

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 2080

H.P. 1471

House of Representatives, March 21, 2006

### **An Act To Accelerate Private Investment in Maine's Wireless and Broadband Infrastructure**

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Reference to the Committee on Utilities and Energy suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PINGREE of North Haven. (GOVERNOR'S BILL)  
Cosponsored by Senator BARTLETT of Cumberland and  
Representatives: ADAMS of Portland, BLISS of South Portland, FLETCHER of Winslow,  
HOTHAM of Dixfield, KOFFMAN of Bar Harbor, SIMPSON of Auburn, Senator: COWGER  
of Kennebec.

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

Sec. 1. 35-A MRSA c. 93 is enacted to read:

**CHAPTER 93**

**ADVANCED TECHNOLOGY INFRASTRUCTURE**

**§9201. Short title**

This chapter may be known and cited as "the Advanced Technology Infrastructure Authority Act."

**§9202. 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 cellular service coverage.

**2. Authority.** "Authority" means the Advanced Technology Infrastructure Authority established in section 9203.

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

**4. Communications service provider.** "Communications service provider" means any entity offering communications service to customers in the State.

**5. Qualifying ConnectME zone.** "Qualifying ConnectME zone" means a geographical region that is eligible for the tax reimbursement established in this chapter, because the authority has determined that the region is unserved or underserved by an advanced communications technology infrastructure.

**§9203. Advanced Technology Infrastructure Authority**

**1. Establishment; membership.** The Advanced Technology Infrastructure Authority is established to stimulate investment in advanced technology infrastructure. The authority is created as a body corporate and politic and a public instrumentality of the State. The exercise by the authority of powers conferred by this chapter is considered to be the performance of essential

governmental functions. The authority consists of the following 5  
voting members:

A. The chair of the Public Utilities Commission;

B. The Chief Information Officer of the State;

C. One representative of consumers, appointed by the Governor; and

D. Two members with significant knowledge of communications technology, appointed by the Governor.

**2. Terms; chair; vacancies.** All members are appointed for 3-year terms. The Governor shall appoint a chair from among the 3 members appointed by the Governor. In the event of a vacancy in the membership, the Governor shall appoint a replacement member for the remainder of that vacated term. Each member of the authority serves until that member's successor is appointed and qualified. Any member of the authority is eligible for reappointment.

**3. Officers; quorum.** The authority may elect a secretary and a treasurer, who may, but need not, be members of the authority. Three members of the authority constitute a quorum and the affirmative vote of 3 members is necessary for any action taken by the authority.

**4. Participation by members.** A member 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 of the authority and otherwise participate in or observe the proceedings of the authority consistent with Title 1, section 405.

**5. Indemnification.** 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.

**6. Staff.** The commission shall provide to the authority staff, to be designated by the commission and not to exceed the equivalent of 3 full-time employees. The salaries and costs of such staff must be allocated proportionately to the authority. The authority may retain staff in addition to the staff designated and provided by the commission.

2           **§9204. Duties of authority**

4           **1. Enhance communications technology infrastructure.** The  
6 authority, through partnerships, grants, direct investment,  
8 loans, demonstration projects and other appropriate means, shall:

10           A. Improve the quality of existing wireless coverage in  
12 areas where the authority determines the quality of the  
14 coverage is inadequate;

16           B. Expand wireless coverage to areas where the authority  
18 determines that no coverage exists;

20           C. Expand the availability of broadband to residential and  
22 small business customers;

24           D. Expand the availability of broadband with bandwidth,  
26 synchronicity, reliability and security adequate to serve  
28 business, education and enterprise consumers;

30           E. Otherwise enhance the State's communications technology  
32 infrastructure; and

34           F. Cover reasonable administrative costs of the authority.

36           **2. Additional duties.** In addition to its duties  
38 established under this chapter, the authority shall:

40           A. Collect, aggregate, coordinate and disseminate  
42 information and data concerning communications services in  
44 the State;

46           B. Continually assess the availability of and need for  
48 advanced communications services in unserved and underserved  
areas within the State;

          C. Identify and secure federal and other funding sources  
for broadband or wireless deployment or education;

          D. Identify opportunities for coordination among providers,  
consumers and state and local governmental entities,  
including coordination with the statewide emergency radio  
network; and

          E. Create and facilitate public awareness and educational  
programs to encourage the use of broadband services.

48           **§9205. Funds**

For purposes of this chapter, the authority may expend up to \$500,000 from a transfer to the authority of previously collected but unallocated funds held by the commission pursuant to section 7104.

**§9206. Reimbursement of certain taxes relating to advanced communications technology infrastructure**

**1. Reimbursement allowed.** A reimbursement is allowed as provided in this section for taxes paid pursuant to Title 36, Part 3 with respect to machinery and equipment purchased for use by a person to develop an advanced communications technology infrastructure in a qualifying ConnectME zone.

**2. Claim for reimbursement.** A claim for reimbursement under this section must be filed with the State Tax Assessor within 3 years from the date on which the machinery and equipment was purchased. The purchaser shall submit the reimbursement claim on a form prescribed by the State Tax Assessor and must include a statement from the authority certifying that the machinery and equipment is being used primarily to provide advanced communications services in a qualifying ConnectME zone. The purchaser and the authority shall retain all records pertaining to such certification and to the purchases in question for at least 6 years. The reimbursement claim must be accompanied by such additional information as the State Tax Assessor may require.

**3. Reimbursement limit.** The authority may not certify for reimbursement under this section a total amount in excess of \$500,000 in any state fiscal year.

**4. Audit.** The State Tax Assessor may audit any claim filed under this section. If the State Tax Assessor determines that the amount of the claimed reimbursement is incorrect, the State Tax Assessor shall redetermine the claim and notify the claimant in writing of the redetermination. If the claimant has received reimbursement of an amount that the State Tax Assessor concludes should not have been reimbursed, the State Tax Assessor may issue an assessment for that amount within 3 years from the date the reimbursement claim was filed or at any time if a fraudulent reimbursement claim was filed. The claimant may seek reconsideration, pursuant to Title 36, section 151, of the redetermination or assessment.

**5. Payment of claims.** The State Tax Assessor shall pay the certified amounts to each approved applicant qualifying for the benefit under this section within 30 days after receipt of a properly completed claim. Interest is not allowed on any payment made to a claimant pursuant to this section.

2        6. Rulemaking. The authority shall develop rules as  
3        necessary to administer this section in cooperation with the  
4        State Tax Assessor. Rules adopted pursuant to this section are  
5        routine technical rules as defined in Title 5, chapter 375,  
6        subchapter 2-A.

7        §9207. General powers

8  
9        In order to carry out the purposes of this chapter, the  
10       authority has the following powers with respect to a project  
11       together with all powers incidental to or necessary for the  
12       performance of these powers:

13       1. Perpetual succession. To have perpetual succession as a  
14       body politic and corporate and an instrumentality of the State;

15       2. Power to sue and be sued. To sue or initiate or appear  
16       in any proceeding. The authority may be sued on its written  
17       contracts or in accordance with Title 1, section 409; Title 5,  
18       chapter 375; or Title 14, chapter 741;

19       3. Official seal. To adopt and have an official seal and  
20       alter the seal at pleasure;

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

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

37       6. Prepare and plan projects and facilities. To prepare or  
38       cause to be prepared plans, specifications, designs and estimates  
39       of costs for the construction and equipment for a project and  
40       attendant facilities and from time to time to modify or cause to  
41       be modified those plans, specifications, designs or estimates;

42       7. Improve and equip project and attendant facilities. By  
43       contract or contracts to construct, acquire, alter, repair,

reconstruct, rehabilitate, improve and equip a project and  
necessary and usual attendant facilities;

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

**9. Fix and collect fees.** To fix and collect fees, lease-rentals and other charges for the use of a project to transmit voice, data or video signals and to provide for the adoption of such reasonable and proper rules as may be necessary to ensure the maximum use at all times of the facilities of any project;

**10. 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;

**11. Make and execute contracts.** To make and execute contracts and other instruments and enter into such transactions as necessary or convenient for the exercise of the authority's powers and functions under this chapter;

**12. Agreements; acceptions; contributions; aid; grants.** To enter into agreements with and 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 loans, aid, contributions, grants and cooperation;

**13. Accept aid or contributions.** To receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this chapter, subject to the conditions upon which those grants and contributions are made, including, but not limited to, gifts or grants from any department or agency of the United States or the State for any purpose consistent with this chapter;

**14. Insurance.** To procure insurance against any loss in connection with the authority's securities and its property and other assets in such amounts and from such insurers as it considers desirable;

**15. Modification of contract, lease, indenture or agreement.** To consent to any modification of any contract,



2 lease, indenture or agreement of any kind to which the authority  
3 is a party;

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

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

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

24 19. Appearances. To appear on the authority's own behalf  
25 before boards, commissions, departments or agencies of a  
26 municipality or the State Government or the Federal Government;

27 20. Executive director; other employees. To employ an  
28 executive director, consulting engineers, architects, attorneys,  
29 accountants, construction and financial experts and such other  
30 employees and agents as may be necessary in the authority's  
31 judgment; and

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

35 **§9208. Use of revenues**

36 The revenues derived by the authority from any lease,  
37 assignment, rental agreement or other disposition or any other  
38 revenue must be used for the purposes of this chapter.

39 **§9209. Advisory council**

40 The Advisory Council on Advanced Technology Investment,  
41 referred to in this section as "the advisory council," is  
42 established to advise the authority in accordance with this  
43 section.

2        1. Membership. The advisory council is composed of the  
3        following members:

4                A. Two members who have experience with issues concerning  
5                broadband access infrastructure, appointed by the Governor;

6                B. Two members who have experience with issues concerning  
7                wireless telecommunications infrastructure, appointed by the  
8                Governor;

9                C. Two members who have experience with issues concerning  
10               the telecommunications and technology infrastructure  
11               implemented by the State's education community, appointed by  
12               the Governor;

13               D. One member who has experience with issues concerning the  
14               statewide emergency radio network, appointed by the Governor;

15               E. One member who serves on the Maine Telecommunications  
16               Education Access Fund Advisory Board established by rules  
17               adopted by the commission, or a successor board, appointed  
18               by the Governor;

19               F. One member from the Maine Technology Institute;

20               G. One member representing the Small Enterprise Growth  
21               Fund, established in Title 10, section 383; and

22               H. Up to 2 additional members, appointed by the authority,  
23               as needed to ensure adequate representation and expertise.

24        2. Duties; rules. The advisory council shall provide  
25        advice and counsel to the authority on technical, policy,  
26        financial and economic issues. The advisory council shall also  
27        perform limited functions assigned to it by the authority or as  
28        provided for by rule. Rules adopted by the authority pursuant to  
29        this subsection are routine technical rules as defined in Title  
30        5, chapter 375, subchapter 2-A.

31        §9210. Collection of data

32               Subject to the provisions in this section, the authority may  
33               collect data from communications service providers concerning  
34               infrastructure deployment and costs, revenues and subscribership.

35               1. Protective orders. The authority may issue protective  
36               orders in accordance with the requirements of the Maine Rules of  
37               Civil Procedure, Rule 26(c). Information subject to the  
38               protective orders is considered within the scope of a privilege

against discovery within the meaning of Title 1, section 402, subsection 3, paragraph B and is not a public record while under the protective order.

**2. 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 the information is of a competitive or proprietary nature, the authority shall issue an order designating that information as confidential. Information that may be designated as confidential pursuant to this section includes, but is not limited to, network diagrams. Information designated as confidential under this section is not a public record under Title 1, section 402, subsection 3.

**3. Protection of information.** A communications service provider may request that confidential or proprietary information provided to the authority under subsection 2 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.

#### **§9211. Legislative oversight; report to committee**

The authority shall provide an annual report to the joint standing committee of the Legislature having jurisdiction over utilities matters that:

**1. Budget.** Includes a report on the budget of the authority;

**2. Activities.** Documents the activities of the authority, including review of applications for funding received by the authority; and

**3. Investments.** Contains a listing of any investments of fund money made and a tracking of the infrastructure improvements resulting from the investments.

#### **§9212. 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.

#### **§9213. Actions against authority**

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.

#### **§9214. Gifts and contributions**

The authority may accept gifts and contributions on behalf of the authority for the purpose of designing, constructing, reconstructing, renovating or acquiring a project.

The authority, in accepting gifts of money, federal funds or other types of income, shall place this money in a special account for the purpose for which it is provided. The authority may invest the money in accordance with the purposes of this chapter, subject to any limitations imposed by the donor.

**Sec. 2. Staggered terms.** Notwithstanding the Maine Revised Statutes, Title 35-A, section 9203, subsection 2, for the initial appointments to the Advanced Technology Infrastructure Authority, the Governor shall appoint one member for a one-year term, one member for a 2-year term and one member for a 3-year term.

### **SUMMARY**

The purpose of this bill is to stimulate investment in advanced communications technology infrastructure so as to increase access to broadband and wireless communications services for all Maine communities, including rural communities. To accomplish this purpose, this bill:

1. Establishes the Advanced Technology Investment Authority, which is governed by a 5-member board that includes the Chief Information Officer of the State, the chair of the Maine Public Utilities Commission and 3 other members;

2. Charges the authority with aggregating data concerning communications services in the State, assessing the availability and need for services in unserved and underserved areas, identifying and securing federal and other funding sources for broadband and wireless deployment and coordinating activities of providers and governmental entities, including coordination with

2 the statewide emergency radio network, the Maine Office of  
Innovation and the Small Enterprise Growth Fund;

4 3. Directs the authority to use a transfer of previously  
collected but unallocated funds of the Maine universal service  
6 fund for the purposes of the bill, including the identification  
of and participation in projects that expand the deployment of,  
8 or improve the quality of, communications technology in Maine; and

10 4. Allows a reimbursement for taxes paid on the purchase of  
machinery and equipment to develop an advanced communications  
12 technology infrastructure in a qualifying ConnectME zone.