HOUSE BILL No. 5670

February 28, 2018, Introduced by Reps. Whiteford, LaFave, Hughes, Victory, Rendon and Miller and referred to the Committee on Communications and Technology.

A bill to create the demand for broadband board; to provide its powers and duties; to create a fund; and to provide for the powers and duties of certain state agencies, departments, and officials.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "Michigan broadband investment act".

Sec. 2. As used in this act:

(a) "Board" means the demand for broadband board created in section 4.

(b) "Broadband service" means a service capable of delivering high-speed internet access at speeds of at least 10 megabits per second downstream and 1 megabits per second upstream.
(c) "Commission" means the public service commission created in section 1 of 1939 PA 3, MCL 460.1.

(d) "Eligible applicant" means a provider that submits an application for a grant under section 5.

(e) "Fund" means the broadband development fund created in section 3.

(f) "Last-mile infrastructure" means broadband infrastructure that serves as the final leg connecting the broadband service provider's network to the end-use customer's on-premises telecommunications equipment.

(g) "Provider" means either of the following:

(i) An entity holding a license under the Michigan telecommunications act, 1991 PA 179, MCL 484.2101 to 484.2603.

(ii) An entity holding a franchise under the uniform video services local franchise act, 2006 PA 480, MCL 484.3301 to 484.3315.

(h) "Provider" does not include a governmental entity.

(i) "Underserved areas" means areas of this state in which households or businesses have access to internet access service but lack access to broadband service.

(j) "Unserved areas" means areas of this state in which households or businesses lack access to internet access service.

Sec. 3. (1) The broadband development fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit
(3) Money in the fund at the close of the fiscal year remains in the fund and does not lapse to the general fund.

(4) The board is the administrator of the fund for auditing purposes.

(5) The board shall expend money from the fund, upon appropriation, only to award grants under section 5.

Sec. 4. (1) The demand for broadband board is created within the commission.

(2) The board consists of the following members:

(a) The chair of the commission or his or her designated representative, who shall serve as a nonvoting member of the board.

(b) Two members appointed by the governor from a list submitted by the Telecommunications Association of Michigan.

(c) One member appointed by the governor from a list submitted by the Michigan Association of Counties.

(d) One member appointed by the governor from a list submitted by the Michigan Townships Association.

(e) Two members appointed by the governor from a list submitted by the Michigan Cable Telecommunications Association.

(3) The members first appointed to the board must be appointed within 60 days after the effective date of this act.

(4) Members of the board serve for terms of 4 years or until a successor is appointed, whichever is later, except that of the members first appointed 2 serve for 1 year, 2 serve for 2 years, and 2 serve for 3 years.

(5) If a vacancy occurs on the board, the governor shall make
an appointment for the unexpired term in the same manner as the
original appointment.

(6) The governor may remove a member of the board for
incompetence, dereliction of duty, malfeasance, misfeasance, or
nonfeasance in office, or any other good cause.

(7) The governor shall call the first meeting of the board. At
the first meeting, the board shall elect from among its members a
chairperson and other officers as it considers necessary or
appropriate. After the first meeting, the board shall meet at least
quarterly, or more frequently at the call of the chairperson or if
requested by 3 or more members.

(8) A majority of the members of the board constitute a quorum
for the transaction of business at a meeting of the board. A
majority of the members present and serving are required for
official action of the board.

(9) The business that the board may perform must be conducted
at a public meeting of the commission held in compliance with the
open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(10) A writing prepared, owned, used, in the possession of, or
retained by the board in the performance of an official function is
subject to the freedom of information act, 1976 PA 442, MCL 15.231
to 15.246.

(11) Members of the board serve without compensation. However,
members of the board may be reimbursed for their actual and
necessary expenses incurred in the performance of their official
duties as members of the board.

(12) The board shall do all of the following:
(a) Determine what areas in this state are in need of broadband service.

(b) Review the report issued by the 21st century infrastructure commission established under Executive Order No. 2016-5.

(c) Identify barriers that dissuade companies from expanding into underserved areas of this state.

(d) Identify specific strategies and policies this state should pursue to incentivize businesses to expand service in underserved areas of this state.

(e) Issue grants as provided under section 5.

Sec. 5. (1) The board may award grants under this section to fund the acquisition and installation of last-mile infrastructure that supports broadband service. The board shall award grants only to eligible applicants to fund the acquisition and installation of infrastructure only in areas that are unserved or underserved.

(2) An eligible applicant must submit an application to the board on a form prescribed by the board. The board shall develop administrative procedures governing the application and grant award process, that must give priority to unserved areas. The board is responsible for receiving and reviewing grant applications and awarding grants under this section.

(3) At least 30 days before the first day applications may be submitted each year, the board must publish on the board's website the specific criteria and any quantitative weighting scheme or scoring system the board will use to evaluate or rank applications and award grants under subsection (10).
(4) An applicant for a grant under this section shall provide the following information on the application:

(a) Evidence that the applicant is an eligible applicant.
(b) The location of the project, identified by a detailed map specifically showing a street level of detail of the location within each municipality.
(c) The kind and amount of broadband infrastructure to be purchased for the project.
(d) Evidence regarding the unserved or underserved nature of the community in which the project is to be located.
(e) 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.
(f) Significant community institutions that will benefit from the proposed project.
(g) Evidence of community support for the project.
(h) The total cost of the project and a detailed budget for the project.
(i) All sources of funding or in-kind contributions for the project that will supplement any grant award.
(j) 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.
(k) The providers' written responses to the inquiry made under
subdivision (j).

(1) Any additional information requested by the board.

(5) Within 3 days after the close of the grant application process, the board shall publish on its website the proposed geographic broadband service area and the proposed broadband service speeds for each application submitted.

(6) An existing provider in or within 20 miles of the proposed project area may, within 30 days of publication of the information under subsection (5), submit in writing to the board a challenge to an application. A challenge must contain information demonstrating either of the following:

(a) The provider currently provides or has begun construction to provide broadband service to the proposed project area.

(b) 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 under this section for the grant cycle under which the application was submitted.

(7) The board must evaluate the information submitted in a provider's challenge under this section and shall not fund a project unless the board determines that the provider's commitment to provide broadband service that meets the requirements of subsection (5) in the proposed project area is not credible. Trade secrets and commercial or financial information submitted by a provider under this act are exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(8) If the board denies funding to an eligible applicant as a
result of a broadband service provider's challenge made under this section, and the broadband service provider does not fulfill the provider's commitment to provide broadband service in the project area, the board shall 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 determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control.

(9) In evaluating applications and awarding grants, the board shall only award grants to unserved and underserved areas and give priority to applications that are constructed in areas identified by the board as unserved.

(10) In evaluating applications and awarding grants in areas identified by the board as underserved areas, the board may give priority to applications that do any of the following:

(a) Offer new or substantially upgraded broadband service to important community institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities.

(b) Facilitate the use of telemedicine and electronic health records.

(c) Serve economically distressed areas of this state, as measured by indices of unemployment, poverty, or population loss that are significantly greater than the statewide average.

(d) Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize
broadband service.

(e) Include a component to actively promote the adoption of the newly available broadband service in the community.

(f) Provide evidence of strong support for the project from citizens, government, businesses, and institutions in the community.

(g) Provide access to broadband service to a greater number of unserved or underserved households and businesses.

(h) Leverage greater amounts of funding for the project from other private and public sources.

Sec. 6. (1) The board shall not disburse money to a provider from the fund for a grant awarded under section 5 unless the provider submits all of the following:

(a) Certification to the board that an expenditure has occurred, the expenditure was reasonable, the expenditure complies with the budget approved by the board, and no other sources of money were used to pay for the expenditure.

(b) All receipts and invoices related to that expenditure.

(2) The board shall not do any of the following:

(a) Disburse money from the fund in an amount that exceeds the amount set forth in a budget approved by the board.

(b) Disburse money on items not approved in the budget.

(c) Disburse any money to the provider that exceeds the actual cost of a project despite the amount of the grant awarded to the provider.

(d) 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.

(3) A provider that submits a false certification under this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year and a fine of $10,000.00. A provider that uses money from the fund for a purpose not approved by the board shall pay back to the fund an amount equal to triple the amount of the improperly used money.