

Act No. 265
Public Acts of 2003
Approved by the Governor
January 5, 2004
Filed with the Secretary of State
January 5, 2004
EFFECTIVE DATE: January 5, 2004

**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2003**

Introduced by Reps. Nitz, Gaffney, Caswell, Garfield, Milosch, Nofs, Stahl, Casperson, Hune, Acciavatti, Voorhees, LaJoy, Bisbee, Shulman, Emmons, Walker, Hoogendyk, Hummel, Huizenga, Newell, Rocca, Farhat, Koetje, Wenke, Pastor, Steil, Meyer, Palsrok, Palmer, Ehardt, Kooiman, Richardville, Julian, Vander Veen, Shaffer and Sheen

ENROLLED HOUSE BILL No. 5254

AN ACT to amend 2002 PA 49, entitled "An act to create the Michigan broadband development authority; to create funds and accounts; to authorize the issuing of bonds and notes; to prescribe the powers and duties of the authority; and to provide incentives for the development of broadband services," by amending section 7 (MCL 484.3207).

The People of the State of Michigan enact:

Sec. 7. (1) The powers of the authority shall include all those necessary to carry out and effectuate the purposes of this act, including, but not limited to, all of the following:

(a) To borrow money and issue bonds and notes to fund operations of the authority, to finance or refinance part or all of the development costs of the broadband infrastructure, to refinance existing debt for technology that constitutes a part of or is related to the broadband infrastructure, and to secure bonds and notes by mortgage, assignment, or pledge of any of its revenues and assets.

(b) To invest any money of the authority at the authority's discretion, in any obligations determined proper by the authority, and name and use depositories for its money.

(c) To enter into joint venture and partnership arrangements subject to subsections (2) and (3) with persons that will acquire, construct, develop, maintain, and operate all or portions of the broadband infrastructure.

(d) To be designated the state program manager for federal telecommunications assistance, to represent this state in negotiations with the federal government regarding telecommunications assistance, and to receive and distribute federal funding, including loans, grants, and other forms of funding and assistance on this state's behalf.

(e) To receive and distribute state or local funding including grants, loans, general appropriations, or an appropriation made for the purposes under subsection (4).

(f) To make loans and to enter into any joint venture and partnership arrangements subject to subsections (2) and (3) with broadband developers and broadband operators that will acquire, construct, maintain, and operate all or portions of the broadband infrastructure.

(g) To provide operating assistance to make broadband services more affordable to broadband developers, broadband operators, and broadband customers, in conjunction with broadband infrastructure financed by the authority.

(h) To impose and collect charges, fees, or rentals for the services furnished by those portions of the broadband infrastructure financed by the authority under this act.

(i) To set construction, operation, and financing standards for the broadband infrastructure in connection with authority financing and to provide for inspections to determine compliance with those standards.

(j) To acquire from any person interests in real or personal property necessary for the operation of the authority.

(k) To procure insurance against any loss in connection with the broadband infrastructure and any other property, assets, or activities of the authority.

(l) To sue and be sued, to have a seal, and to make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of the authority's powers.

(m) To enforce financial, operational, warranty, security, lease, and guaranty terms and conditions established under financings by the authority. The authority may under this subsection acquire, construct, develop, lease, create, and maintain all or portions of the broadband infrastructure and acquire from any person interests in real and personal property.

(n) To make and amend bylaws.

(o) To indemnify and procure insurance indemnifying any members of the board of the authority from personal liability by reason of their service as a board member.

(p) To investigate, evaluate, and assess the current broadband infrastructure and the future broadband infrastructure needs of this state and to encourage and participate in aggregation strategies for the broadband services of all public entities and nonprofit corporations in this state to maximize the interconnectivity and efficiencies of the broadband infrastructure.

(2) Notwithstanding any other provision of this act, the authority shall not make loans to, or enter into any joint venture and partnership arrangements or participation with, any governmental entity or nonprofit organization except in connection with the financing or refinancing of development costs for that allocable portion of the broadband infrastructure used or to be used exclusively by governmental entities or nonprofit organizations, including, but not limited to, universities, colleges, hospitals, school districts, public safety agencies, judicial organizations, libraries, cities, townships, and counties. No allocable portion of the broadband infrastructure financed by a loan to a governmental entity or a nonprofit organization shall be used to serve residential, business, or other commercial customers.

(3) Notwithstanding any other provision of this act, except in connection with financing or refinancing under subsection (2) or enforcement procedures authorized under subsection (1)(m), the authority shall acquire real or personal property constituting portions of the broadband infrastructure only in connection with the participation of persons other than governmental entities or nonprofit organizations through joint ventures and partnership arrangements, or other co-ownership arrangements and only if the participation is necessary to assure availability of financing or refinancing derived from the issuance by the authority of bonds or notes, the interest on which is exempt from taxation under the United States internal revenue code, and the financing derived from the tax-exempt bonds or notes is allocated only to those development costs relating to that portion of the broadband infrastructure that is to be used by governmental bodies or nonprofit organizations.

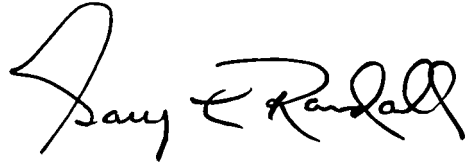
(4) The authority shall establish a seed capital loan program to make capital loans to persons planning to apply to the authority for financing of broadband infrastructure. Priority for the seed capital loan program shall be given for developments targeted to underserved areas. During the initial 2 years of operations, the authority shall designate a minimum of \$500,000.00 to be targeted to rural underserved areas and a minimum of \$500,000.00 targeted to urban underserved areas. Community economic development programs and small providers shall be given a preference to receive loans under this subsection. The terms and conditions for the seed capital loans shall be established by the authority. As used in this act, "underserved areas" means geographical areas of this state identified by the authority as having the greatest need for broadband development. In identifying underserved areas, the authority shall consider the area's economic conditions, including, but not limited to, family income, affordability of access, lack of options available, low percentage of residents subscribing, and any other criteria considered important by the authority in determining whether an area is underserved.

(5) As part of an application for financing under this act, the broadband developer and broadband operator shall file with the authority a participation plan for small and minority owned businesses and a communitywide outreach plan to educate the public of the availability of broadband services. The authority shall not approve an application unless a plan is submitted under this subsection.

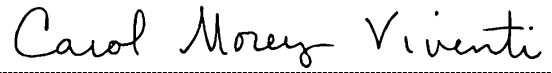
(6) Priority shall be given to the application of any broadband developer who applies to develop broadband capability within a recovery zone as that term is defined in section 8d of the Michigan renaissance zone act, 1996 PA 376, MCL 125.2688d.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. 825 of the 92nd Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor