, and access to, essential government services throughout the commonwealth;

(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 certain unanticipated obligations of the commonwealth, to provide for an alteration of purpose for current appropriations, to meet certain requirements of law and to provide for a capital outlay program to achieve the deployment of affordable and ubiquitous broadband access for every citizen of the commonwealth, the sums set forth in section 2A, for the several purposes and subject to the conditions specified in this act, are hereby made available, subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2008.

There is no Section 2

SECTION 2A.

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. 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” and inserting in place thereof the following words:-
Massachusetts broadband institute

SECTION 4. Said section 3 of said chapter 23A of the General Laws, 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” and inserting in place thereof the following words:- Massachusetts broadband institute, established pursuant to section 6B

SECTION 5. Said section 3 of said chapter 23A of the General Laws, 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” and inserting in place thereof the following words:- Massachusetts broadband institute established pursuant to section 6B

SECTION 6. Chapter 40J of the General Laws is hereby amended by striking out sections 6B and 6C 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 board of the Massachusetts broadband institute established pursuant to subsection (c).

“Broadband”, high-speed internet access, including wireless internet access, as may be further defined by the board.

“Fund”, the Massachusetts Broadband Incentive Fund established pursuant to section 6C.

“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 executive director of the corporation shall appoint a qualified individual as

director to manage the affairs of said institute. The purpose of the institute shall be to achieve the deployment of affordable and ubiquitous broadband access across the commonwealth. The particular objectives of the institute shall be to: (i) assess and improve broadband access conditions in communities that have no access or have limited or insufficient access to broadband; (ii) 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.

(c) The institute shall be governed and its corporate powers exercised by a board of directors, which shall consist of the following 9 members: the secretary of the executive office of administration and finance, or his designee; the secretary of the executive office of housing and economic development, or his designee; the commissioner of the department of telecommunications and cable, or his designee; the executive director of the corporation, or his designee; and the chairman of the governing board of the John Adams Innovation Institute, or his designee; and 4 members to be appointed by the governor all of whom 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 appointed by the governor shall serve a term of 4 years and thereafter until his successor is appointed. 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. 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 annually.

(d) The board shall leverage private sector and federal investment by financing the construction and acquisition of broadband infrastructure to promote the development of broadband access. Said broadband infrastructure shall include, but not limited to, conduit, fiber and towers. 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 non-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 board 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.

(e) The board shall collect 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 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 as the board may deem necessary.

(f) The board shall establish a detailed long-term plan for the operation of the institute and the administration of the fund and shall consult with the joint committee on telecommunications, utilities and energy and the joint committee on economic development and emerging technologies on said plan. The plan, and any amendments

thereto, shall be subject to the approval of the secretary of housing and economic development and the secretary of administration and finance and the plan, and any amendments thereto, shall be filed with the house and senate committees on ways and means, the joint committee on telecommunications, utilities and energy and the joint committee on economic development and emerging technologies.

(g) The board shall annually 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 and the secretary of administration and finance. The board shall file said plan, and any amendments thereto, with the house and senate committees on ways and means, the joint committee on telecommunications, utilities and energy and the joint committee on economic development and emerging technologies.

(h) The board shall promulgate rules and regulations for the administration and enforcement of this section and section 6C.

(i) 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.

(j) 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.

(k) 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.

Section 6C. (a) There is hereby established and placed within the corporation a fund to be known as the Massachusetts Broadband Incentive Fund to be held by the corporation separate and apart from its other funds, to finance the activities of the institute. The fund shall be credited any appropriations, bond proceeds or other monies authorized by the general court and specifically designated to be credited thereto, such additional funds as

are subject to the direction and control of the corporation, any pension funds, federal grants or loans or private investment capital which may properly be applied in furtherance of the objectives of the fund, any proceeds from the sale of qualified investments secured or held by the fund, any fees and charges imposed relative to the making of qualified investments, as such shall be defined by the board, secured or held by the fund, and any other monies which may be available to the corporation for the purposes of the fund from any other source or sources.

(b) The corporation shall invest and reinvest the fund and the income thereof, except as hereinafter provided, only as follows: (1) in the making of qualified investments approved by the board, pursuant to rules approved by the board; (2) in defraying the ordinary and necessary expenses of administration and operation associated with the council; provided, however, that said administrative and operational expenses shall not exceed 2½ per cent of the total assets of the fund in any 1 fiscal year; (3) in the investment of any funds not required for immediate disbursement in the purchase of such securities as may be lawful investments for fiduciaries in the commonwealth; (4) for the payment of binding obligations associated with such qualified investments which are secured by the fund as the same become payable; and (5) for the payment of principal or interest on qualified investments secured by the fund or the payment of any redemption premium required to be paid when such qualified investments are redeemed prior to maturity; provided, however, that monies in the fund shall not be withdrawn at any time in such an amount as would reduce the amount of the fund to less than the minimum requirement thereof established by the corporation, except for the purpose of paying binding obligations associated with qualified investments which are secured by the fund as the same become payable.

(c) The fund shall be held and applied by the corporation, subject to the approval of the board, to make qualified investments designed to advance the following public purposes: (1) to make capital investments to finance the construction or acquisition of broadband infrastructure pursuant to section 6B; (2) to stimulate increased financing for the expansion of broadband services in the commonwealth by leveraging private financing for highly productive state-of-the-art facilities and by providing financing related thereto including, without limitation, financing of the construction or expansion of such new

facilities; (3) to make matching grants to public instrumentalities, companies and other entities to induce the federal government, industry and other grant-funding sources to fund the expansion of broadband services in the commonwealth, and to thereby serve to increase and strengthen the commercial and industrial base of the commonwealth and the economic development and employment opportunities related thereto; and (4) to provide bridge financing to public instrumentalities, companies and other entities in anticipation of the receipt of grants of the type described in clause (3) awarded or to be awarded by the federal government, industry or other sources.

The corporation shall make no such qualified investment pursuant to clause (1) of subsection (b) unless: (i) the investment has been approved by a majority vote of the board; and (2) the corporation finds that, to the extent possible, the qualified investment is such that a definite benefit to the economy of the commonwealth may reasonably be expected therefrom. In addition, the corporation shall make no such qualified investment pursuant to said clause (1) of said subsection (b) unless the qualified investment is in conformity with rules adopted by the board and approved by the corporation.

Such rules shall set the terms and conditions for investments which are to constitute qualified investments, which may include, without limitation, loans, guarantees, loan insurance or reinsurance, equity investments, grants made only pursuant to clause (2) of subsection (c), or other financing or credit enhancing devices, as made by the corporation directly or on its own behalf or in conjunction with other public instrumentalities, private institutions, or the federal government. Such rules and regulations shall provide that each qualified investment made pursuant to clause (1) of said subsection (c) shall involve a transaction with the participation of at least 1 at-risk private party.

Such rules shall set forth the terms, procedures, standards and conditions which the corporation shall employ to identify qualified applications, process applications, make investment determinations, safeguard the fund, advance the objective of increasing employment opportunities for the citizens of the commonwealth, oversee the progress of qualified investments and secure the participation of other public instrumentalities, private institutions, or the federal government in such qualified investments. Such rules shall provide that each recipient of a qualified investment shall be required to pay a fee as a

condition of such receipt, which fee may take the form of points, an interest rate premium or a contribution of warrants or other form of equity or consideration to the fund as prescribed by the corporation. Such rules shall provide for negotiated agreements between the corporation and each recipient of a qualified investment regarding the terms and conditions by which the fund's support thereof could be reduced or withdrawn.

(d) The corporation may solicit investments by private institutions or investors in the activities of the fund and may reach agreements with such private institutions or investors regarding the terms of any such investments including, without limitation, the rights of such investors to participate in the income or appropriation of the fund. In furtherance of the objective of securing investments by private institutions or investors in the activities of the fund as set forth in the preceding sentence, the corporation may develop a proposal relative to the creation of a separate investment entity which would allow for the commingling of the resources of the fund with the maximum participation by such private institutions or investors in a manner which is consistent with the public purpose of the fund and under terms and conditions calculated to protect and preserve the assets of the fund. If the creation or operation of such a separate entity as proposed by the corporation would require additional or clarifying amendments to the enabling act of the corporation, such proposal shall include proposed statutory language with regard thereto.

(e) Copies of the approved rules, and any modifications thereto, shall be submitted to the chairs of the house and senate committees on ways and means, the chairs of the joint committee on economic development and emerging technologies, the chairs of the joint committee on telecommunication, utilities and energy and the clerks of the house of representatives and senate.

(f) Qualified investment transactions undertaken by the corporation pursuant to this section shall not, except as specified in this section, be subject to chapter 175, and shall be payable solely from the fund, and shall not constitute a debt or pledge of the faith and credit of the commonwealth, the corporation or any subdivision of the commonwealth.

(g) The corporation shall not at any time make expenditure from or commitment of the assets of the fund including, without limitation, the making of qualified investments secured by the fund, if following the making of a qualified investment, the amount of the fund shall be less than the minimum requirement established by law, unless the board, at

the time of making of such qualified investment, deposits in the fund from the proceeds thereof or from any fees and charges imposed relative to the making of qualified investments, or otherwise, an amount which, together with the amount in the fund, shall not be less than the minimum requirement. At no time shall the minimum requirement of the fund be less than the maximum amount of principal and interest becoming due in the current and succeeding fiscal year of the corporation on all outstanding bonds and other obligations which are secured by the fund or such greater amount as may be set forth in the rules governing the fund.

SECTION 7. Notwithstanding any general or special law to the contrary, to meet the expenditures necessary in carrying out section 2A, 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 bonds issued by the commonwealth as aforesaid shall be designated on their face, Massachusetts Broadband Incentive Fund Loan Act of 2008, and shall be issued for a maximum term of years, not exceeding 30 years, as 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, 2043. All interest and payments on account of principal of such obligations shall be payable from the General Fund. Bonds and interest thereon issued under this section shall be general obligations of the commonwealth.

SECTION 8. Notwithstanding any general or special law to the contrary, in making the initial appointments pursuant to subsection (c) of section 6B of chapter 40J of the General Laws the governor shall appoint 1 member to serve for a term of 1 year, 1 member to serve for a term of 2 years, 1 member to serve for a term of 3 years and 1 member to serve for a term of 4 years.

SECTION 9. Notwithstanding any general or special law to the contrary, not less than 10 days after the effective date of this act the Massachusetts Technology Park Corporation, established pursuant to section 3 of chapter 40J of the General Laws, shall transfer the balance of the Wireless and Broadband Development Fund established, pursuant to section

6C of chapter 40J of the General Laws, to the Massachusetts Broadband Incentive Fund established by section 6B of chapter 40J of the General Laws.