

MAINE STATE LEGISLATURE

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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.

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

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

4 **33-F.**

5 Technology ConnectMaine Authority Not Authorized 35-A MRSA
6 §9203
7 §9203-A

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

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

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

13 **2. Authority.** "Authority" means the ConnectMaine Authority established in section
14 ~~9203~~ 9203-A.

15 **Sec. 4. 35-A MRSA §9203**, as amended by PL 2019, c. 625, §7, is repealed.

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

17 **§9203-A. ConnectMaine Authority**

18 **1. Establishment; purpose.** The ConnectMaine Authority is established as a
19 nonprofit corporation with public and charitable purposes whose duties, activities and
20 operations are within the provisions of the United States Internal Revenue Code, Section
21 501(c)(3).

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

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

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

34 A. The chair of the Public Utilities Commission or the chair's designee;

35 B. The Chief Information Officer of the State or the officer's designee;

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

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

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.

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; acceptions; 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:

- 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.