

Chapter 231

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. 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 2, 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.

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 6C of chapter 40J of the General Laws ..... \$40,000,000

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 line 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, as so appearing, is hereby further amended by striking out, in lines 62 and 63, the words "wireless broadband development council, established pursuant to section 6A" and inserting in place thereof the following words:- Massachusetts Broadband Institute, established by section 6B.

SECTION 5. Said section 3 of said 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" and inserting in place thereof the following words:- Massachusetts Broadband Institute, established by section 6B.

SECTION 6. 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 board of the Massachusetts Broadband Institute established by subsection (c).

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

"Fund", the Massachusetts Broadband Incentive Fund established by section 6C.

"Institute", the Massachusetts Broadband Institute established by 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, subject to the approval of the board, shall appoint a qualified individual as director to manage the affairs of the institute. The purpose of the institute shall be to achieve the deployment of affordable and ubiquitous broadband access across the commonwealth. The objectives of the institute shall include: (i) assessing and improving broadband access conditions in communities that have no access or have limited or insufficient access to broadband; (ii) promoting robust broadband access for essential state and local governmental services including, without limitation, public safety, health and education; (iii) promoting increased availability of, and competition for, broadband access and related services; and (iv) creating conditions that will encourage economic competitiveness and growth. The first priority of the institute shall be to assess and improve conditions in the commonwealth's communities that have no broadband access.

(c) The institute shall be governed and its corporate powers exercised by a board of directors, which shall consist of the following<sup>9</sup> members: the secretary of administration and finance or his designee; the secretary of housing and economic development or his designee; the commissioner 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 1 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 1 member 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 on 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. An 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 his 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. This broadband infrastructure shall include, but not be limited to, conduit, fiber and towers. Any equipment or other property financed by the institute shall be owned by the corporation, the commonwealth or 1 or more other public entities, but may be leased or licensed by the institute, for a fee or otherwise, for use by nonprofit 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 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 nonprofit 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 nonprofit entities and telecommunications and broadband service providers to develop and maintain an inventory of: (i) locations where telecommunications and broadband services are not available in the commonwealth; (ii) locations where telecommunications and broadband infrastructure is available or is likely to be available to support the provision of services to unserved and underserved areas; (iii) locations where new infrastructure may be necessary to support the provision of services to unserved 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 the 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 shall be filed with the clerks of the house of representatives and the senate who shall forward the same to 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 the plan, and any amendments thereto, with the clerks of the house of representatives and the senate who shall forward the same to 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 in the commonwealth.

(j) The board shall prepare, publish and distribute, with or without charge, as the institute may determine, any 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 and the clerks of the house of representatives and the senate who shall forward the same to 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.

(l) Actions of the board may take effect immediately and notice thereof shall be published and posted. Meetings of the board shall be subject to

section 11A1/2 of chapter 30A. Records pertaining to the activities of the institute shall be subject to section 10 of chapter 66, unless exempted under subsection (h) of section 12. The operations of the institute shall be subject to chapters 268A and 268B; provided, however, that the members of the board shall be considered directors for the purposes of the fourth, fifth and seventh paragraphs of section 3.

(m) Sections 38A1/2 to 38O, inclusive, of chapter 7, section 39M of chapter 30, subject to the provisions of subsection (c) of section 4A and sections 44A to 44J, inclusive, of chapter 149 shall apply to the operations of the institute.

Section 6C. 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.

SECTION 7. Notwithstanding any general or special law to the contrary, 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, \$40,000,000. 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. No authorization shall be expended unless expressly authorized by the secretary of administration and finance. 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 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 by section 3 of chapter 40J of the General Laws, shall transfer the balance of the Wireless and Broadband Development Fund established by section 6C of chapter 40J of the General Laws to the Massachusetts Broadband Incentive Fund, established by said section 6C.

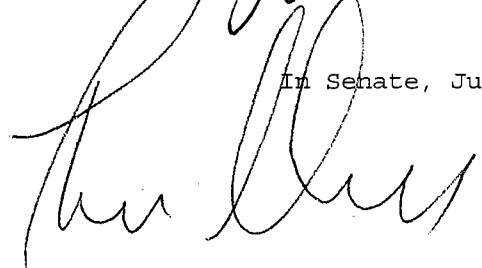
House of Representatives, July 24, 2008.

Preamble adopted,

 , Speaker.

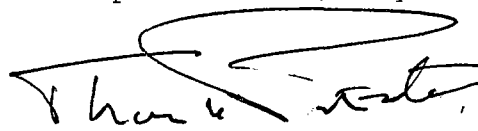
In Senate, July 24, 2008.

Preamble adopted,

 , President.

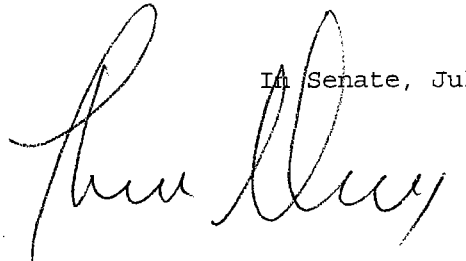
House of Representatives, July 24, 2008.

Bill passed to be enacted,

 , Speaker.

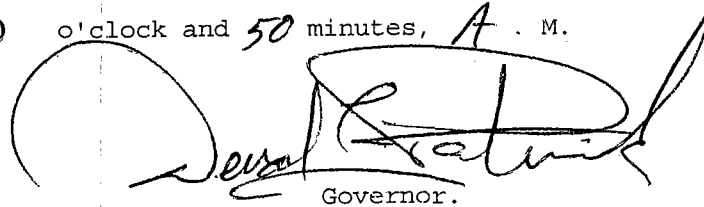
In Senate, July 28, 2008.

Bill passed to be enacted,

 , President.

4 August, 2008.  
Approved,

at 10 o'clock and 50 minutes, A . M.

  
Governor.