

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

majority

SAC
ROS

L.D. 1484

Date: 6/10/21

(Filing No. S- 248)

MAJORITY

ENERGY, UTILITIES AND TECHNOLOGY

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

130TH LEGISLATURE

FIRST SPECIAL SESSION

COMMITTEE AMENDMENT " B " to S.P. 477, L.D. 1484, "An Act To Enhance the ConnectMaine Authority's Capacity To Provide World-class Internet"

Amend the bill by striking out the title and substituting the following:

'An Act To Establish the Maine Connectivity Authority'

Amend the bill by inserting after the title and before the enacting clause 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 federal American Rescue Plan Act of 2021, 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,'

Amend the bill by striking out everything after the enacting clause and inserting the following:

'Sec. 1. 5 MRSA §12004-G, sub-§33-G is enacted to read:

33-G.

Technology Maine Connectivity Authority Not Authorized 35-A MRSA
§9404

Sec. 2. 5 MRSA §12021, sub-§6, ¶G-1 is enacted to read:

G-1. The Maine Connectivity Authority under Title 35-A, section 9404;

Sec. 3. 35-A MRSA c. 94-A is enacted to read:

CHAPTER 94-A**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. Bonds. "Bonds" 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 or cellular voice or data service.

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

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

4 **§9404. Maine Connectivity Authority**

5 **1. Establishment; membership.** The Maine Connectivity Authority is established as
6 a body corporate and politic and a public instrumentality of the State, and the exercise by
7 the authority of the powers conferred by this chapter is deemed and held to be the
8 performance of essential governmental functions. The authority consists of the following
9 members:

10 A. Seven voting members appointed by the Governor and confirmed by the Legislature
11 as follows:

12 (1) Three members who possess expertise in advanced communications
13 technology infrastructure or communications service, including, but not limited to,
14 expertise in network design, network operations and middle mile infrastructure;

15 (2) One member representing communities in the State;

16 (3) One member who possesses expertise in banking or financial lending,
17 including, but not limited to, expertise in the provision of loans or other capital
18 investments for infrastructure deployment in the State;

19 (4) One member who possesses expertise in education system needs; and

20 (5) One member who possesses expertise in telehealth delivery and telehealth
21 system needs; and

22 B. Four ex officio voting members as follows:

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

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

26 (3) The Chief Executive Officer of the Finance Authority of Maine or the officer's
27 designee; and

28 (4) The Chief Information Officer within the Department of Administrative and
29 Financial Services or the officer's designee.

30 **2. Terms; reappointments; vacancies; chair.** Members appointed by the Governor
31 serve 3-year terms, except that 2 such members first appointed serve a one-year term, 2
32 such members first appointed serve a 2-year term and 3 such members first appointed serve
33 a 3-year term. Members appointed by the Governor are eligible for reappointment. If a
34 member appointed by the Governor fails to serve until the expiration of the member's term,
35 the Governor may appoint a replacement member for the remainder of that member's term.
36 The Governor shall appoint one member to serve as chair of the authority.

37 **3. President.** Upon the recommendation of the authority, the Governor shall appoint
38 a president of the authority subject to confirmation by the Legislature. The president serves
39 a 4-year term and is eligible for reappointment. The president shall manage the authority's
40 programs, services and staff and shall perform other duties the authority considers
41 appropriate.

1 **4. Officers; quorum.** The authority may elect a secretary and a treasurer, who may
2 but need not be members of the authority. Six members of the authority constitute a
3 quorum, and the affirmative vote of 6 members is necessary for any action taken by the
4 authority.

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

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

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

22 **§9405. Powers and duties of authority**

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

27 **1. Power to sue and be sued.** To sue or initiate or appear in any proceeding. The
28 authority may be sued on its written contracts or to the extent permitted by Title 1, section
29 409; Title 5, chapter 375; or Title 14, chapter 741;

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

31 **3. Bylaws; rules.** To adopt bylaws and any rule necessary or useful for carrying out
32 any of the authority's powers or duties pursuant to this chapter. Rules adopted pursuant to
33 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
34 2-A;

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

43 **5. Prepare and plan projects and facilities.** To prepare or cause to be prepared plans,
44 specifications, designs and estimates of costs for the construction and equipping of a project

ROS

1 and attendant facilities and from time to time to modify or cause to be modified those plans,
2 specifications, designs or estimates;

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

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

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

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

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

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

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

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

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

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

41 **16. Manage or operate real and personal property.** To manage or operate, or cause
42 to be managed or operated, real and personal property, to take assignments of leases and

1 rentals or to take any other action necessary or incidental to the performance of the
2 authority's duties under this chapter;

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

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

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

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

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

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

22 **§9406. Issuance of bonds**

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

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

32 **3. Form.** The authority shall determine the form of the bonds, including any attached
33 interest coupons, the manner of execution of the bonds, the denomination or denominations
34 of the bonds and the place or places for payment of principal and interest, which may be at
35 any financial institution within or without the State. Bonds must be executed in the name
36 of the authority by the manual or facsimile signature of the authorized official or officials.
37 Signatures and facsimiles of signatures on bonds are valid for all purposes even if the
38 authorized official ceases to hold office before delivery of the bonds. The bonds may be
39 issued in coupon or registered form or both as the authority may determine. In addition to
40 this subsection, the authority may provide for transfer of registration of its registered bonds
41 by book entry on the records of the entity designated for that purpose and may enter into
42 such contractual arrangements as may be necessary to accomplish these purposes. In the
43 event a book entry method of transfer is used, principal of and interest on those registered

ROS

1 bonds must be payable to the registered owner shown in the book entry or the legal
2 representatives, successors or transferees of the registered owner.

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

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

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

20 **§9407. Tax exemptions; taxable bonds**

21 1. Bonds exempt from taxation. Bonds of the authority constitute a proper public
22 purpose and the bonds, their transfer and the income from them, including any profits made
23 on their sale, must at all times be exempt from taxation within the State, whether or not
24 those bonds, their transfer or the income from them, including any profits made on their
25 sale, are subject to taxation under the United States Internal Revenue Code of 1986, as
26 amended.

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

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

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

§9408. Collection of data

Subject to the provisions of this section, the authority may collect data from communications service providers and any wireless providers 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 or wireless 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 that 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 or a wireless 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 or a wireless 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

ROS

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 to 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 laws governing 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, must be liberally construed. In the event of any conflict between this chapter and any other law, this chapter prevails, 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. 4. 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, chapters 93 and 94-A 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 the 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.'

Amend the bill by adding before the summary the following:

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

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

ROS

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.

FISCAL NOTE REQUIRED

(See attached)



130th MAINE LEGISLATURE

LD 1484

LR 1519(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A" (5-248)
Committee: Energy, Utilities and Technology
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

This bill establishes state connectivity goals and establishes the Maine Connectivity Authority, a quasi-independent state entity, to develop and finance projects to meet those goals. The Authority is governed by a seven-member board and includes four additional nonvoting representatives from the Department of Economic and Community Development, the University of Maine System, the Finance Authority of Maine and the Chief Information Officer of the State. The Authority may be funded through various sources, including issuing bonds, collecting fees related to the use of facilities financed by the Authority and other federal funding provided. The Authority is required to consult with the ConnectMaine Authority to develop recommendations to facilitate its oversight of the ConnectMaine Authority and to report back regarding those recommendations by January 15, 2022.

Additional costs to the Department of Administrative and Financial Services, the Department of Economic and Community Development, the University of Maine System and the Finance Authority of Maine for representatives to serve on the Maine Connectivity Authority can be absorbed within existing budgeted resources. Any additional costs to the ConnectMaine Authority to work with the Maine Connectivity Authority are anticipated to be minor and can be absorbed within existing budgeted resources.