

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2006

Beginning in fiscal year 2007-08, state funding for the Department of Public Safety, Bureau of State Police must be provided as follows:

1. Highway Fund. Sixty percent must be allocated from the Highway Fund pursuant to Title 23, section 1653; and

2. General Fund. Forty percent must be appropriated from the General Fund.

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

Effective May 30, 2006.

CHAPTER 665

H.P. 1471 - L.D. 2080

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

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

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

<u>33-F.</u>	<u>ConnectME</u>	<u>Not</u>	<u>35-A</u>
<u>Technology</u>	<u>Authority</u>	<u>Authorized</u>	<u>MRSA</u>
			<u>§9203</u>

Sec. 2. 5 MRSA §12004-I, sub-§85-A is enacted to read:

<u>85-A.</u>	<u>ConnectME</u>	<u>Not</u>	<u>35-A</u>
<u>Technology</u>	<u>Advisory</u>	<u>Authorized</u>	<u>MRSA</u>
	<u>Council</u>		<u>§9206</u>

Sec. 3. 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 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 wireless service coverage.

2. Authority. "Authority" means the ConnectME Authority established in section 9203.

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

4. Communications service provider. "Communications service provider" means:

A. Any entity offering communications service to customers in the State; or

B. Any facilities-based provider of wireless voice or data retail service that voluntarily chooses to be assessed by the authority pursuant to section 9211.

5. Unserved or underserved area. "Unserved or underserved area" means an area that the authority pursuant to section 9204, subsection 2, paragraph B determines to meet criteria established by the authority by rule adopted pursuant to section 9205, subsection 3 in accordance with section 9204, subsection 1.

§9203. ConnectME Authority

1. Establishment; membership. The ConnectME Authority is established to stimulate investment in advanced communications technology infrastructure in unserved or underserved areas. 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 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; and

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

Compensation of members is as provided in Title 5, section 12004-G, subsection 33-F.

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. At the request of the authority, the commission or any other state agency with expertise in communications services or advanced communications technology infrastructure shall provide to the authority staff designated by the commission or agency. Staff resources provided by the commission and other agencies may not exceed in total 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 or other state agencies.

§9204. Duties of authority

1. Establish criteria defining unserved and underserved areas. The authority, by rule adopted pursuant to section 9205, subsection 3, shall establish criteria to define unserved and underserved areas. The authority shall establish criteria that ensure that an area is not determined to be an unserved or underserved area if the effect of that determination would inhibit or impede private investment in any area or diminish the value of prior investment in advanced communications technology infrastructure within any area. Criteria established by the authority must

include but are not limited to whether investment is planned in an area within a reasonable time.

2. Enhance communications technology infrastructure. The authority, through partnerships, grants, direct investment, loans, demonstration projects and other appropriate means, shall, in a competitively neutral fashion and without giving preference to any one form of technology over another:

A. Monitor wireless coverage in areas where the authority determines the quality of the coverage is inadequate;

B. Determine whether an area is an unserved or underserved area;

C. Expand the availability of broadband to residential and small business customers in unserved or underserved areas;

D. Expand the availability of broadband with bandwidth, synchronicity, reliability and security adequate to serve business, education and enterprise consumers in unserved or underserved areas;

E. Otherwise enhance the State's communications technology infrastructure in unserved and underserved areas; and

F. Cover reasonable administrative costs of the authority.

3. Additional duties. In addition to its duties established under this chapter, the authority shall:

A. Collect, aggregate, coordinate and disseminate information and data concerning communications services and advanced communications technology infrastructure in the State;

B. Track investment in advanced communications technology infrastructure;

C. Continually assess the availability of and need for advanced communications technology infrastructure in unserved or underserved areas within the State;

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

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

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

4. Limitations on activities of the authority.

The authority may not develop, acquire, fund, coordinate or otherwise undertake any project or make any grant, direct investment or loan under this chapter unless:

A. The action is taken on behalf of, in partnership with or in support of one or more communications service providers that are remitting assessments to the authority under section 9211; and

B. The authority determines that, without the authority's action, the installation of adequate advanced communications technology infrastructure in an unserved or underserved area would not otherwise occur.

Notwithstanding any other provision of this chapter, the authority may not provide any wireline, wireless, satellite, voice, data or video service at retail or wholesale.

5. Public notice and opportunity for private investment. Prior to taking any action described in subsection 4, the authority shall provide public notice of its intention to take the action. The authority may not take the action if a service provider franchised or certificated to provide a communications service to the area submits a timely certification to the authority that the service provider will commence within 45 days and will complete within one year the installation of sufficient advanced communications technology infrastructure to provide broadband or wireless service in a manner that would render the authority's action unnecessary or redundant.

§9205. General powers

In order 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 for the performance of these powers:

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 in accordance with 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 major

substantive 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 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 equipment for 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 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;

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. 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;

11. 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;

12. 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;

13. 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;

14. 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;

15. 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;

16. 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 and may be considered a liability of the State;

17. 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;

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

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

20. 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.

§9206. ConnectME Advisory Council

The ConnectME Advisory Council, referred to in this section as "the advisory council," is established to advise the authority in accordance with this section.

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

A. Four members who have experience with issues concerning advanced communications technology infrastructure, appointed by the Governor;

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

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

D. One member from the Maine Technology Institute appointed by the Director of the Office of Innovation within the Department of Economic and Community Development;

E. One member representing the Small Enterprise Growth Fund, established in Title 10, section 383, appointed by the Director of the Office of Innovation within the Department of Economic and Community Development; and

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

Compensation of members is as provided in Title 5, section 12004-I, subsection 85-A.

2. Duties; rules. The advisory council shall provide advice and counsel to the authority on technical, policy, financial and economic issues. The advisory council shall also perform limited functions assigned to it by the authority or as provided for by rule adopted by the authority pursuant to section 9205, subsection 3.

§9207. 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 designating that 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 or the legitimate competitive or proprietary interests of a communications service provider. 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 designate any information as confidential 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.

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

§9208. Legislative oversight; report to committee

No later than January 15th of each year, the authority shall provide a 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;

3. Investments. Contains a listing of any investments of money in the ConnectME Fund, as established pursuant to section 9211, and a tracking of

the infrastructure improvements resulting from the investments; and

4. Market conditions. 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.

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.

§9209. 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.

§9210. 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.

§9211. ConnectME Fund

1. ConnectME Fund established. The ConnectME Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the authority for the purposes of supporting the activities and projects of the authority under this chapter.

2. Assessment. After receiving authorization pursuant to Title 5, section 8072 to finally adopt major substantive rules under section 9205, subsection 3 or after January 15, 2007, whichever is later, the authority may require every communications service provider to contribute on a competitively neutral basis to the fund. The assessment may not exceed 0.25% of the revenue received or collected for all communications services provided in this State by the communications service provider. A facilities-based provider of wireless voice or data retail service may voluntarily agree to be assessed by the authority as a communications service provider under this subsection.

3. Explicit identification on customer bills. A communications service provider assessed pursuant to subsection 2 may recover the amount of the assess-

ment from the provider's customers. If a provider recovers the amount from its customers, it must explicitly identify the amount owed by a customer on the customer's bill and indicate that the funds are collected for use in the ConnectME Fund.

§9212. 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.

§9213. Use of revenues

The revenues derived by the authority from any assessment, transfer of funds, lease, assignment, rental agreement or other disposition or any other revenue must be used for the purposes of this chapter and applied in a competitively neutral fashion and without giving preference to any one form of technology over another.

§9214. No franchise fees

The authority may not establish or collect a franchise fee pursuant to 47 United States Code, Section 542 or Title 30-A, section 3008. If any tax, fee, charge or assessment or portion thereof established by the authority is held by a court of competent jurisdiction to be a franchise fee, the imposition of that tax, fee, charge or assessment or portion thereof is unenforceable.

§9215. Repeal

This chapter is repealed January 31, 2009.

Sec. 4. 36 MRSA §2017 is enacted to read:

§2017. Reimbursement of certain taxes relating to advanced communications technology infrastructure

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Advanced communications technology infrastructure" has the same meaning as in Title 35-A, section 9202.

B. "Authority" has the same meaning as in Title 35-A, section 9202.

C. "Qualifying ConnectME zone" means a geographical area that is eligible for tax reimbursement under this section because the authority has determined that the area is an unserved or underserved area.

2. Reimbursement allowed. Following final adoption of rules under subsection 7, but in no event earlier than July 1, 2007, a reimbursement is allowed as provided in this section for taxes paid pursuant to this Part with respect to machinery and equipment purchased for use by a person to develop an advanced communications technology infrastructure in a qualifying ConnectME zone.

3. Claim for reimbursement. A claim for reimbursement under this section must be filed with the 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 assessor and must include a statement from the authority certifying that the machinery and equipment is being used primarily to develop an advanced communications technology infrastructure 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 assessor may require.

4. 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.

5. Audit. The assessor may audit any claim filed under this section. If the assessor determines that the amount of the claimed reimbursement is incorrect, the 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 assessor concludes should not have been reimbursed, the 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 section 151 of the redetermination or assessment.

6. Payment of claims. Within 30 days after receipt of a properly completed claim under this section, the assessor shall inform the State Controller of the certified amounts that are to be reimbursed to the claimant. The State Controller shall make the reimbursement and shall account for and pay it as a sales and use tax refund. Interest is not allowed on any payment made to a claimant pursuant to this section.

7. Rulemaking. The authority in cooperation with the assessor shall develop rules as necessary to

administer this section. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

8. Repeal. This section is repealed January 31, 2009.

Sec. 5. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 35-A, section 9203, subsection 2, for the initial appointments to the ConnectME 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.

Sec. 6. Temporary transfer of funds authorized. For purposes of funding activities of the ConnectME Authority under the Maine Revised Statutes, Title 35-A, chapter 93, the Public Utilities Commission may, upon request of the authority, transfer to the ConnectME Fund, established pursuant to Title 35-A, section 9211, up to \$500,000 of previously collected but unallocated funds held by the commission in the universal service fund pursuant to Title 35-A, section 7104. The authority may not request and the commission may not undertake any transfer of funds to the ConnectME Fund under this section until the authority receives authorization pursuant to Title 5, section 8072 to finally adopt major substantive rules under Title 35-A, section 9205, subsection 3 or until after January 15, 2007, whichever is later. Once the authority has collected \$500,000 in the ConnectME Fund through assessments collected pursuant to Title 35-A, section 9211, the authority shall transfer to the universal service fund an amount equal to the amount transferred from the universal service fund to the authority under this section. Upon receipt of the transfer into the universal service fund, the commission shall ensure the return of the funds to ratepayers by amending the quarterly assessments made pursuant to Title 35-A, section 7104.

Sec. 7. Submission of plan; authority to report out legislation. No later than January 31, 2008, the ConnectMe Authority, established under the Maine Revised Statutes, Title 35-A, section 9203, shall submit to the joint standing committee of the Legislature having jurisdiction over utilities matters a plan, together with necessary implementing legislation, providing for the winding up of the authority's affairs, the disposition of assets and other matters pertaining to the affairs of the authority. The joint standing committee of the Legislature having jurisdiction over utilities matters shall report out legislation to the Second Regular Session of the 123rd Legislature providing for the winding up of the authority's affairs or the repeal of Title 35-A, section 9215.

See title page for effective date.

CHAPTER 666

H.P. 1484 - L.D. 2092

An Act To Allow a Second Opportunity for Retired Teachers To Elect To Rejoin the Teacher Group Accident and Sickness and Health Insurance Plan

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

Sec. 1. 20-A MRS §13451, sub-§2-C, as enacted by PL 1997, c. 652, §3 and affected by §4, is amended to read:

2-C. Eligibility; teachers who retire following break in employment. A teacher who retires but who is not in service immediately prior to retirement and who has at least 25 years of creditable service under Title 5, chapter 423, subchapter ~~4~~ 4 may make a one-time election at retirement to rejoin the teacher group plan. If previous service terminated due to the elimination of the teacher's position as a result of closure of a school in School Administrative District Number 10 where the teacher was employed, the teacher may make one additional election to rejoin the plan, which election may be exercised at any time after retirement. Coverage of preexisting conditions upon rejoining the plan under this subsection is governed by Title 24-A, chapter 36. The payment provisions of subsection 3 apply to retirees exercising ~~the~~ an option under this subsection.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

EDUCATION, DEPARTMENT OF

Retired Teachers' Health Insurance

Initiative: Provides funds for the State's share of the cost of health insurance premiums for 2 former employees of School Administrative District No. 10 that have been identified as being eligible to have a 2nd opportunity to rejoin the teacher group health plan after retirement.

GENERAL FUND	2005-06	2006-07
All Other	\$0	\$4,373
GENERAL FUND TOTAL	\$0	\$4,373

See title page for effective date.