House
Legislative
Analysis
Section

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BROADBAND PACKAGE

Senate Bill 880 as enrolled
Public Act 48 of 2002
Sponsor: Sen. John J. H. Schwarz, M.D.

Senate Bill 881 as enrolled
Public Act 49 of 2002
Sponsor: Sen. Leon Stille

Senate Bill 999 as enrolled
Public Act 50 of 2002
Sponsor: Sen. Valde Garcia

House Committee: Energy and Technology
Senate Committee: Technology and Energy
Second Analysis (7-12-02)

THE APPARENT PROBLEM:

The most unthinkable and improbable of technologies—gadgets and capabilities that are unimaginable to all but a few visionaries or eccentrics—sometimes have such a profound impact on the shape of human history that people forget what life was like prior to their invention. Other technologies fade into obscurity soon after they are developed. For instance, a June 24, 2002 New York Times article pronounced the death of the outhouse, suggesting to those who remained on the fence that indoor plumbing is here for the duration. Yet just a year and half after its first ride, the Pony Express was made obsolete by the telegraph. A committed skeptic might insist that only history will tell whether the Internet's appeal will endure or whether future generations will remember the Internet as the quaint and fleeting obsession of a specific time and place. Despite this (perhaps healthy) skepticism, many people believe that the currently available applications of the Internet are mere teasers that suggest, but do not yet reveal, the long-term benefits of the Internet revolution. They believe that the Internet revolution will radically transform the ways people communicate and live in the 21st century and beyond.

Describing the advent of the Internet—or any other technological development for that matter—as a "revolution" invites attempts to further develop the analogy. For instance, historians of ideas and philosophers might inquire about the nature of the "old order" that the Internet threatens to upset, insisting that without understanding that order, no one can sufficiently appreciate the Internet's uniqueness, novelty, and likely implications. While these witnesses of the revolution investigate its finer points, others feel the need to take sides. Opponents of the revolution may regard its focus on the "communication of information" as a corruption or at least impoverished version of the "true teaching and learning of knowledge". Individual "friends of the revolution", who agree that the Internet's benefits outweigh whatever costs it may involve, may dispute the importance of ensuring a certain distribution of the Internet's benefits. This internal debate between the Internet's proponents takes place within the broader discussion of the "digital divide", i.e., the gap between those who have "access" to computers and those who do not. Some people believe that being able to connect to the Internet by using a dial-up modem, whether at home, school, work, the local library, or an Internet café counts as having such access. They argue that high-speed, high-capacity Internet service, "broadband", is a luxury, and that it will remain a luxury, unless and until the market decides otherwise. But many telecommunications experts throughout the country and the state argue that broadband is rapidly becoming a necessity for consumers, businesses, governments, and institutions. Moreover, many Internet users believe that they will

need broadband in the near future, even if they can squeak by without it today. Among those who perceive broadband as a necessity, many suggest that the state and federal governments ought to promote access more actively.

Months of committee testimony and discussion in both the Senate and the House have contributed to a complex picture of both the potential benefits of broadband and the challenges confronting attempts to promote the development of the broadband infrastructure. A serious look at broadband must begin with a discussion of what *exactly* broadband is, and it turns out that providing a precise definition is not so easy. In "Connecting to the Internet: Broadband Connections," the Legislative Service Bureau's Science and Technology Division offers the following useful characterization of broadband: "The term broadband has become synonymous with advanced telecommunications capabilities and refers to high-speed data transmission and high bandwidth capacity. Simply put it refers to telecommunications technologies that can carry a lot of data and carry it at very high speeds." Characterizing broadband as a high speed and high bandwidth connection immediately prompts questions such as how fast? and how much bandwidth? The short answer is that the FCC, which no longer considers "broadband" to be a technical term, uses "advanced telecommunication capability" to describe services and facilities with an upstream, or customer-to-provider, and downstream, provider-to-customer, transmission speed of more than 200 kilobits per second, regardless of technology. The commission decided on the 200 kbps figure because this is somewhat faster than Basic Rate Integrated Services Digital Network service (ISDN), which operates at a rate of 144 kbps, and because "200 kbps is enough to provide the most popular applications, including web-browsing at the same speed as one can flip the pages of a book." A somewhat longer answer would consider the various different technologies capable of providing broadband service.—i.e., cable modem, DSL (digital subscriber line), fiber optic connections, satellite, or terrestrial wireless. Each of these technologies offers its own level of capabilities and a distinct set of advantages and disadvantages, and within certain general parameters—notably, faster than dial-up modem speeds and always-on connections—any of these technologies can count as broadband. The complexities of deploying individual broadband technologies to specific geographical regions, as well as the radically diverse needs of individual end-users, make it difficult to establish a speed definitive of broadband. For many end-users, 200 kbps speeds would be frustratingly slow, whereas for dial-up modem users, such speeds would be relatively fast. Whatever the present speed, the FCC acknowledges that the minimum acceptable connection speeds for "broadband" will need to be revised as technologies are developed and are made more widely available and as demand for both higher speeds and applications requiring higher speeds increases.

So is there evidence of a "need for speed"? That is, do people really need broadband? According to committee testimony, the state's major automobile manufacturers will require suppliers of car parts to receive and send designs and plans over the Internet within the next couple of years. The suppliers will simply not be able to stay in business if they do not have broadband. Broadband might also enable a surgeon who is relatively unfamiliar with a procedure that he or she must perform to teleconference with an expert halfway across the country or halfway around the world. In this way, broadband increases, if only indirectly, the likelihood of the procedure's success. For an auto part supplier or a patient under the proverbial knife, the need for broadband is clear enough. While such "life or death" cases may be the exception rather than the norm, the opportunity costs of continuing to use a dial-up modem must also be considered. For instance, a February 20, 2002 Detroit Free Press article discussed the case of a farmer who has come to depend on information available on the Internet and who is frustrated by the low speeds achievable with his dial-up modem. As the farmer put it, "time is money". Farmers and other businesspeople may find themselves at a real competitive disadvantage if they lack broadband service but their competitors have it, and the state will likely have difficulty attracting new businesses to the state if broadband is more readily available elsewhere than it is in Michigan. Students in rural or inner-city school districts, where broadband is not necessarily available, may become increasingly isolated from their peers in "connected" areas of the state, and they may find themselves with fewer opportunities to learn. Broadband may never be necessary in the sense that oxygen and clean water are necessary, but many people believe that the long-term costs of not deploying broadband infrastructure throughout the state is simply too high to force Michiganians to bear.

At the same time, a January 2002 EPIC-MRA poll suggests that while 25 percent of adults in Michigan consider themselves either very well or somewhat well informed about broadband, only 24 percent of adults in Michigan can (more or less, correctly) identify "broadband" with high-speed Internet access. Subscription rates for broadband services, where they

are available, seem rather low. For instance, according to FCC data, as of June 2001 97 percent of Americans lived in zip codes where high-speed Internet services were available to at least some individual, business, or institution, but only 7.8 million households and small businesses subscribed to those services. People have warned that these statistics can be deceiving, since the fact that broadband is available to one subscriber within a zip code does not necessarily mean that it is available throughout the zip code. Still, others find the gap in the numbers at least somewhat significant. Further, according to committee testimony and news reports, many telecommunications companies—e.g., SBC/Ameritech, Verizon, Sprint, and Qwest—have cut back on investment in broadband infrastructure. If broadband is truly destined to become the passport to the world of 21st century telecommunications, why haven't consumers expressed more interest in it, why aren't telecommunications companies more actively developing the infrastructure necessary for it, and why do so few people even know what broadband is? And why, when the private sector is not acting on its own, should government take the initiative in promoting broadband?

Most people believe that the question of whether broadband is, or ever will be, "necessary" is a question that residents, businesses, and institutions will ultimately have to answer for themselves. Moreover, most people agree that responsibility for convincing consumers that the benefits of broadband are real and not just hype falls upon telecommunications providers. But some people argue that consumers and providers are currently embroiled in a "chicken or egg" debate that prevents the parties from moving forward. Some observers have suggested that consumers, particularly residential consumers, are reluctant to subscribe to broadband service because they do not believe that any of the applications currently on the market require speeds higher than those they can achieve with their dial-up modems. A dial-up modem user who just browses the web and uses e-mail, occasionally downloading or uploading a file, may wish that she could connect at a higher speed or that she had an always-on connection but may not be willing to pay much extra for those conveniences. Content providers and other industry officials concede that residential consumer applications have been slow to emerge, but they argue that content providers currently have little incentive to develop such applications. Content providers have no way of knowing how much demand there is when most consumers cannot connect at speeds that would allow them to use the application. Thus, content providers and other industry representatives point to business applications that require high-speed Internet access as evidence of broadband's potential, and they dangle applications such as video-on-demand like carrots, as a way to motivate general consumer interest. Large businesses, institutions, and organizations often have access to, and take advantage of broadband service, and relatively complex content is available for these customers. Still, even those individual residential customers who want to subscribe to broadband service may find it unavailable in their area.

Determining whether broadband is "available" is not much easier than deciding upon a precise definition of broadband. The FCC and the Michigan Public Service Commission collect some data on where broadband infrastructure is deployed and where there are broadband subscribers, but the information is incomplete because so much depends on the existence, quality, and type of connection that any given end-user has to the Internet "backbone." The fact that a business or housing development has broadband service does not necessarily mean that a business or residential area just down the road has access to broadband. For instance, current DSL technology requires that an end-user be located within about three miles of a telephone switching office with equipment capable of handling digital signals, and so one resident may be able to get broadband where his neighbor may not. Cable broadband service uses the same infrastructure as cable television, which is available in many—but not all—areas of an individual city or township, let alone the state. Wireless technologies (at least currently) depend on a direct "line of sight" between equipment located at the customer's house or business and a tower or satellite, and inclement weather, mountains, and even trees, can create problems for someone who depends on reliable, uninterrupted service. Since capabilities vary according to the relevant technology, the fact that one broadband technology is available to residents of a city block may be irrelevant to a business on the same block. At the same time, broadband can often be found or made available in the unlikeliest of places, such as Granite Island. A November 2001 Detroit Free Press article tells the story of how one of the owners of the island's lighthouse, upon arriving at the island by boat, hooked up her laptop to write her mother an e-mail to let her know that she and her husband had arrived safely. The woman's mother, who lives in France, responded almost immediately to say that she had watched her daughter and son-in-law arrive through a 24-hour web-cam made possible by the island's wireless broadband service. The apparent unavailability of broadband in remote places has

created a market niche for consultants who specialize in finding solutions for customers who, often wrongly, assume that they simply have no options. In some cases, such solutions are as simple (technically) as connecting several dial-up modems together to create a combined speed equivalent to that offered by other technologies (though in this particular case, the customer would not have the always-on connection).

In the end, whether broadband is "available" to an individual customer is largely a function of how much the customer is willing to pay for the service. Large businesses can generally afford "T1 connections" to the Internet backbone. Research universities generally have the in-house expertise and capital necessary for creating the massive infrastructure that allows thousands of students, faculty, and staff to simultaneously upload and download large applications at lighting-quick speeds. And *for the right price* someone living out "in the sticks" can probably find someone willing to deliver fiber optic lines to her door. But what about the small businesses, the less wealthy residents, and the many institutions, organizations, and government agencies that simply cannot afford access to broadband? Bringing high-speed Internet access to all corners of the state, nation, and world is not simply—or even primarily, at this point—a technological problem. Rather, it is an economic problem. Although the lack of applications that require high-speed access is a significant factor in the low "take rates" for broadband where infrastructure currently does exist, another significant factor in explaining the availability or non-availability of broadband is the cost involved in deploying infrastructure to remote, sparsely populated locations. The developers of such infrastructure argue that they have little choice but to pass the costs of deploying infrastructure along to consumers, and as with many infrastructure issues, geography and population density are key factors in determining how economically feasible it is to deliver service to any particular end-user.

Another factor affecting the cost of deploying broadband infrastructure—one that people often overlook—is the rights-of-way fees charged by local units of government. For all of the Internet's promises to take us to the farthest corners of the globe and beyond, much of the information highway lies underneath "Main Street". The state constitution gives local governments significant control over setting the conditions of access to rights-of-way, and the Michigan Telecommunications Act (MTA) gives the locals the right to charge telecommunications providers for the "fixed and variable" costs associated with such access. Most local governments do not charge such fees, but many are beginning to do so or are considering doing so, and negotiating conditions of access with individual local communities can be a timely, expensive, and aggravating process for both providers and community officials. Some municipalities charge both application fees and per linear foot fees, while others charge one but not the other. Application fees for competitive local exchange providers can be as much as $10,000, and annual fees can exceed $1.00 per linear foot occupied. Making matters even more complex, incumbent local exchange providers claim an exemption from such fees on the basis of Public Act 129 of 1883, and cable companies' access to and use of local rights-of-way are governed by federal law and regulations.

Federal and state legislators and regulators are uniquely positioned to take steps to make broadband more or less attractive and available to potential end users, especially when they believe that promoting high-speed Internet access is in the public's interest. Federal legislators took steps to promote broadband deployment when they enacted the Telecommunications Act of 1996. Section 706 of the act requires the FCC and state commissions with regulatory authority over telecommunication services—in Michigan, the Michigan Public Service Commission (PSC)—to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." The act also requires the FCC to report regularly on the question of whether advanced telecommunication services are being made available "in a reasonable and timely fashion." If the FCC determines that they are not, the act requires the commission to "take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market." On February 6, 2002, the FCC adopted and released its third "Section 706 report." The commission found, as it had found in its previous two reports, satisfactory progress in the deployment of advanced telecommunications capability, and thus determined that no *immediate* action to *accelerate* deployment is required. Still, as Section 706 implies and the FCC explicitly acknowledges in the report's introduction,

the report's findings relieve neither the FCC, nor the state commissions, of their general duty to *encourage* deployment. The details of how to meet this obligation are far from clear. Although the act clearly suggests that federal and state commissions should *facilitate* private deployment efforts, it provides little guidance for regulators who are trying to determine precisely when they should push market forces along, when they should sit back and let consumers and service providers hash things out among themselves, and when, if ever, they should curb the market. Moreover, the act's general directive is silent on the issue of local control of rights-of-way.

At the state level, the Michigan Economic Development Corporation (MEDC), the PSC, and Governor Engler have actively promoted the deployment of broadband infrastructure statewide. The MEDC issued its "LinkMichigan" plan in May 2001, and in late November the Governor began to actively promote his "Michigan HiSpeed Internet Plan," which he described as building on the MEDC's recommendations. Legislation has been introduced to encourage and facilitate private efforts to deploy broadband infrastructure—without favoring any specific technology—to make high speed Internet access available to businesses, schools and other educational institutions, hospitals and other health care facilities, governments, residents, and others throughout the state.

THE CONTENT OF THE BILLS:

Senate Bill 881 would create the "Michigan Broadband Development Authority Act." The bill would begin by enumerating legislative findings stating the need for broadband infrastructure throughout the state and declaring that it is a valid public purpose for the state to assist in financing private and public sector development of that infrastructure. "Broadband services" would be defined as services, including voice, video, and data, that provide capacity for transmission in excess of 200 kilobits per second in at least one direction regardless of the technology or medium used, including wireless, copper wire, fiber optic cable, or coaxial cable. The bill would also do the following:

- create the Michigan Broadband Development Authority (MBDA) and establish its board of directors;

- authorize MBDA to issue tax-exempt bonds and notes to finance or refinance all or part of the development of the broadband infrastructure and specify that the notes or bonds would not be a debt of the state;

- prescribe MBDA's other powers, including making loans to, and entering into joint venture and partnership arrangements with, broadband developers and operators;

- prohibit MBDA from making loans to, or entering into joint ventures or partnership arrangements with, any governmental entity or nonprofit organization except in connection with financing development costs for the portion of broadband infrastructure used or to be used exclusively by governmental entities or nonprofit agencies;

- restrict MBDA's ability to acquire real and personal property constituting portions of the broadband infrastructure;

- create a Reserve Capital Account under MBDA's control to secure its bonds and notes;

- create a seed capital loan program to make capital loans available to persons planning to apply to MBDA for financing of broadband infrastructure, with priority given to developments targeted to underserved areas of the state;

- require broadband developers and operators applying for financing under the bill to file with MBDA both a participation plan for small and minority owned businesses and a community wide outreach plan to educate the public of the availability of broadband services; and

- require the MBDA to submit an annual report relating to its activities for the preceding year to the governor, the Speaker of the House of Representatives, the Senate Majority Leader, and to each member of the House and Senate committees with oversight over utility and energy issues.

Except to the extent necessary to maintain, improve, complete or expand an element of the broadband infrastructure already acquired or financed under the act, MBDA could not enter into new partnerships or other joint ventures arrangements or provide new loans or joint venture and partnership arrangements after December 31, 2008.

Senate Bill 880 would create the "Metropolitan Extension Telecommunications Rights-of-Way Oversight Act", which according to the bill's statement of purpose, was designed to encourage competition among providers of telecommunication

services and to streamline the process for authorizing providers' access to and use of local public rights-of way, among other things. Specifically, the bill would do the following:

• create the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (METROWA), under the authority of Section 27 of Article VII of the state constitution (see "Background Information" below), and give METROWA the exclusive power to assess fees on telecommunication providers owning telecommunication facilities in public rights-of-way within a metropolitan area;

• require a provider to obtain a permit from a municipality for access to its public rights-of-way and pay the municipality a one-time $500 administrative fee, and submit route maps, and require municipalities to grant permits;

• require a provider to pay to METROWA an annual maintenance fee per linear foot of public right-of-way occupied by the provider's facilities of five cents, beginning April 1, 2003. (For the period of November 1, 2002 to March 31, 2003, a provider would have to pay an initial annual maintenance fee of two cents per linear foot, prorated for the period. Under certain cases, these fees would be reduced "in recognition of the need to provide nondiscriminatory compensation to municipalities for management of their rights-of-way". A provider providing cable services within a metropolitan area would have to pay an annual maintenance fee of one cent per linear foot and would be allowed to satisfy the fee requirement based on aggregate investment in Internet broadband facilities in Michigan since January 1, 1996);

• extend the permit and permit fee requirements to a provider asserting rights under Public Act 129 of 1883;

• require the maintenance fee revenue to be distributed to municipalities in metropolitan areas;

• require municipalities, in order to receive fee-sharing payments, to comply with the bill and modify fees to the amount permitted under the bill;

• allow providers to take a credit against their utility property tax (pursuant to Senate Bill 999);

• discount the maintenance fees of providers implementing a shared use arrangement;

• allow METROWA to waive the fee for facilities in underserved areas;

• make exceptions to the fee requirements for educational institutions, electric and gas utilities, the state, counties, municipalities, and municipally owned utilities;

• establish "fair play" requirements for a county or municipality providing a telecommunication service or cable modem service provided through a broadband Internet access transport service;

• require providers excavating, constructing, or installing facilities within, or temporarily obstructing, a public right-of way to return the right-of-way to its original condition;

• specify remedies and penalties the Public Service Commission (PSC) could order for violations of the bill;

• require municipalities to use maintenance fee funds received under the bill solely for rights-of-way purposes and require any municipality with a population of 10,000 or more that received funds to file an annual report with METROWA on the use and distribution of the funds;

• require METROWA to file an annual report of its activies for the preceding year with the governor, the legislature, and members of the legislative committees dealing with energy, technology, and telecommunications issues; and

• repeal several sections of the Michigan Telecommunications Act (MTA) dealing with access to and use of local rights-of-way.

Senate Bill 999 would amend Public Act 282 of 1905, which provides for the assessment and taxation of the property of telephone, telegraph, and railroad companies, to allow a credit against the tax for expenditures for certain information-carrying equipment. The bill would also allow a separate credit for annual maintenance fees paid pursuant to Senate Bill 880, less the equipment credit.

Senate Bill 880 is tie-barred to both of the other bills, and Senate Bill 999 is tie-barred to Senate Bill 880. Senate Bill 880 would take effect on November 1, 2002.

BACKGROUND INFORMATION:

Article VII, Section 27. Article VII of the state constitution deals with local government, and Section 27 deals specifically with metropolitan governments and authorities. This section states: "Notwithstanding any other provision of this constitution the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide. Wherever possible, such additional forms of government or authorities shall be designed to perform multipurpose functions rather than a single function."

Article VII, Section 29. Section 29 of Article VII of the state constitution deals with local control of highways, streets, alleys, and other public places and the use of these public places by public utilities. This section states: "No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village; or to transact local business therein without first obtaining a franchise from the township, city or village. Except as otherwise provided in this constitution the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government."

LinkMichigan. In May 2001, the Michigan Economic Development Corporation (MEDC) issued a report entitled LinkMichigan. In the report, the MEDC identified improved access to high-speed telecommunication services as "the most important state economic infrastructure issue for the new century." The MEDC noted the widespread perception that broadband is a luxury and warned that failure to prepare for the future could lead the state to lose its "preeminence" as "a recognized leader in competing for new business growth and attracting and retaining a world-class workforce." According to the MEDC, broadband access will soon become "as essential of an infrastructure service as water, phone, electric, or natural gas service is today." The report recommended that state and local governments facilitate the private sector's development of the infrastructure necessary to deploy broadband throughout the state. The full report is available on the web at: www.medc.michigan.org. The report specifically recommended the following:

1. The Michigan Department of Management and Budget should:

- aggregate collective purchasing demand of the state, higher education users, K-12 users, local government users, and any other public partners and ask (through a request for proposals) private-sector bidders interested in serving the state to provide advanced telecommunication services to each;

- require by contract that providers build and maintain a high-speed backbone infrastructure that extends to most regions of the state to serve these customers; and

- require by contract that winning vendor(s) resell excess network capacity on a non-discriminatory wholesale basis to increase competition and encourage investment in regions that might not otherwise attract new service providers.

2. The Michigan Public Service Commission should:

- establish a level regulatory playing field for all telecommunications and information carriers;

- enact a one-stop right-of-way permitting system to create common rules for all carriers; and

- establish one common tax and fee system to replace differing systems in place around the state.

3. The MEDC, along with local economic development agencies and providers, should make recommendations for:

- enacting laws and/or rules requiring all telecommunications and information carriers to provide specific network location and capability information;

- develop and enforce quality-of-service standards so that businesses and other purchasers of advanced telecommunication services are able to plan and not have business operations disrupted because of continual installation delays; and

- link reporting to the approval of right-of-way permits.

4. The MEDC should:

• provide local community planning grants so that local officials can develop their own last mile solutions for their communities;

• encourage communities to link or leverage their local strategies to the statewide backbone initiative; and

• refuse assistance to communities that have established barriers to new telecommunications investment.

Other resources. All three of the FCC's Section 706 reports on the deployment of "advanced telecommunications capability" are available on line at: www.fcc.gov/broadband/706.html. The Science and Technology Division of the Legislative Service Bureau has published several helpful backgrounders on "Connecting to the Internet."

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, Senate Bill 880 would generate between $9 and $14 million in right-of-way maintenance fee revenue during the first year of implementation and between $24 and $36 million in subsequent years. This revenue would replace the roughly $11.5 million in annual revenue currently generated by local units of government in right-of-way fees. Additional one-time revenue from the $500 permit fees would generate an additional $3 to $4 million in the first year and an indeterminate amount in future years.

While it is possible that state appropriations and expenditures would be necessary to provide for the operation of the financing authority, the fiscal implications of Senate Bill 881 are indeterminate.

Senate Bill 999 would reduce state revenue from the Utility Property Tax by an indeterminate amount. The amount could range from between $2 and $36 million per year depending upon the determination as to whether incumbent local exchange carriers imposing an End User Common Line (EUCL) charge would be eligible to recover the costs of maintenance fees through the credit. Any revenue reduction would impact the state's general fund.

For a fuller explanation of the likely fiscal impact of Senate Bills 880, 881, and 999, see the House Fiscal Agency's analysis of the bills, dated 7-9-02.

ARGUMENTS:

For:

Affordable, non-discriminatory access to broadband for all regions of the state is vitally important for the state's well being, and the state should take action to facilitate private efforts to deploy the broadband infrastructure. Although the FCC has reported that deployment is occurring in a timely and reasonable fashion, officials at the Michigan Economic Development Corporation and the Michigan Public Service Commission have argued that "average is not good enough" and that Michigan must take the lead on broadband. The opportunity cost of not acting now could make it difficult to retain businesses and attract new businesses to the state. A report by Gartner Consulting suggests that the original LinkMichigan plan, upon which Senate Bills 880, 881, and 999 are largely based, could lead to an increase of 500,000 jobs in the state within a ten-year period and a $440,000 gain in gross state product.

The benefits of actively promoting broadband would extend not only to businesses that are currently operating in the state or considering beginning operations here, but also to residents, hospitals, schools, and other institutions and organizations. Increasingly, people are seeing the availability of broadband as enhancing their quality of life, and Michiganians do not want to be left on the wrong side of the digital divide. Ensuring that schoolchildren throughout the state have speedy, efficient access to the information available on the Internet is extremely important for the state's future. Public libraries, recognizing that some residents will still be unable or unwilling to pay for broadband even if it does become widely available, would like to be able to offer high-speed access to the Internet to their patrons. Broadband can also help the state and local governments to share information in emergency situations. As with most technologies, those who are skeptical or dubious of broadband's claims will soon find themselves wondering how they could have done without it.

Senate Bill 881 would allow the state to create the Michigan Broadband Development Authority, which would, by issuing notes and bonds, make below-market financing available to broadband developers and operators. The authority, modeled on the highly successful Michigan State Housing Development Authority, would be responsible for ensuring that providers had developed sound plans, and ultimately the state would not be liable for notes and bonds that the authority issued. Without pledging the full faith

and credit of the state, the state would make it easier for broadband providers to cover their costs and thus remove a key obstacle to providing Michigan's residents, businesses, governmental agencies, organizations, and institutions with the high-speed Internet capabilities they will need in the 21st century. The bill avoids favoring any specific technology, which is important since it is unclear which technologies would best serve individual end-users' broadband needs. The bill would also create a seed capital loan program, which would emphasize the special needs of underserved areas of the state and would favor community economic development programs and smaller broadband providers. Such provisions would ensure a broad mix of providers, and notably those who were willing to take broadband to rural and urban areas, had access to METROWA financing.

Against:

The laws of supply and demand, rather than the laws of the state, should determine when and where broadband is deployed. While broadband is not available in all areas of the state, it is available and priced reasonably in many areas, and in quite a few areas potential customers may choose between competing technologies. Many people simply are not interested in high speed Internet access.

The benefits that Michigan would reap from Senate Bill 881's enactment are not as clear as some supporters of the bill suggest. Although the bill would make financing available to providers, providers would have to decide for themselves whether or not to apply for financing. Even if providers did apply for financing and deploy infrastructure throughout the state, there is no guarantee that residents and small businesses, among others, would be interested in paying for broadband. *If* broadband developers took advantage of METROWA financing to develop infrastructure, and *if* demand for broadband drastically picked up among residents and small businesses, then the METROWA *could* result in economic good times for the state. Still, the MEDC and others have argued their case largely by touting benefits that are by no means guaranteed.

Response:

While it is possible that providers would not be interested in the financing made available by MBDA, it is fairly clear that any provider thinking about developing infrastructure in the state would be attracted to the possibility of acquiring capital at low rates. MBDA would be fiscally conservative in its creation of the Reserve Capital Account and in its approach to providers' development plans. The bill contemplates the possibility that MBDA could default in the payment of principal or interest of any notes or bonds are due, but the success of MSHDA is a strong precedent for MBDA. But the state will not really be taking a major risk in promoting broadband development, especially considering that the state would not be liable on the notes or bonds issued by MBDA. The remote possibility that MBDA could turn out to be a total disaster is a reason to stress the need to proceed cautiously and the need for the legislature to maintain oversight; it is not a sufficient reason for inaction.

For:

Senate Bill 880 would create a uniform permit and fee system for broadband providers who need access to the municipal rights-of-way, under which much of the necessary infrastructure lie. In order to access this infrastructure, providers need to dig up roads and sidewalks, and such activities not only disrupt the community's ability to use the facilities but also create the need for repairs and reduce the life of the rights-of-way. The bill is clearly a compromise between owners of the infrastructure who would prefer to pay minimal—ideally, no—costs for such access and municipalities that believe that the bill's fee system will not cover their "fixed and variable costs," which they are currently entitled to recover under the MTA. Nevertheless, broadband developers would gain by knowing the costs of doing business ahead of time, without having to negotiate access with individual municipalities. And municipalities would benefit by having the incumbent local exchange carriers, which currently claim an exemption from local fees, pay their share of keeping up the rights-of-way.

The bill would promote the shared use of infrastructure, by giving a shared use discount to providers who used the same poles, trenches, and other common spaces and physical facilities, and would thereby help minimize the impact of providers' access to rights-of-way. The bill would also promote deployment of broadband infrastructure to the state's underserved areas by allowing METROWA to waive rights-of-way maintenance fees to a provider if two-thirds of the affected municipalities in an underserved area agree to have their distribution of fees reduced by that amount.

Against:

Some constitutional concerns have been raised about the concept of a state authority with broad powers over local rights-of-way. Article VII, Section 29 of

the state constitution clearly gives local governments control over their rights-of-way. Under the bill, METROWA would, among other things, "have the exclusive power to assess fees on telecommunications providers owning telecommunication facilities in public rights-of-way within a municipality in a metropolitan area to recover the costs of using the rights-of-way by the provider." It appears that METROWA would violate local governments' rights to negotiate the terms of access to rights-of-way within their boundaries.

Response:

Article VII, Section 29 states that "*Except as otherwise provided in this constitution* the right of all counties, townships, cities and villages to the reasonable control of their highways, streets, alleys and public places is hereby reserved to such local units of government." This section establishes a general presumption in favor of local control of local rights-of-way, but it clearly falls short of establishing locals' absolute control over their rights-of-way. Senate Bill 880 would explicitly reference Article VII, Section 27 in creating METROWA. This section states that "*Notwithstanding any other provision of this constitutio*n the legislature may establish in metropolitan areas additional forms of government or authorities with powers, duties and jurisdictions as the legislature shall provide." Thus, despite Section 29's general presumption in favor of local governments, Section 27 clearly authorizes the legislature's creation of a metropolitan authority regulating access to local rights-of-way.

Against:

Senate Bill 880 would state that one of the purposes of the act would be to "allow for a tax credit as the sole means by which providers can recover the costs under this act and to insure that the providers do not pass these costs on to the end-users of this state through rates and charges for telecommunications services." But what is good for the end-user is not necessarily good for the taxpayer. By giving providers a tax credit, taxpayers, not all of whom would subscribe to broadband services, would essentially be subsidizing the deployment of broadband to those who did subscribe to broadband.

Response:

One of the key principles of the bill package is that promoting broadband will not only provide direct benefits to those who wind up subscribing but will also provide indirect benefits to those who do not subscribe. Taxpayers will benefit by having schools and hospitals that have high speed Internet access. Projections of economic development potential also suggest that taxpayers will likely see a long-term increase in the state's general fund as a result of the bill package.

Analyst: J. Caver

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.