House
Legislative
Analysis
Section

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BROADBAND PACKAGE

Senate Bill 880 (Substitute H-4)
Sponsor: Sen. John J. H. Schwarz, M.D.

Senate Bill 881 (Substitute H-4)
Sponsor: Sen. Leon Stille

Senate Bill 999 (Substitute H-2)
Sponsor: Sen. Valde Garcia

House Committee: Energy and Technology
Senate Committee: Technology and Energy
First Analysis (3-13-02)

THE APPARENT PROBLEM:

The most unthinkable and improbable of technologies—gadgets and capabilities that are, prior to their invention, absolutely inconceivable 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. Yet other technologies fade into obscurity just as quickly. A committed skeptic might insist that only history will tell whether the Internet's appeal will endure, like the appeal of indoor plumbing, or whether future generations will remember the Internet as the quaint and fleeting obsession of a specific time and place, like the hula hoop or lava lamp. Despite this (perhaps healthy) skepticism, many people believe that human beings have only begun to see the effects of the Internet revolution—a revolution that will radically transform the way that people communicate and live in the 21st century and beyond. Telecommunications experts throughout the state and nation argue that "broadband" (roughly defined as high-speed Internet service), which many people consider to be a luxury, is rapidly becoming a necessity for residents, businesses, governments, and other institutions and organizations. Analogies to both previous public works programs, such as the creation of the interstate highway system, are ubiquitous. Moreover, many non-experts agree that they will need broadband in the near future, even if they can squeak by without it today.

Is there evidence of this "need for speed"? According to committee testimony, the major car manufacturers are allegedly requiring part suppliers to be able to receive and send designs and plans within the next couple of years. The suppliers will simply not be able to stay in business if they do not have the capacity to upload the plans. Broadband also enables a surgeon who is relatively unfamiliar with a procedure that he or she must perform to teleconference with an expert who can coach the surgeon. In this way, broadband increases, if only indirectly, the likelihood of success. For an auto part supplier or a patient under the proverbial knife, the need for broadband is clear enough. Such "life or death" cases may be the exception rather than the norm, yet the opportunity costs of continuing to use a dial-up modem must also be considered. For instance, a recent 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 he put it, "time is money," and a farmer—or any businessperson, for that matter—may be at a real competitive disadvantage if his or her competitors have broadband service and he or she does not. From an economic development standpoint, the state may have difficulty attracting new businesses to the state if broadband is more readily available elsewhere than it is in Michigan. Consider also the students in rural or inner-city school districts, where broadband may not be available, and the "digital divide" that may increasingly separate them from their peers in "connected" areas of the state. Broadband may not ever be necessary in the sense that oxygen and clean water are necessary, but many people believe that the ultimate cost 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 (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, but only 7.8 million households and small businesses subscribed to those services. Further, according to both committee testimony and news reports, many telecommunications companies—e.g., SBC/Ameritech, Verizon, Sprint, and Qwest—are cutting 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 are telecommunications companies not more actively developing the infrastructure necessary for it, and why do so few people even know what it is? And why, under these conditions, should government take the initiative in promoting broadband when the private sector is not acting on its own?

When depicting the present state and the future of broadband, some people paint in rough, broad strokes, offering generalities that fail to capture the details, and others collate various, random snapshots in isolation from the multitude of other possible perspectives that exist. Months of committee testimony and discussion in both the Senate and the House have contributed to a considerably richer picture of both the potential benefits of, 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 have to look at 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 technologies to specific geographical regions, as well as the radically diverse needs among individual end-users, make it difficult to establish a definitive speed. For many end-users, 200 kbps speeds would be frustratingly slow, whereas for others, notably dial-up modem users, such speeds would enable significantly greater capabilities than they presently enjoy. 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.

Most people believe that the question of whether broadband is, or ever will be, "necessary" is ultimately a question that residents, businesses, and organizations will 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 ultimately 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, occasionally downloading a file, and sends and receives e-mail 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 will not develop such applications until they see that there is significant demand for them. They argue that demand for an application is somewhat difficult to gauge when most consumers cannot even connect at speeds that would allow them to use the application. Thus, representatives of industry 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 interest. Large businesses, institutions, and organizations often have access to, and take advantage of broadband service and complex applications, but whether or not an individual end-user can get broadband is dependent on the availability of broadband in the area.

Unfortunately, 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." Thus, the fact that a business or housing development has broadband services 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. Although cable television is available in many areas of the state, it is not available everywhere, and cable broadband service uses the same infrastructure. Wireless technologies (at least currently) depend on a direct "line of sight" between equipment located at a resident's house and a tower or satellite, and inclement weather, mountains, and trees, can create problems with guaranteeing adequate service. Moreover, as mentioned earlier, service provided to one end-user may not provide the capabilities that another end-user in the same area needs; for instance, the fact that cable broadband is available to residents of a city block may be irrelevant to a businessperson on the same block who has different needs. 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 them arrive through a 24-hour web-cam made possible by wireless broadband service. Throughout the state, certain providers specialize in finding solutions for end-users who 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. Likewise, research universities generally have the in-house expertise and capital necessary for creating massive infrastructure that allow thousands of students, faculty, and staff to simultaneously upload and download applications at lighting-quick speeds. Moreover, *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 deployment broadband infrastructure—one that consumers 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 units significant control over setting the conditions of access to rights-of-way, and the Michigan Telecommunications Act (MTA) gives units the right to charge telecommunications providers for the "fixed and variable" costs associated with such access. According to committee testimony, incumbent local exchange providers claim an exemption from such fees on the basis of Public Act 129 of 1883. Moreover, the conditions of access for cable companies are covered under federal law and regulations. Application fees for competitive local exchange providers can be as much as $10,000 and per linear foot of right-of-way occupied fees can exceed $1.00. Some municipalities charge both application fees and per linear foot fees, while others charge one but not the other, and others charge nothing for access to their rights-of-way. Although most local governments do not charge these access fees, many are beginning to do so or are looking into 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.

Federal and state legislators and regulators are uniquely positioned to take steps to make broadband more or less attractive and available to 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 less 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 was a valid public purpose for the state to assist in financing private and public sector development of a statewide broadband 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. If voice transmission capacity was offered in conjunction with other services utilizing transmission in excess of 200 kilobits per second, the voice transmission capacity could be less than 200 kilobits per second. The bill would do the following:

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

- prescribe the MBDA's powers, including making loans to, and entering into joint venture and partnership arrangements with, broadband developers and operators. Except to the extent necessary to maintain, improve, complete, or expand an element of the broadband infrastructure already acquired or financed under the bill, the MBDA could not enter into new partnerships or other joint venture arrangements or provide new loans after December 31, 2008;

- authorize the 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;

- prohibit the 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;

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

- create a Reserve Capital Account under the 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 the MBDA for financing of broadband infrastructure. Priority for the program would be given to developments targeted at "underserved" areas of the state, and community economic development programs and small providers would be given a preference to receive capital loans.

- require broadband developers and operators applying for financing under the bill to file with the 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.

Senate Bill 880 would create the "Metropolitan Extension Telecommunications Rights-of-Way Oversight Act" to do the following:

- create the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority (METROWA), and give it 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, pay the municipality a one-time $500 administrative fee, and submit route maps; and require municipalities to grant permits;

- require a telecommunication provider to pay to the METROWA an annual maintenance fee per linear foot of public right-of-way occupied by the provider's facilities of five cents per foot, 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 the 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 to return rights-of-way to their 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 the METROWA on the use and distribution of the funds;

• require the 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:

Fiscal information is not available.

ARGUMENTS:

For:

Affordable access to broadband throughout the state is vitally important for the state's well being, and while to a certain extent the market has responded, and would likely continue to respond, the state should take action to facilitate 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 it is important that Michigan take the lead on broadband. The opportunity cost of not acting now could lead to key economic development problems, such as difficulties retaining businesses and attracting business to the state. A report by Gartner Consulting has suggested that the original LinkMichigan plan 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, and the impact of these bills, which are closely related to the LinkMichigan plan, could be equally beneficial. And the benefits of actively promoting broadband would extend to residents, hospitals, schools, and other institutions and organizations throughout the state.

Senate Bill 881 would allow the state to create an authority—the Michigan Broadband Development Authority—that would, by issuing notes and bonds, make below-market financing available to broadband developers and operators. The authority, modeled on the 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, at least at this point, which technologies 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, including those who were willing to take broadband to all regions of the state, had access to METROWA financing.

Against:

The laws of supply and demand, rather than the laws of the state, should determine where broadband is deployed. While broadband is not available in all areas of the state, it is available and affordable in many areas. 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 believe. First, although the bills would make financing available to providers, providers would have to decide for themselves whether or not to apply for financing. Second, even if providers did apply for financing and deploy infrastructure throughout the state, there is no guarantee that residents and small businesses, among others, will be interested in acquiring broadband services. Thus, *if* broadband developers take advantage of METROWA financing to develop infrastructure, and *if* demand for broadband drastically picks up among residents and small businesses, then the METROWA *could* result in economic good times for the state, but the much touted benefits of the state's promotional efforts are highly conditional.

Response:

While it is possible that providers will not be interested in the financing made available by the 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. Ultimately the state would not be liable on the notes or bonds issued by the MBDA, and the 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 the MBDA could default in the payment of principal or interest of any notes or bonds are due, but proponents of the bill cite the success of MSHDA as a precedent for the MBDA and believe that the state will not really be taking a major risk in promoting broadband development. The remote possibility that the 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 municipal rights-of-way. In order to access their 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 lead to the need for repairs and ultimately reduce the life of the rights-of-way The bill is clearly a compromise between owners of 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, which would see a more level playing field, particularly with respect to incumbent local exchange carriers, which currently claim an exemption from local rights-of-way fees.

The bill promotes the shared use of infrastructure, by giving a shared use discount, and thus would help minimize the impact of provider access to rights-of-way. The bill also promotes deployment of broadband infrastructure to underserved areas by allowing the 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, the 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."

Response:

The bill would reference Article VII, Section 27 of the state constitution in establishing the METROWA, which states, in part, that "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."

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." 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 also 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.

POSITIONS:

The Department of Treasury supports the bills. (3-13-02)

The Michigan Public Service Commission supports the bills. (3-13-02)

The Michigan Economic Development Corporation supports the bills. (3-13-02)

The Michigan Municipal League supports the bills. (3-13-02)

The Michigan Townships Association supports the concept of the bills. (3-13-02)

The Michigan Cable Television Association supports the bills. (3-13-02)

Taxpayers United opposes the bills. (3-13-02)

AARP Michigan supports Senate Bills 880 and 881, but does not have a position on Senate Bill 999. (3-13-02)

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.