

## MICHIGAN BROADBAND INVESTMENT ACT

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<http://www.house.mi.gov/hfa>

**House Bill 5670 as introduced**  
**Sponsor: Rep. Mary Whiteford**  
**Committee: Communications and Technology**  
**Complete to 5-22-18**

Analysis available at  
<http://www.legislature.mi.gov>

### BRIEF SUMMARY:

House Bill 5670 would create the Michigan Broadband Investment Act to establish the Demand for Broadband Board and the Broadband Development Fund for the purpose of expanding *broadband service* to *underserved* and *unserved* areas of Michigan.

*Broadband service* would be defined under the bill as a service capable of delivering high-speed internet access at speeds of at least 10 megabits per second downstream and 1 megabit per second upstream.

The bill would further define *underserved areas* as areas of Michigan where households or businesses have access to internet service, but lack access to broadband service, while *unserved areas* would refer to areas of Michigan where houses and businesses do not have any access to internet service.

### DETAILED SUMMARY:

#### **Broadband board creation**

The Demand for Broadband Board (“board”) would be created under the new act and would consist of the following 7 members:

- The chair of the Public Service Commission (PSC) or his or her designated representative. This member would not have voting authority.
- Members appointed by the governor as follows:
  - Two members from a list submitted by the Telecommunications Association of Michigan.
  - Two members from a list submitted by the Michigan Cable Telecommunications Association.
  - One member from a list submitted by the Michigan Association of Counties.
  - One member from a list submitted by the Michigan Townships Association.

The members first appointed to the board would have to be appointed within 60 days after the bill’s effective date. Members would serve for 4-year terms or until a successor is appointed, whichever is later. However, the very first members appointed to the board would serve for staggered terms, with 2 members serving for 1 year, 2 members serving for 2 years, 2 members serving for 3 years, and 1 member serving the full 4 years.

If a vacancy occurred on the board, the governor would make an appointment for the unexpired term in the same manner as the original appointment. The governor also may

remove a member for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

Finally, members of the board would serve without compensation. However, members would be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

### **Broadband board meetings**

The governor would call the first meeting of the board, where the board would elect a chairperson and officers from among their members. After this first meeting, the board would meet at least quarterly, or more frequently at the call of the chairperson or if requested by 3 or more members.

A quorum to conduct business at the meetings would consist of a majority of the members. A majority of the members present and serving would be required for official action of the board. The business that the board could perform would be conducted at a public meeting of the PSC, held in compliance with the Open Meetings Act (MCL 15.261 to 15.275).

A writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function would be subject to the Freedom of Information Act (FOIA) (MCL 15.231 to 15.246).

### **Broadband board duties**

The board would be required to do the following:

- Determine what areas in Michigan are in need of broadband service.
- Review the report issued by the 21<sup>st</sup> Century Infrastructure Commission that was established under Executive Order No. 2016-5.<sup>1</sup>
- Identify barriers that dissuade companies from expanding into underserved areas of Michigan.
- Identify strategies and policies Michigan should pursue to incentivize businesses to expand service in underserved areas.

Additionally, the board would be responsible for receiving and reviewing grant applications and awarding grants from the Broadband Development Fund.

The board would be prohibited from disbursing money from the fund in any of the following ways or for any of the following reasons:

- In an amount that exceeds the amount set forth in a budget approved by the board or on items not approved in the budget.
- To the provider that exceeds the actual cost of a project despite the amount of the grant awarded to the provider. *Provider* would mean either an entity holding a license under the Michigan Telecommunications Act (MCL 484.2101 to 484.2603) *or* an entity holding a franchise under the Uniform Video Services Local Franchise Act (MCL 484.3301 to 484.3315); it would not mean a governmental entity.

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<sup>1</sup> [http://www.michigan.gov/documents/snyder/21st\\_Century\\_Infrastructure\\_Commission\\_Report\\_555079\\_7.pdf](http://www.michigan.gov/documents/snyder/21st_Century_Infrastructure_Commission_Report_555079_7.pdf)

- Disburse the last 20% of grant money for a project until the provider certifies that the project has been properly constructed consistent with the application, is operational, and is able to provide broadband service.

### **Broadband development fund**

The Broadband Development Fund (“fund”) would be created within the state treasury.

The state treasurer would be able to receive money or other assets from any source for deposit into the fund. The treasurer would direct the investment of the fund and credit to the fund interest and earnings from fund investments.

The board would be the administrator of the fund for auditing purposes. The board also would expend money from the fund, upon appropriation, only to award grants to providers under broadband development applications, as described below. However, disbursement would not be able to occur unless the provider submitted to the board all of the following:

- Certification that an expenditure occurred and that it was reasonable and complied with the budget approved by the board, and that no other sources of money were used to pay for the expenditure.
- All receipts and invoices related to that expenditure.

Finally, money in the fund at the close of the fiscal year would remain in the fund and would not lapse to the General Fund.

### **Broadband development applications**

The board would be able to award grants to *eligible applicants* (providers that submit an application for a grant) to fund the acquisition and installation of *last-mile infrastructure* that support broadband service in unserved or underserved areas. The bill would define *last-mile infrastructure* as broadband infrastructure that serves as the final leg connecting the broadband service provider’s network to the end-use customer’s on-premises telecommunications.

An eligible applicant would have to submit an application to the board on a form prescribed by the board. The board also would develop administrative procedures governing the application and grant award process, giving priority to unserved areas.

At least 30 days prior to the first day that applications can be submitted each year, the board would have to publish on its website the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award grants.

An applicant for a grant would have to provide *all* of the following information on the application:

- Evidence that the applicant is an eligible applicant.
- The location of the project, identified by a detailed map specifically showing a street level of detail of the location within each municipality.
- The kind and amount of broadband infrastructure to be purchased for the project.

- Evidence regarding the unserved or underserved nature of the community in which the project will be located.
- The number of households that will have access to broadband service as a result of the project, or whose internet access service will be upgraded to broadband service as a result of the project.
- Significant community institutions that will benefit from the proposed project.
- Evidence of community support for the project.
- The total cost of the project and a detailed budget or the project.
- All sources of funding or in-kind contributions for the project that will supplement any grant award.
- Evidence that, no later than 6 weeks before submission of the application, the applicant contacted, in writing, all existing providers within 20 miles of the proposed project area to ask for each provider's plan to provide or upgrade to broadband service in the project area, plus the providers' written responses to the inquiry.
- Any additional information requested by the board.

Within 3 days after the close of the grant application process, the board would have to publish on its website the proposed geographic broadband service area and the proposed broadband service speeds for each application submitted. An existing provider in the proposed project area or within 20 miles of the proposed project area may, within 30 days of publication of the information, submit in writing to the board a challenge to an application. A challenge would contain information demonstrating *either* of the following:

- The provider currently provides or has begun construction to provide broadband service to the proposed project area.
- The provider commits to complete construction of broadband infrastructure and provide broadband service in the proposed project area no later than 18 months after the date grant awards are made for the grant cycle under which the application was submitted.

### **Evaluation of applications**

The board would be required to evaluate the information submitted in a provider's challenge under this section and would not fund a project unless the board determined that the provider's commitment to provide broadband service that meets the requirements of the proposed geographic broadband service area and speeds posted on the board's website is not credible. Trade secrets and commercial or financial information submitted by a provider under this act would be exempt from FOIA.

If the board denies funding to an eligible applicant as a result of a broadband service provider's challenge, and the broadband service provider does not fulfill the commitment to provide broadband service in the project area, the board would not deny funding to an eligible applicant as a result of a challenge by the same broadband service provider for the following 2 grant cycles, unless the board determined that the provider's failure to fulfill the commitment was the result of factors beyond the provider's control.

In evaluating applications and awarding grants, the board would only award grants to unserved and underserved areas, giving priority to applications that would construct in unserved areas. With regard to underserved areas, priority could be based on whether the applications do any of the following:

- Offer new or substantially upgraded service to important community institutions, including, but not limited to, libraries, educational institutions, and public safety or health care facilities.
- Facilitate the use of telemedicine and electronic health records.
- Serve economically distressed areas, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average.
- Provide technical support and train residents, business, and institutions in the community to utilize broadband service.
- Include a component to actively promote the adoption of the newly available broadband service in the community.
- Provide access to broadband service to a greater number of unserved or underserved households and businesses.
- Leverage greater amounts of funding for the project from other private and public sources.

#### **False certification**

A provider that submits a false certification would be guilty of a misdemeanor punishable by imprisonment for up to one year and a fine of \$10,000. A provider that uses money from the fund for a purpose not approved by the board would have to pay back triple the amount of the money improperly used.

#### **FISCAL IMPACT:**

The bill would result in potential marginal costs to the Public Service Commission within the Department of Licensing and Regulatory Affairs to cover any reimbursements due to members of the Demand for Broadband Board for expenses occurred in the performance of their duties. Potential reimbursements would likely be covered through existing appropriations to the Public Service Commission.

The bill would have no other direct fiscal impact to the state. However, the bill would create the Broadband Development Fund, which would require future legislative appropriations to establish fund sources for the issuance of grants.

For more information on broadband internet in Michigan and other states and its associated costs, please see the memorandum [Broadband Internet](#), dated April 4, 2018, on the House Fiscal Agency website.

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