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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY

MEMORANDUM

TO: Senator Anne Carney, Chair
Representative Thom Harnett, Chair
Joint Standing Committee on Judiciary

FROM: Senator Mark Lawrence, Chair ^{ML det}
Representative Seth Berry, Chair ^{SB det}
Joint Standing Committee on Energy, Utilities and Technology

DATE: June 1st, 2021

RE: Public records exception review of LD 1484

The Joint Standing Committee on Energy, Utilities and Technology is requesting the Judiciary Committee’s review of a portion of the majority report amendment to LD 1484, *An Act To Enhance the ConnectMaine Authority's Capacity To Provide World-class Internet* (Senator Bennett, sponsor) pursuant to Title 1, section 434. For reference, attached to this memorandum is a copy of the original version of the bill and a draft amendment to LD 1484, proposed by its sponsor, that was largely incorporated as the majority report amendment to the bill.

A majority of our Committee voted “ought to pass as amended” on LD 1484, to adopt the draft amendment to the bill proposed by Senator Bennett, which we understand was developed in cooperation with the Department of Economic and Community Development and other Administration representatives.¹ We do not have available at this time a copy of the final majority report amendment to LD 1484, however, the attached draft provides the specific provisions for which this review is requested.

LD 1484, as amended in the majority report, sets forth state connectivity goals and establishes the Maine Connectivity Authority (“MCA”) to further those goals through the development and financing of connectivity projects and through other activities. For the purposes of this review, the amendment in new Title 35-A, section 9408 (see pages 8-9 of the draft amendment) allows the MCA, on its own or upon request to keep specific information about communications service providers and wireless providers that own or operate advanced communications technology infrastructure in the State confidential if making that information public would compromise the security of public utility systems to the detriment of public interest or if the information is of a competitive or proprietary nature. It only allows the MCA to designate the information as confidential to the minimum extent necessary to protect the public interest or

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¹ There are 9 members on the majority report amendment. 3 members voted “ought to pass as amended” on a minority report amendment that would provide additional federal funding to the ConnectMaine Authority (Representatives Wadsworth, Foster and Carlow). 1 member was recorded as absent (Representative Grignon).

the legitimate competitive or proprietary interests of a communications service provider or wireless provider and requires the MCA to adopt rules regarding such designation of confidential information prior to designating any such information as confidential. This provision is substantially similar to language currently in law applicable to the ConnectMaine Authority (35-A MRSA §9207), a copy of which is also appended to this memorandum.

Reviewing the statutory criteria for the proposed exception to public records in the majority report amendment to LD 1484, we would comment as follows:

- A. Need to collect the information.** The information required regarding communications service providers and wireless providers is necessary for the MCA to evaluate current deployment of advanced communications technology infrastructure in the State and the costs, revenues and subscribership of such providers as it impacts the availability and affordability of communications technology to Maine residents.
- B. Value in maintaining the information.** Maintenance of that information will allow the MCA to determine actions to be taken, including the deployment of funding, to further the state connectivity goals and evaluate grant requests or project financing.
- C. Federal law.** We are unaware of any federal law requiring this information to be confidential.
- D. Balancing the individual's privacy rights and the public interest.** Review of the balancing of interests under this proposed exception is perhaps better considered under criteria E.
- E. Balancing the effect of disclosure on business competition against the public interest.** Public disclosure of this proprietary information may place the submitter at a competitive disadvantage and does not appear to serve a significant public interest.
- F. Interfering in public negotiations.** We are unaware of any connection between this information and negotiations involving a public body.
- G. Balancing the public interest and potential jeopardy to public safety or a member of the public.** Some of this information could be of a nature that if disclosed could compromise the security of public utility systems or networks and does not appear to serve a significant public interest. For example, precise infrastructure location information if public could make the network susceptible to the intentional, illegal interference with a communication service, and potentially affect critical emergency communication services such as E911.
- H. Narrowness of the exception.** The exception only applies to certain information collected by the MCA from communications service providers or wireless providers that is designated as confidential, is not otherwise publicly available and the disclosure of which that could compromise security to the detriment of the public interest or is of a competitive or proprietary nature.
- I. Any other criteria.**

Thank you for reviewing this proposed public records exception. Please let us know if you require any additional information.

cc: Members, Energy, Utilities and Technology Committee

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1484

S.P. 477

In Senate, April 14, 2021

**An Act To Enhance the ConnectMaine Authority's Capacity To
Provide World-class Internet**

Received by the Secretary of the Senate on April 12, 2021. Referred to the Committee on Energy, Utilities and Technology pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant".

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BENNETT of Oxford.
Cosponsored by Representative BERRY of Bowdoinham and
Senator: MAXMIN of Lincoln, Representative: SKOLFIELD of Weld.

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Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§33-F, as amended by PL 2019, c. 625, §1, is further amended to read:

33-F.

Technology	ConnectMaine Authority	Not Authorized	35-A MRSA
			§9203
			§9203-A

Sec. 2. 5 MRSA §12021, sub-§6, ¶B, as amended by PL 2019, c. 625, §2, is further amended to read:

B. The ConnectMaine Authority under Title 35-A, section 9203 9203-A;

Sec. 3. 35-A MRSA §9202, sub-§2, as amended by PL 2019, c. 625, §6, is further amended to read:

2. Authority. "Authority" means the ConnectMaine Authority established in section 9203 9203-A.

Sec. 4. 35-A MRSA §9203, as amended by PL 2019, c. 625, §7, is repealed.

Sec. 5. 35-A MRSA §9203-A is enacted to read:

§9203-A. ConnectMaine Authority

1. Establishment; purpose. The ConnectMaine Authority is established as a nonprofit corporation with public and charitable purposes whose duties, activities and operations are within the provisions of the United States Internal Revenue Code, Section 501(c)(3).

A. In accordance with the provisions of this chapter, the authority shall engage in all necessary activities and shall encourage and support projects and partnerships that further the goals and policies in section 9202-A.

B. The authority shall operate as a nonprofit organization consistent with its composition and broad public purposes. No part of the net earnings of the authority may benefit any member, officer, director or employee, including directors of the board, except that the authority may pay reasonable compensation for services rendered and otherwise hold, manage and dispose of its property in furtherance of the purposes of the authority.

2. Board of directors. The authority is governed and all of its powers exercised by a board of directors, referred to in this chapter as "the board," consisting of the following 7 voting members:

- A.** The chair of the Public Utilities Commission or the chair's designee;
- B.** The Chief Information Officer of the State or the officer's designee;
- C.** One representative of consumers, appointed by the Governor;
- D.** Two members with significant knowledge of communications technology, appointed by the Governor;

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1 E. The Commissioner of Economic and Community Development or the
2 commissioner's designee; and

3 F. One member with significant knowledge of telehealth as defined in Title 24-A,
4 section 4316, subsection 1, appointed by the Governor.

5 3. Terms. Directors of the board appointed by the Governor are appointed for 3-year
6 terms. Those directors may serve no more than 2 consecutive terms. Directors who serve
7 on the board by virtue of their offices serve terms coincident with their terms in office.

8 4. Chair; vice-chair; secretary; treasurer. The board shall elect a chair, a vice-chair,
9 a secretary and a treasurer from among its members. Each officer serves for a one-year
10 term and is eligible for reelection.

11 5. President. Once every 2 years, the Governor shall submit the name of an individual
12 to the board for confirmation to serve as the president of the authority. Reappointment is
13 subject to confirmation by the board. The president shall manage the authority's programs,
14 services and staff and shall perform other duties the board considers appropriate.

15 6. Quorum. A majority of the directors constitutes a quorum.

16 7. Executive committee. The board may elect an executive committee of not fewer
17 than 6 members who, in intervals between meetings of the board, may transact such
18 business of the authority as the board may authorize from time to time.

19 8. Indemnification. Each director of the board must be indemnified by the authority
20 against expenses actually and necessarily incurred by the director in connection with the
21 defense of any action or proceeding in which the director is made a party by reason of being
22 or having been a director of the board and against any final judgment rendered against the
23 director in that action or proceeding.

24 9. Liability of officers, directors and employees. All officers, directors, employees
25 and other agents of the authority, including directors of the board, entrusted with the
26 custody of the securities of the authority or authorized to disburse the funds of the authority
27 must be bonded either by a blanket bond or by individual bonds with a minimum limitation
28 of \$100,000 coverage for each person covered by the bond or bonds, or equivalent fiduciary
29 liability insurance, conditioned upon the faithful performance of their duties. The premiums
30 for the bond or bonds must be paid out of the assets of the authority.

31 10. Prohibited interests of officers, directors and employees. An officer, director
32 or employee of the authority, including a director of the board, or a spouse or dependent
33 child of any of those individuals may not receive any direct personal benefit from the
34 activities of the authority in assisting any private entity. This section does not prohibit
35 corporations or other entities with which an officer or director is associated by reason of
36 ownership or employment from participating in activities with the authority if ownership
37 or employment is made known to the board and the officer or director abstains from voting
38 on matters relating to that participation. This prohibition does not extend to corporators
39 who are not officers or directors of the authority.

40 11. Staff; central broadband planning. In accordance with section 9205, subsection
41 19, the authority shall employ such employees and agents as may be necessary in the
42 authority's judgment to carry out the purposes of this chapter. That staff shall serve as the
43 central broadband planning entity for the State and shall support the board and the authority
44 in accordance with the provisions of this chapter.

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1 **Sec. 6. 35-A MRSA §9204-A, sub-§8**, as enacted by PL 2015, c. 284, §7, is
2 amended to read:

3 **8. Limitations on activities of the authority.** The authority may not develop, acquire,
4 fund, coordinate or otherwise undertake any project or make any grant, direct investment
5 or loan under this chapter unless the authority determines that without the authority's action
6 the installation of adequate advanced communications technology infrastructure in an
7 unserved or underserved area would not occur within the same time period. When
8 providing grants, direct investment or loans for broadband infrastructure investments, the
9 authority shall give preference to those investments that provide the greatest relative
10 improvement to existing broadband service in an unserved or underserved area. The
11 authority shall require as a condition of a grant, direct investment or loan for broadband
12 infrastructure investments under this chapter that the recipient's performance under the
13 agreement or contract governing the grant, investment or loan be subject to audit at the
14 authority's discretion and that the recipient be required to return to the authority the amount
15 of or a portion of the amount of the grant, investment or loan if the recipient, as determined
16 by the authority, fails to comply with a material term of the governing agreement or
17 contract. Notwithstanding any other provision of this chapter, the authority may not
18 provide any wireline, wireless, satellite, voice, data or video service at retail or wholesale.

19 **Sec. 7. 35-A MRSA §9205, sub-§4-A** is enacted to read:

20 **4-A. Securities.** To acquire, subscribe to, own, hold, sell, assign, transfer, mortgage
21 or pledge the stock, shares, bonds, debentures, notes or other securities and evidences of
22 interest in or indebtedness of any person, firm, corporation, joint stock company,
23 partnership, association or trust and, while the owner or holder thereof, exercise all the
24 rights, powers and privileges of ownership, including the right to vote;

25 **Sec. 8. 35-A MRSA §9205, sub-§10**, as enacted by PL 2005, c. 665, §3, is amended
26 to read:

27 **10. Make and execute contracts.** To make and execute contracts and other
28 instruments and enter into such transactions with any entity, public or private, as necessary
29 or convenient for the exercise of the authority's powers and functions under this chapter;

30 **Sec. 9. 35-A MRSA §9205, sub-§11**, as enacted by PL 2005, c. 665, §3, is amended
31 to read:

32 **11. Agreements; acceptations; contributions; aid; grants.** To enter into agreements
33 with and accept loans, aid, contributions, grants and the cooperation or assistance of the
34 United States, or any agency of the United States, or of the State or any agency or
35 governmental subdivision or any private entity in furtherance of the purposes of this
36 chapter, including, but not limited to, the development and financing of a project, and to
37 do all things necessary in order to avail the authority of those loans, aid, contributions,
38 grants and cooperation;

39 **Sec. 10. 35-A MRSA §9205, sub-§17-A** is enacted to read:

40 **17-A. Debt.** To borrow money for any of the purposes authorized in this chapter,
41 incur debt, which includes the issuance of bonds, debt, notes or other evidences of
42 indebtedness, whether secured or unsecured, and secure the same by mortgage, pledge,
43 deed of trust or other lien on the authority's property, rights and privileges of every kind
44 and nature or any part of or interest in any of them;

1 **Sec. 11. 35-A MRSA §9205, sub-§17-B** is enacted to read:

2 **17-B. Equity investments; loans; contractual arrangements.** In addition to
3 disbursement of funds through grants as described in section 9204-A, to make alone or in
4 participation or cooperation with others direct equity investments, loans or any other
5 contractual arrangement allowed by law with public or private entities for the same
6 purposes for which grants may be made;

7 **Sec. 12. 35-A MRSA §9205, sub-§19**, as enacted by PL 2005, c. 665, §3, is
8 amended to read:

9 ~~19. Executive director; other employees~~ **Employees.** To employ an executive
10 director, hire and compensate employees as well as consulting engineers, architects,
11 attorneys, accountants, construction and financial experts and such other employees and
12 agents individuals as may be necessary in the authority's judgment; and

13 **Sec. 13. 35-A MRSA §9205-A** is enacted to read:

14 **§9205-A. Limitation of powers**

15 The authority may not enter into contracts, obligations or commitments of any kind on
16 behalf of the State or any of its agencies, nor does it have the power of eminent domain or
17 any other power not provided to business corporations generally. Bonds, notes and other
18 evidences of indebtedness of the authority are not a debt or liability of the State and do not
19 constitute a pledge of the faith and credit of the State.

20 **Sec. 14. 35-A MRSA §9207, sub-§2**, as amended by PL 2019, c. 625, §9, is further
21 amended to read:

22 **2. Protection of information.** A communications service provider may request that
23 confidential or proprietary information provided to the authority under this section not be
24 viewed by those ~~members of the authority~~ directors of the board who could gain a
25 competitive advantage from viewing the information. Upon such a request, the authority
26 shall ensure that the information provided is viewed only by those ~~members of the authority~~
27 directors of the board and staff who do not stand to gain a competitive advantage and that
28 there are adequate safeguards to protect that information from ~~members of the authority~~
29 those directors of the board who could gain a competitive advantage from viewing the
30 information.

31 **Sec. 15. 35-A MRSA §9208**, as amended by PL 2019, c. 625, §10, is further
32 amended by adding after subsection 4 a new paragraph to read:

33 As part of the report under this section required to be submitted to the joint standing
34 committee of the Legislature having jurisdiction over utilities matters no later than January
35 15, 2030, the authority shall include a proposal, along with any necessary implementing
36 legislation, designed to facilitate the termination and repeal of the authority by January 15,
37 2032. The proposal shall include an assessment of the authority's success in furthering the
38 goals and policies in section 9202-A and may also include an alternative proposal designed
39 to continue the activities of the authority for a specified period of time beyond January 15,
40 2032.

41 **Sec. 16. 35-A MRSA §9209**, as enacted by PL 2005, c. 665, §3, is amended to read:

42 **§9209. Conflicts**

1 A ~~member of the authority~~ director of the board may not participate in any decision on
2 any contract entered into by the authority under this chapter if that ~~member~~ director has
3 any interest, direct or indirect, in any firm, partnership, corporation or association that is
4 party to the contract. The interest must be disclosed to the authority in writing and must be
5 set forth in the minutes of the authority.

6 **Sec. 17. 35-A MRSA §9210**, as enacted by PL 2005, c. 665, §3, is amended to read:
7 **§9210. Actions against authority**

8 A ~~member of the authority~~ director of the board, while acting within the scope of this
9 chapter, is not subject to any personal liability resulting from the exercise or carrying out
10 of any of the authority's purposes or powers.

11 **Sec. 18. 35-A MRSA §9211-A, sub-§3**, as enacted by PL 2015, c. 323, §1, is
12 amended to read:

13 **3. Purpose of the fund.** The fund is established to address the need in the State for
14 access to ultra high-speed broadband infrastructure that will enhance the State's
15 competitiveness in national and international economies. To the extent funds are available,
16 the fund must be used to provide grants in accordance with subsections 4 and 5 to
17 communities, regional partnerships and municipalities to support public-private
18 partnerships to support a municipal gigabit fiber-optic broadband network in their regions
19 with the following goals and to provide loans in accordance with subsection 7-A to any
20 public or private entity to support the following goals:

- 21 A. Provide high-speed broadband access to attract, create and grow the State's
22 economy and market the products and services of businesses in the State in national
23 and international markets with ultra high-speed symmetric connectivity and address
24 challenges in geography;
- 25 B. Provide expanded health care services by facilitating access to telemedicine, as
26 defined in Title 24-A, section 4316, subsection 1, and state and local services for senior
27 citizens and persons with disabilities;
- 28 C. Expand educational opportunities for students across the State through virtual and
29 distance learning;
- 30 D. Facilitate broader access for the public to services provided by municipal and
31 county governments, including, but not limited to, law enforcement entities, the
32 judicial system and child, youth and family social services; and
- 33 E. Provide expanded residential services to support employment opportunities.

34 In order to facilitate the achievement of the goals and policies of this section, the authority
35 shall establish and regularly update, after opportunity for public comment and taking into
36 consideration relevant federal policies, definitions of "gigabit fiber-optic broadband
37 network" and "ultra high-speed broadband infrastructure."

38 **Sec. 19. 35-A MRSA §9211-A, sub-§7-A** is enacted to read:

39 **7-A. Loans; equity investments; requirements.** To the extent funds are available in
40 the fund, the authority shall award loans to or make direct equity investments in any public
41 or private entity to achieve the purpose of the fund as described in subsection 3, subject to
42 the following conditions:

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A. The amount of the loan or investment may not exceed \$200,000 for each eligible project selected;

B. The recipient of the loan or investment must demonstrate to the satisfaction of the authority that it has a viable plan identical or similar to one created in accordance with subsections 5 and 6; and

C. The recipient of the loan or investment may be required, as a condition of the loan or investment, to provide a cash match.

In determining recipients of loans or direct equity investments under this subsection, the authority shall solicit proposals from public and private entities for such loans or investments and shall select the proposals that, as determined by the authority, represent the most cost-effective activities that will achieve the purpose of the fund as described in subsection 3.

Sec. 20. 35-A MRSA §9211-A, sub-§10, as enacted by PL 2015, c. 323, §1, is amended to read:

10. Report. Beginning December 15, 2016, the authority shall provide an annual report to the joint standing committee of the Legislature having jurisdiction over energy and utility matters on the grants, loans and investments distributed from the fund and an analysis of the fund's activities that have addressed the need for expansion of ultra high-speed broadband access in the State.

Sec. 21. Transition provisions. The following provisions govern the transition in the reorganization of the ConnectMaine Authority under this Act.

1. The reorganized authority is the successor in every way to the powers, duties and functions of the former authority except as those powers, duties and functions are expressly altered by this Act.

2. All existing rules and procedures in effect, in operation or adopted in or by the former authority or any of its administrative units or officers are in effect and continue in effect until rescinded, revised or amended by the reorganized authority.

3. All existing contracts, agreements and compacts currently in effect under the former authority continue in effect.

4. All members of the former authority continue as the same representative members of the board of the reorganized authority for the remainder of their terms, and any positions authorized and allocated subject to the personnel laws of the former authority continue within the reorganized authority.

5. All records, property and equipment previously belonging to or allocated for the use of the former authority become, on the effective date of this Act, the property of the reorganized authority.

6. All existing forms, licenses, letterheads and similar items bearing the name of or referring to "the ConnectMaine Authority" may be used by the reorganized authority.

SUMMARY

This bill amends the laws governing the ConnectMaine Authority as follows.

- 1 1. It reorganizes the authority as a nonprofit organization with oversight provided by
2 a board of directors.
- 3 2. It clarifies the liability of officers, directors and employees of the authority as well
4 as conflicts of interest for such individuals.
- 5 3. It authorizes the authority to acquire and hold securities, issue bonds, acquire and
6 hold equity investments and enter into agreements or contracts with public and private
7 entities.
- 8 4. It requires as a condition of receipt of a grant, direct investment or loan from the
9 authority that the recipient's performance be subject to audit and that the amount or a
10 portion of the amount of the grant, investment or loan be returned to the authority if the
11 recipient fails to comply with a material term of the agreement or contract governing the
12 grant, investment or loan.
- 13 5. It requires the authority to submit to the joint standing committee of the Legislature
14 having jurisdiction over utilities matters no later than January 15, 2030 a proposal, along
15 with any necessary implementing legislation, designed to facilitate the termination and
16 repeal of the authority by January 15, 2032.
- 17 6. It alters the Municipal Gigabit Broadband Network Access Fund in the Maine
18 Revised Statutes, Title 35-A, section 9211-A to authorize the authority to offer loans to and
19 make direct equity investments in any public or private entity using a proposal solicitation
20 process.
- 21 7. It includes provisions governing the transition from the current organization of the
22 ConnectMaine Authority to the reorganized ConnectMaine Authority.

Committee: EUT
LA: DT
File Name:
LR (item)#: 1519(02)
New Title?: Y
Add Emergency?: Y
Date: 5/26/21

LD 1484
Proposed amendment, Senator Bennett

Amend the bill by striking out the title and inserting the following in its place:

“An Act To Establish the Maine Connectivity Authority”

Amend the bill by striking out everything after the title and before the summary and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Connectivity Authority, established in this legislation, is charged with ensuring the universal availability in the State of high-speed connectivity and secure, affordable, reliable, competitive and sustainable forward-looking advanced communications technology infrastructure to meet the State’s future needs; and

Whereas, there exist significant technology infrastructure needs and gaps in the State such that many residents and businesses in the State are unable to take full advantage of the economic, health, educational and other opportunities available through connectivity services; and

Whereas, significant federal funding under the American Rescue Plan Act, which will be used to fund the activities of the Maine Connectivity Authority in addressing such needs and gaps, is anticipated to become available before the expiration of the 90-day period; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Title 35-A, chapter 95 is enacted to read:

CHAPTER 95

CONNECTIVITY INFRASTRUCTURE

§9401. Short title

This chapter may be known and cited as "the Connectivity Infrastructure Act."

§9402. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Advanced communications technology infrastructure. "Advanced communications technology infrastructure" means any communications technology infrastructure or infrastructure improvement that expands the deployment of, or improves the quality of, broadband availability and wireless service coverage.

2. Authority. "Authority" means the Maine Connectivity Authority established in section 9404.

3. Bond. "Bond" means bonds, debts, notes or other evidences of indebtedness.

4. Communications service. "Communications service" means any wireline voice, satellite, data, fixed wireless data or video retail service, cellular voice or data.

5. Project. "Project" means real property, personal property, equipment, fixtures, materials, wires, cables, labor and other improvements necessary and proper for the provision of advanced communications technology infrastructure.

§9403. State connectivity goals

1. Goals. The goals of the State related to connectivity are that:

A. High speed connectivity be universally available in the State, including to all residents, businesses and community anchor institutions;

B. There be secure, affordable, reliable, competitive and sustainable forward-looking advanced communications technology infrastructure that can meet current and future needs;

C. All residents, businesses and institutions in the State be able to take full advantage of the economic, health, educational and other opportunities available through connectivity services; and

D. Existing public and private infrastructure be utilized effectively and efficiently in the public interest to provide advanced communications technology infrastructure in all areas of the State.

§9404. Maine Connectivity Authority

1. Establishment; membership. The authority is established as a quasi-independent state entity pursuant to Title 5, section 12024 and a body corporate and politic and a public instrumentality of the State, and the exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of essential governmental functions. The authority consists of the following voting members:

A. Seven members appointed by the Governor and confirmed by the Legislature who possess expertise in advanced communications technology infrastructure, rural economic development, telehealth, education or utility structures; and

B. Four ex officio members as follows:

(1) The Commissioner of Economic and Community Development or the commissioner's designee;

(2) The chancellor of the University of Maine System or the chancellor's designee;

(3) The chair of the Public Utilities Commission or the chair's designee; and

(4) The Chief Information Officer of the State or the officer's designee.

2. Terms; reappointments; vacancies; chair. Members appointed by the Governor shall serve three-year terms, except that two such members first appointed shall serve a one-year term, two such members first appointed shall serve a two-year term and three such members first appointed shall serve a three-year term. Members appointed by the Governor are eligible for reappointment. If a member appointed by the Governor fails to serve until the expiration of the member's term, the Governor may appoint a replacement member for the remainder of that member's term. The Governor shall appoint one member to serve as chair of the authority.

3. President. Upon the recommendation of the authority, the Governor shall appoint a president of the authority subject to confirmation by the Legislature. The president shall serve a four-year term and is eligible for reappointment. The president shall manage the authority's programs, services and staff and shall perform other duties the authority considers appropriate.

4. Officers; quorum. The authority may elect a secretary and a treasurer who may but need not be members of the authority. Seven members of the authority constitute a quorum and the affirmative vote of 7 members is necessary for any action taken by the authority.

5. Remote participation by members. A member of the authority may participate in a meeting of the authority and place a vote electronically or telephonically as long as members of the public have an opportunity to listen to the deliberations and otherwise participate in or observe the proceedings of the authority.

6. Members not personally liable; indemnification. A member of the authority, while acting within the scope of this chapter, is not subject to any personal liability resulting from the exercise or carrying out of any of the authority's purposes or powers. Each member of the authority must be indemnified by the authority against expenses actually and necessarily incurred by the member in connection with the defense of any action or proceeding in which the member is made a party by reason of being or having been a member of the authority and against any final judgment rendered against the member in that action or proceeding.

7. Conflicts. A member of the authority may not participate in any decision on any contract entered into by the authority under this chapter if that member has any interest, direct or indirect, in any firm, partnership, corporation or association that is party to the contract. The interest must be disclosed to the authority in writing and must be set forth in the minutes of the authority.

§9405. Powers and duties of authority

To carry out the purposes of this chapter, the authority has the following powers with respect to a project together with all powers incidental to or necessary or proper for the performance of these powers and for carrying out its responsibilities in accordance with this chapter.

1. Power to sue and be sued. To sue or initiate or appear in any proceeding. The authority may be sued on its written contracts or to the extent permitted by Title 1, section 409; Title 5, chapter 375; or Title 14, chapter 741.

2. Official seal. To adopt and have an official seal and alter the seal at pleasure.

3. Bylaws; rules. To adopt bylaws and any rule necessary or useful for carrying out any of the authority's powers or duties pursuant to this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Acquire real or personal property. To acquire real or personal property or any interest in real or personal property, including rights or easements, on either a temporary or long-term basis by gift, purchase, transfer, foreclosure, lease or otherwise; to improve, hold, sell with or without public bidding, assign, lease, rent, encumber, mortgage or otherwise dispose of any real or personal property, any interest in real or personal property or mortgage interests owned or in its control, custody or possession; and to release or relinquish any right, title, claim, lien, interest, easement or demand, however acquired, including upon threat of foreclosure.

5. Prepare and plan projects and facilities. To prepare or cause to be prepared plans, specifications, designs and estimates of costs for the construction and equipping of a project and attendant facilities and from time to time to modify or cause to be modified those plans, specifications, designs or estimates.

6. Improve and equip project and attendant facilities. By contract or contracts to construct, acquire, alter, repair, reconstruct, rehabilitate, improve and equip a project and necessary and usual attendant facilities.

7. Maintain, reconstruct and operate. To maintain, reconstruct and operate, or cause to be maintained, reconstructed and operated, a project.

8. Fix and collect fees. To fix and collect fees, lease-rentals and other charges for the use of any project, equipment or services.

9. Provide for financing or refinancing. To provide financing for a project or to provide for refinancing of existing indebtedness and for the financing of the project and of other necessary and usual attendant facilities.

10. Incur indebtedness. To borrow money for any of the purposes authorized in this chapter, incur debt, which includes the issuance of bonds consistent with section 9406, whether secured or unsecured and whether issued by the authority or through another entity including, but not limited to, the Maine Municipal Bond Bank, and secure the same by mortgage, pledge, trust agreement, security agreement or other lien on or security interest in the authority's property, rights and privileges of every kind and nature or any part of or interest in any of them.

11. Equity investments; loans, grants, contractual arrangements. To make alone or in participation or cooperation with others direct equity investments, loans, grants or any other contractual arrangement allowed by law with public or private entities in furtherance of the purposes of this chapter including, but not limited to, the development and financing of a project.

12. Make and execute contracts. To make and execute contracts and other instruments and enter into such transactions as reasonably necessary for the exercise of the authority's powers and functions under this chapter.

13. Agreements; contributions; aid; grants. To enter into agreements with and to accept loans, aid, contributions, grants and the cooperation or assistance of the United States, or any agency of the United States, or of the State or any agency or governmental subdivision in furtherance of the purposes of this chapter, including, but not limited to, the development and financing of a project, and to do all things necessary in order to avail the authority of those agreements, loans, aid, contributions, grants and cooperation.

14. Acceptance of federal funds and other assistance. To act as the public agency of the State for the purpose of accepting federal funds or other federal assistance or funds or other assistance from any other source in furtherance of the purposes of this chapter, including, but not limited to, the development and financing of projects.

15. Modification of contract, lease, indenture or agreement. To consent to any modification of any contract, lease, indenture or agreement of any kind to which the authority is a party.

16. Manage or operate real and personal property. To manage or operate, or cause to be managed or operated, real and personal property, to take assignments of leases and rentals or to take any other action necessary or incidental to the performance of the authority's duties under this chapter.

17. Lease or rent facilities or equipment used to transmit voice, data or video signals. To lease or rent any facilities or equipment for a project for such amounts as the authority determines to a communications service provider to further the purposes of this chapter, as long as the obligation of the service provider is considered a binding contract with the authority and as long as no liability on account of the authority may be incurred beyond the money available for that purpose or may be considered a liability of the State.

18. Investments. Except as otherwise provided in this chapter, to invest any funds not needed for immediate use, including any funds held in reserve, in property or in securities in which fiduciaries in the State may legally invest funds.

19. Use of revenues. To use for the purposes of this chapter only any revenues derived by the authority from any assessment, transfer of funds, lease, assignment, rental agreement or other disposition or any other revenue.

20. Appearances. To appear on the authority's own behalf before boards, commissions, departments or agencies of a municipality, the State or the United States.

21. Employees. To hire and compensate employees as well as consulting engineers, architects, attorneys, accountants, construction and financial experts and such other individuals as may be necessary in the authority's judgment.

22. All acts granted or implied. To do any act necessary or convenient to exercise the powers granted in this chapter or reasonably implied by this chapter.

§9406. Issuance of bonds

1. Conclusive authorization. All bonds of the authority shall be conclusively presumed to be fully authorized and issued under the laws of the State, and any person or governmental unit shall be estopped from questioning their authorization, sale, issuance, execution or delivery by the authority.

2. Maturity; interest. The securities of each issue of bonds shall be dated, shall mature at a time or times not exceeding 30 years from their date and shall bear interest at a rate or rates determined by the authority. At the option of the authority, the bonds may be made redeemable before maturity at a price or prices and under terms and conditions fixed prior to their issuance.

3. Form. The authority shall determine the form of the bonds, including any attached interest coupons, the manner of execution of the bonds, the denomination or denominations of the bonds and the place or places for payment of principal and interest, which may be at any financial institution within or without the State. Bonds shall be executed in the name of the

authority by the manual or facsimile signature of the authorized official or officials. Signatures and facsimiles of signatures on bonds will be valid for all purposes even if the authorized official ceases to hold office before delivery of the bonds. The bonds may be issued in coupon or registered form or both as the authority may determine. In addition to this subsection, the authority may provide for transfer of registration of its registered bonds by book entry on the records of the entity designated for that purpose and may enter into such contractual arrangements as may be necessary to accomplish these purposes. In the event a book entry method of transfer is used, principal of and interest on those registered bonds shall be payable to the registered owner shown in the book entry or the legal representatives, successors or transferees of the registered owner.

4. Sale. The authority may sell the bonds at a public or private sale, in a manner and at a price it determines is in the best interest of the authority.

5. Credit not pledged. Bonds of the authority do not constitute any debt or liability of the State or of any municipality therein or any political subdivision thereof, or of the authority or a pledge of the faith and credit of the State or of any such municipality or political subdivision, but are payable solely from the revenues of the project or projects for which they are issued or from other eligible collateral or the revenues or proceeds of other eligible collateral pledged to the payment of the bonds and all such bonds must contain on their face a statement to that effect. The issuance of the bonds does not directly or indirectly or contingently obligate the State or any municipality or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment.

6. Anticipatory borrowing. In anticipation of the sale of bonds, the authority may issue temporary notes and renewal notes, the total stated amount of which does not exceed at any one time outstanding the authorized amount of the bonds. The period of such anticipatory borrowing shall not exceed 5 years and the time within which the bonds are to become due shall not be extended by the anticipatory borrowing beyond the term permitted by this section.

§9407. Tax exemptions; taxable bonds

1. Bonds exempt from taxation. Bonds of the authority shall constitute a proper public purpose and the bonds, their transfer and the income from them, including any profits made on their sale, shall at all times be exempt from taxation within the State, whether or not those bonds, their transfer or the income from them, including any profits made on their sale, are subject to taxation under the United States Internal Revenue Code, as amended.

2. Conveyances, leases, mortgages, deeds of trust and trust indentures exempt from taxation. Conveyances by or to the authority and leases, mortgages and deeds of trust or trust indentures by or to the authority shall be exempt from all taxation by the State or any of its political subdivisions, including, but not limited to, any applicable license, excise or other taxes imposed in respect of the privilege of engaging in any of the activities in which the authority may engage.

3. Property exempt from taxation and other assessments. Property acquired, held or transferred by the authority shall be exempt from all taxes and from betterments and special assessments of the city, town, county, State or any political subdivision thereof. The authority may agree to make payments in lieu of taxes to the applicable political subdivisions.

4. Taxable bonds. The authority is authorized to agree and consent to the inclusion of interest on any of its bonds, under the United States Internal Revenue Code of 1986 or any subsequent corresponding internal revenue law of the United States, in the gross income of the holders of any such bonds to the same extent and in the same manner that the interest on bills, bonds, notes or other obligations of the United States is includable in the gross income of the holders of such bills, bonds, notes or other obligations under the United States Internal Revenue Code or any such subsequent law.

§9408. Collection of data

Subject to the provisions in this section, the authority may collect data from communications service providers and any wireless provider that own or operate advanced communications technology infrastructure in the State concerning infrastructure deployment and costs, revenues and subscribership.

1. Confidential information. If the authority, on its own or upon request of any person or entity, determines that public access to specific information about communications service providers in the State could compromise the security of public utility systems to the detriment of the public interest or that specific information is of a competitive or proprietary nature, the authority shall issue an order which sets forth its designation of the information as confidential. Information that may be designated as confidential pursuant to this subsection includes, but is not limited to, network diagrams. The authority may designate information as confidential under this subsection only to the minimum extent necessary to protect the public interest and the legitimate competitive or proprietary interests of a communications service provider. The authority may not designate any information as confidential under this subsection until it has adopted rules to implement this subsection.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3.

2. Protection of information. A communications service provider may request that information provided to the authority that the provider requests be designated as confidential under subsection 1 not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

§9409. Legislative oversight; report to committee

1. Annual report. No later than January 15, 2022, and annually thereafter, the authority shall provide a report to the joint standing committee of the Legislature having jurisdiction over utilities matters that:

- A. Includes a report on the budget of the authority;
- B. Documents the activities of the authority, including a detailed description of the progress toward the state connectivity goals in section 9403;
- C. Contains a listing of any investments of money in the authority, while maintaining confidentiality for organizations working with the authority; and
- D. Contains an analysis of the availability of communications services and advanced communications technology infrastructure, including an analysis of the competitive market in the State for communications services and advanced communications technology infrastructure and whether the communications services provided in the State are reasonably comparable to services provided regionally and nationwide.

2. Sunset review. As part of the report required under subsection 1 to be submitted to the joint standing committee of the Legislature having jurisdiction over utilities matters no later than January 15, 2030, the authority shall include findings and recommendations following its review of the effectiveness of the authority in furthering the purposes of this chapter, including:

- A. An analysis of whether the authority has fulfilled its intended purpose under this chapter;
- B. An analysis of whether the activities of the authority should continue for a specified period of time and any recommendations, including proposed legislation, for changes the powers and duties of the authority to better further the purposes of this chapter; and
- C. An analysis of whether the activities of the authority should be terminated and the authority repealed within a specified time frame and any recommendations, including proposed legislation, necessary to facilitate an orderly transition following the termination of activities of the authority including the appropriate disposition of the assets of the authority.

After receiving a report under this section, the joint standing committee of the Legislature having jurisdiction over utilities matters may report out legislation relating to the authority.

§9410. Liberal construction

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed. In the event of any conflict between this chapter and any other law, this

chapter shall prevail, but the power and authority granted is deemed to be in addition to and not in derogation of power and authority granted by any other law.

Sec. 2. Maine Connectivity Authority; statutory review; report. In consultation with the ConnectMaine Authority established under the Maine Revised Statutes, Title 35-A, section 9203, the Maine Connectivity Authority established under Title 35-A, section 9404 shall review the provisions of Title 35-A, chapter 93 and 95 and develop recommendations for any necessary changes to either chapter to facilitate the oversight of the ConnectMaine Authority by the Maine Connectivity Authority, which may include, but are not limited to, changes establishing the ConnectMaine Authority as a division of or other unit under the authority of the Maine Connectivity Authority, and any other recommendations relating to the Maine Connectivity Authority or ConnectMaine Authority.

On or before January 15, 2022, the Maine Connectivity Authority shall submit the recommendations resulting from that review, including any proposed legislation, to the Joint Standing Committee on Energy, Utilities and Technology, which it may include in the report required under Title 35-A, section 9409, subsection 1. After reviewing the report, the joint standing committee may report out related legislation to the 130th Legislature.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This amendment changes the title of and replaces the bill and adds an emergency preamble and emergency clause. It enacts the Connectivity Infrastructure Act which, among other things, sets forth state connectivity goals and establishes the Maine Connectivity Authority to further those goals through the development and financing of connectivity projects and through other activities.

The amendment also directs the Maine Connectivity Authority, in consultation with the ConnectMaine Authority to review the provisions of the Maine Revised Statutes pertaining to each entity and develop recommendations for any necessary changes to those provisions to facilitate the oversight of the ConnectMaine Authority by the Maine Connectivity Authority and any other recommendations. The Maine Connectivity Authority is directed to submit such recommendations, including any proposed legislation, to the Joint Standing Committee on Energy, Utilities and Technology on or before January 15, 2022. After reviewing the recommendations, the joint standing committee may report out related legislation to the 130th Legislature

Title 35-A: PUBLIC UTILITIES**Part 7: TELECOMMUNICATIONS****Chapter 93: ADVANCED TECHNOLOGY INFRASTRUCTURE****§9207. Collection of data**

Subject to the provisions in this section, the authority shall collect annually from communications service providers and any wireless providers that own or operate advanced communications technology infrastructure in the State data concerning infrastructure deployment for the purpose of developing mapping information to assist the authority in implementing the provisions of section 9202-A; pricing data for advertised retail pricing for broadband services offered in the State; and revenue data for the purpose of assessing communications service providers subject to section 9211. The authority shall permit providers that have provided data to the authority at a level of detail that the authority has determined acceptable to continue to provide the data in the same format. For mapping data, the authority, whenever possible, shall use data formats consistent with data formats used for mapping at the federal level. [PL 2019, c. 625, §9 (AMD).]

1. Confidential information. Data provided to the authority pursuant to this section is confidential. The authority, upon request or on its own motion, may initiate a proceeding to determine whether to remove the confidential designation of specific information provided under this section. The authority shall adopt rules pursuant to section 9205, subsection 3 defining the criteria it will use to satisfy the requirements of this paragraph and the types of information that would satisfy the criteria. The authority may not remove the confidential designation under this subsection until those rules are finally adopted.

Information designated as confidential under this subsection is not a public record under Title 1, section 402, subsection 3 ([./1/title1sec402.html](http://1/title1sec402.html)).

[PL 2019, c. 625, §9 (AMD).]

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2. Protection of information. A communications service provider may request that confidential or proprietary information provided to the authority under this section not be viewed by those members of the authority who could gain a competitive advantage from viewing the information. Upon such a request, the authority shall ensure that the information provided is viewed only by those members of the authority and staff who do not stand to gain a competitive advantage and that there are adequate safeguards to protect that information from members of the authority who could gain a competitive advantage from viewing the information.

[PL 2019, c. 625, §9 (AMD).]

SECTION HISTORY

PL 2005, c. 665, §3 (NEW). PL 2019, c. 625, §9 (AMD).

The Revisor's Office cannot provide legal advice or interpretation of Maine law to the public.
If you need legal advice, please consult a qualified attorney.

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PUBLIC RECORDS EXCEPTION REVIEW CHECKLIST

Revised 2/13/12

A. Whether the record protected needs to be collected (Conclusion of committee of jurisdiction?)		
B. The value to the agency or official or to the public in maintaining the record (Conclusion of committee of jurisdiction?)		
C. Whether federal law requires the record to be confidential		
Does the proposed exception meet one or more of the following (D, E, F, G or I)		
D. Whether the proposed exception protects an individual's privacy interest and, if so, whether that interest substantially outweighs the public interest in disclosure		
E. Whether public disclosure puts a business at a competitive disadvantage and, if so, whether that business's interest substantially outweighs the public interest in the disclosure of records		
F. Whether public disclosure compromises the position of a public body in negotiations and, if so, whether that public body's interest substantially outweighs the public interest in the disclosure of records		
G. Whether public disclosure jeopardizes the safety of a member of the public or the public in general and, if so, whether that safety interest substantially outweighs the public interest in the disclosure of records		
I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception		
H. Whether the proposed exception is as narrowly tailored as possible		
<i>If the proposed exception creates broad confidentiality for an entity: 2-A. Accountability review of agency or official.</i> In evaluating each proposed public records exception, the review committee shall, in addition to applying the criteria of subsection 2, determine whether there is a publicly accountable entity that has authority to review the agency or official that collects, maintains or uses the record subject to the exception in order to ensure that information collection, maintenance and use are consistent with the purpose of the exception and that public access to public records is not hindered.		
2-B. Accessibility of public records. In reviewing and evaluating whether a proposal may affect the accessibility of a public record, the review committee may consider any factors that affect the accessibility of public records, including but not limited to fees, request procedures and timeliness of responses.		