

# 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:**

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

3           Sec. 2. As used in this act:

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

6           (b) "Broadband service" means a service capable of delivering  
7 high-speed internet access at speeds of at least 10 megabits per  
8 second downstream and 1 megabits per second upstream.

1 (c) "Commission" means the public service commission created  
2 in section 1 of 1939 PA 3, MCL 460.1.

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

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

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

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

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

14 (ii) An entity holding a franchise under the uniform video  
15 services local franchise act, 2006 PA 480, MCL 484.3301 to  
16 484.3315.

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

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

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

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

25 (2) The state treasurer may receive money or other assets from  
26 any source for deposit into the fund. The state treasurer shall  
27 direct the investment of the fund. The state treasurer shall credit

1 to the fund interest and earnings from fund investments.

2 (3) Money in the fund at the close of the fiscal year remains  
3 in the fund and does not lapse to the general fund.

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

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

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

10 (2) The board consists of the following members:

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

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

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

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

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

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

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

27 (5) If a vacancy occurs on the board, the governor shall make

1 an appointment for the unexpired term in the same manner as the  
2 original appointment.

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

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

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

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

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

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

27 (12) The board shall do all of the following:

1 (a) Determine what areas in this state are in need of  
2 broadband service.

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

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

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

11 (e) Issue grants as provided under section 5.

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

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

23 (3) At least 30 days before the first day applications may be  
24 submitted each year, the board must publish on the board's website  
25 the specific criteria and any quantitative weighting scheme or  
26 scoring system the board will use to evaluate or rank applications  
27 and award grants under subsection (10).

1 (4) An applicant for a grant under this section shall provide  
2 the following information on the application:

3 (a) Evidence that the applicant is an eligible applicant.

4 (b) The location of the project, identified by a detailed map  
5 specifically showing a street level of detail of the location  
6 within each municipality.

7 (c) The kind and amount of broadband infrastructure to be  
8 purchased for the project.

9 (d) Evidence regarding the unserved or underserved nature of  
10 the community in which the project is to be located.

11 (e) The number of households that will have access to  
12 broadband service as a result of the project, or whose internet  
13 access service will be upgraded to broadband service as a result of  
14 the project.

15 (f) Significant community institutions that will benefit from  
16 the proposed project.

17 (g) Evidence of community support for the project.

18 (h) The total cost of the project and a detailed budget for  
19 the project.

20 (i) All sources of funding or in-kind contributions for the  
21 project that will supplement any grant award.

22 (j) Evidence that no later than 6 weeks before submission of  
23 the application the applicant contacted, in writing, all existing  
24 providers within 20 miles of the proposed project area to ask for  
25 each provider's plan to provide or upgrade to broadband service in  
26 the project area.

27 (k) The providers' written responses to the inquiry made under

1 subdivision (j).

2 (l) Any additional information requested by the board.

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

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

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

14 (b) The provider commits to complete construction of broadband  
15 infrastructure and provide broadband service in the proposed  
16 project area no later than 18 months after the date grant awards  
17 are made under this section for the grant cycle under which the  
18 application was submitted.

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

27 (8) If the board denies funding to an eligible applicant as a

1 result of a broadband service provider's challenge made under this  
2 section, and the broadband service provider does not fulfill the  
3 provider's commitment to provide broadband service in the project  
4 area, the board shall not deny funding to an eligible applicant as  
5 a result of a challenge by the same broadband service provider for  
6 the following 2 grant cycles, unless the board determines that the  
7 broadband service provider's failure to fulfill the provider's  
8 commitment was the result of factors beyond the broadband service  
9 provider's control.

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

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

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

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

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

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



1 broadband service.

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

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

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

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

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

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

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

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

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

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

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

26 (d) Disburse the last 20% of grant money for a project until  
27 the provider certifies that the project has been properly

1 constructed consistent with the application, is operational, and is  
2 able to provide broadband service.

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