

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1012

H.P. 700

House of Representatives, March 12, 2009

### An Act To Establish the Maine Broadband Commission

(EMERGENCY)

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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 DILL of Cape Elizabeth.  
Cosponsored by Senator HOBBS of York and  
Representatives: BERRY of Bowdoinham, HINCK of Portland, Speaker PINGREE of North  
Haven, PIOTTI of Unity, ROTUNDO of Lewiston, Senators: BARTLETT of Cumberland,  
President MITCHELL of Kennebec.

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

3           **Whereas,** the issue in this legislation is sensitive to a prescribed federal schedule as  
4 established by the Federal Communications Commission, and this issue must be resolved  
5 before the end of the legislative session; and

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

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

11           **Sec. 1. 5 MRSA §12004-G, sub-§30-D** is enacted to read:

12           **30-D.**

13           Public Utilities            Maine Broadband            Legislative Per            35-A MRSA §9216  
14    Commission    Diem and Expenses

15           **Sec. 2. 35-A MRSA §9216** is enacted to read:

16       **§9216. Maine Broadband Commission**

17           **1. Establishment; membership.** The Maine Broadband Commission, referred to in  
18 this section as "the commission," is established pursuant to Title 5, section 12004-G,  
19 subsection 30-D to lease or sell excess broadband capacity resulting from the conversion  
20 of the education broadband spectrum from analog to digital. The commission is created  
21 to advise the University of Maine System on the issue of the transition of the broadband  
22 spectrum from analog to digital. The commission shall negotiate and enter into lease or  
23 sales agreements with service providers and ensure that the leases and sales potentials and  
24 revenues are fully realized for the benefit of the educational system and the State. The  
25 commission shall also work to establish a sustainable model in building networks and as a  
26 facilitator of infrastructure development to attract private investment and economic  
27 opportunities.

28       The commission is created as a body corporate and politic and a public instrumentality of  
29 the State. The commission consists of the following 15 voting members:

30           A. Two members of the Senate, appointed by the President of the Senate, and one  
31 member with expertise in a field relevant to obtaining the maximum public benefit  
32 from the lease and sale of education broadband capacity, one member from the  
33 Department of Public Safety and one member from the Department of  
34 Transportation, appointed by the President of the Senate;

35           B. Two members of the House of Representatives, appointed by the Speaker of the  
36 House, and one member with expertise in a field relevant to obtaining the maximum  
37 public benefit from the lease and sale of education broadband capacity, one member

1 from the Department of Economic and Community Development and one member of  
2 a statewide public broadcasting network, appointed by the Speaker of the House; and

3 C. One member each from the ConnectME Authority, the University of Maine  
4 System, the Maine Community College System and the executive branch, and one  
5 member with expertise in a field relevant to obtaining the maximum public benefit  
6 from the lease and sale of education broadband capacity, appointed by the Governor.

7 Members must be appointed within 30 days of the effective date of this section.

8 Compensation of members is as provided in Title 5, section 12004-G, subsection 30-D.

9 **2. Terms; chair; vacancies.** All nonlegislative members of the commission are  
10 appointed for 3-year terms. The first-named Senator is the Senate chair of the  
11 commission and the first-named member of the House is the House chair of the  
12 commission. In the event of a vacancy in the membership, the appointing authorities  
13 shall appoint a replacement member for the remainder of that vacated term. Each member  
14 of the commission serves until that member's successor is appointed and qualified. Any  
15 member of the commission is eligible for reappointment. Legislative members serve  
16 during the term of office for which they were elected and may serve beyond their  
17 designated term until their successors are appointed.

18 **3. Officers; quorum.** The commission may elect a secretary and a treasurer, who  
19 must be members of the commission. Seven members of the commission constitute a  
20 quorum, and the affirmative vote of 7 members is necessary for any action taken by the  
21 commission.

22 **4. Participation by members.** A member may participate in a meeting of the  
23 commission and place a vote electronically or telephonically as long as members of the  
24 public have an opportunity to listen to the deliberations of the commission and otherwise  
25 participate in or observe the proceedings of the commission consistent with Title 1,  
26 section 405.

27 **5. Duties.** In order to carry out the purposes of this section, the commission has the  
28 following powers with respect to its mission to lease or sell excess broadband capacity  
29 together with all powers incidental to those powers or necessary for the performance of  
30 the following:

31 A. To adopt bylaws and, pursuant to Title 5, chapter 375, adopt any rule necessary or  
32 useful for carrying out any of its powers or duties pursuant to this section. Rules  
33 adopted by the commission are routine technical rules pursuant to Title 5, chapter  
34 375, subchapter 2-A;

35 B. To enter into lease or sales agreements in furtherance of the purposes of this  
36 section;

37 C. To make and execute contracts and all other instruments, including financial  
38 documents, and enter into such transactions as necessary or convenient for the  
39 exercise of its powers and functions under this section;

1 D. To the extent permitted under any agreement or contract, to consent to any  
2 modification of any contract, lease, indenture or agreement of any kind to which the  
3 commission is a party;

4 E. To procure insurance against any loss in connection with its securities and its  
5 property and other assets in such amounts and from such insurers as it considers  
6 desirable; and

7 F. To sue or initiate or appear in any proceeding, and the commission may be sued  
8 on its written contracts or in accordance with Title 1, section 409; Title 5, chapter  
9 375; or Title 14, chapter 741.

10 6. Revenue received. Any revenue received from the lease or sale under this  
11 section of broadband capacity is dedicated to the enhancement of the University of Maine  
12 System and the Maine Community College System, as well as working towards  
13 establishing a sustainable model in building networks and as a facilitator of infrastructure  
14 development under subsection 1. For the purposes of this section, the revenue must be  
15 deposited with the Treasurer of State.

16 7. Reports. By February 1st of each year, the commission shall submit a report on  
17 the commission's annual activities, including the status of all leases and sales of  
18 broadband capacity and full amounts of revenue acquired, to the joint standing  
19 committees of the Legislature having jurisdiction over utility matters and educational  
20 matters.

21 **Sec. 3. Stimulus funds.** The Commissioner of Administrative and Financial  
22 Services, in the commissioner's role of monitoring the legislative progress of the federal  
23 stimulus plan, known as the American Recovery and Reinvestment Act of 2009, shall in a  
24 timely manner consult with the agencies and institutions affected by the broadband  
25 conversion from analog to digital and the subsequent task of the development of the  
26 telecommunications infrastructure of broadband investment, such as the University of  
27 Maine System, the Department of Economic and Community Development, the  
28 Department of Public Safety and the Department of Transportation, and ascertain how to  
29 maximize access to the stimulus funds in order to carry out the purposes of this Act. The  
30 commissioner is authorized to submit any legislation for the purpose of gaining funds  
31 necessary to the 124th Legislature.

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

34 **SUMMARY**

35 This bill directs the Commissioner of Administrative and Financial Services to  
36 ascertain, in consultation with appropriate entities, the maximum funds available from the  
37 federal stimulus plan to carry out the purposes of this bill. The bill also establishes the  
38 Maine Broadband Commission in order to lease or sell excess broadband capacity  
39 resulting from the conversion of the broadband spectrum from analog to digital. The  
40 commission is created to advise the University of Maine System on the issue of the  
41 transition of the broadband spectrum from analog to digital. The commission is to

1 negotiate and to enter into lease or sales agreements with service providers and ensure the  
2 leases and sales potentials and revenues are fully realized for the benefit of the  
3 educational system and the State and to work to the goal of broadband access for  
4 everyone in the State.