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No. 1516

H.P. 1040

House of Representatives, April 25, 2017

An Act To Encourage Broadband Development through Private Investment

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

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WADSWORTH of Hiram.
Cosponsored by Representatives: HANLEY of Pittston, HARVELL of Farmington,
O'CONNOR of Berwick.

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

2 **Sec. 1. 35-A MRSA §9211-A, sub-§5, ¶¶D and E**, as enacted by PL 2015, c.
3 323, §1, are amended to read:

4 D. Information gathered from local public and private institutions that identifies how
5 the broadband services will expand access to state and local services identified under
6 subsection 3; ~~and~~

7 E. A summary of input received from the business community to identify the
8 services that will be used in planning the implementation grant application; and

9 **Sec. 2. 35-A MRSA §9211-A, sub-§5, ¶F** is enacted to read:

10 F. Evidence of compliance with the requirements of chapter 94.

11 **Sec. 3. 35-A MRSA §9217, sub-§1, ¶¶D and E**, as enacted by PL 2015, c. 284,
12 §11, are amended to read:

13 D. Include one or more potential network designs, cost estimates, operating models
14 and potential business models based on input from broadband providers operating
15 within the municipality, municipalities or region and any other parties that submit a
16 network design solution in the course of developing the plan to address any
17 broadband gaps identified in paragraph C; ~~and~~

18 E. Include an assessment of all municipal procedures, policies, rules and ordinances
19 that have the effect of delaying or increasing the cost of broadband infrastructure
20 deployment; and

21 **Sec. 4. 35-A MRSA §9217, sub-§1, ¶F** is enacted to read:

22 F. Include evidence of compliance with the requirements of chapter 94.

23 **Sec. 5. 35-A MRSA c. 94** is enacted to read:

24 **CHAPTER 94**

25 **MUNICIPAL BROADBAND PRIVATE INDUSTRY SAFEGUARDS**

26 **§9401. Definitions**

27 As used in this chapter, unless the context otherwise indicates, the following terms
28 have the following meanings.

29 **1. Broadband service.** "Broadband service" means service of high-speed Internet
30 access capability in excess of 144 kilobits per second both to and from a computer or
31 network.

32 **2. Capital costs.** "Capital costs" means all costs of providing a service that are
33 capitalized in accordance with generally accepted accounting principles.

1 **3. Direct costs.** "Direct costs" means those expenses of a municipality that are
2 directly attributable to providing broadband service and would be eliminated if broadband
3 service was not provided by the municipality.

4 **4. Feasibility consultant.** "Feasibility consultant" means a person with expertise in
5 the processes and economics of providing broadband service.

6 **5. Full-cost accounting.** "Full-cost accounting" means the accounting of all costs
7 incurred by a municipality in providing broadband service, including all capital costs,
8 direct costs and indirect costs.

9 **6. Indirect costs.** "Indirect costs" means any costs identified with 2 or more services
10 or other functions that are not directly identified with a single service or function.
11 "Indirect costs" includes the costs of administration, accounting, personnel, purchasing,
12 legal support and other staff or departmental support.

13 **7. Private provider.** "Private provider" means a private entity that provides
14 broadband service.

15 **8. Provide.** "Provide" means, as it relates to a municipality and broadband service,
16 to provide or offer broadband service directly or indirectly, including through an
17 authority or instrumentality acting on behalf of the municipality or for the benefit of the
18 municipality, through a partnership or joint venture or by contract, resale or otherwise.

19 **9. Subscriber.** "Subscriber" means a person that lawfully receives broadband
20 service from another person that provides broadband service.

21 **§9402. Scope of chapter**

22 Nothing in this chapter applies to a municipality purchasing, leasing, constructing or
23 equipping facilities that are designed to provide services within the municipality and that
24 the municipality uses for internal municipal government purposes or, by written contract,
25 leases, sells capacity in or grants other similar rights to a private provider to use the
26 facilities in connection with the private provider's offering broadband service.

27 **§9403. Municipal limitations on providing broadband service**

28 Except as provided in this chapter, a municipality may not provide broadband service
29 to a subscriber or, for the purpose of providing broadband service to a subscriber,
30 purchase, lease, construct, maintain or operate a facility that is designed to provide
31 broadband service. A municipality may not offer to provide or provide broadband service
32 to a subscriber that does not reside within the geographic boundaries of the municipality.

33 **§9404. Antitrust immunity**

34 Notwithstanding Title 10, section 1104, subsection 4, a municipality that provides
35 broadband service is not exempt from the recovery of damages, interest on damages,
36 costs and attorney's fees for antitrust violations in providing broadband service. A
37 municipality that provides broadband service is subject to applicable antitrust liabilities

1 under the federal Local Government Antitrust Act of 1984, 15 United States Code,
2 Sections 34 to 36.

3 **§9405. Preliminary public hearing**

4 Before a municipality may engage or offer to engage in an activity to provide
5 broadband service, the legislative body of the municipality shall hold a preliminary public
6 hearing.

7 If the legislative body elects to proceed after holding the preliminary public hearing
8 required by this section, the legislative body of the municipality must approve the hiring
9 of a feasibility consultant to conduct a feasibility study in accordance with section 9406.

10 **§9406. Feasibility study; additional public hearing requirements**

11 If a feasibility consultant is hired pursuant to section 9405, the legislative body of the
12 municipality shall require the feasibility consultant to complete a feasibility study in
13 accordance with this section, submit to the legislative body no later than 180 days from
14 the date the feasibility consultant is hired to conduct the feasibility study the full written
15 results of the feasibility study with a summary of the results that is no longer than one
16 page in length and attend the public hearings described in this section to present the
17 feasibility study results and respond to questions from the public.

18 **1. Feasibility study.** A feasibility study must at a minimum consider:

19 A. Whether the municipality's providing broadband service in the manner proposed
20 by the municipality hinders or advances competition for broadband service in the
21 municipality;

22 B. Whether but for the municipality any person would provide the proposed
23 broadband service;

24 C. The fiscal impact on the municipality of the capital investment in facilities to be
25 used to provide the proposed broadband service;

26 D. The expenditure of funds for labor, financing and administering the proposed
27 broadband service;

28 E. The projected growth in demand in the municipality for the proposed broadband
29 service;

30 F. The projections at the time of the feasibility study and for the next 5 years of a
31 full-cost accounting for a municipality to purchase, lease, construct, maintain or
32 operate the facilities necessary to provide the proposed broadband service; and

33 G. The projections at the time of the feasibility study and for the next 5 years of the
34 revenues to be generated from the proposed broadband service.

35 **2. Public hearings.** If the feasibility study shows that the average annual revenues
36 under subsection 1, paragraph G exceed the average annual costs under subsection 1,
37 paragraph F by at least the amount necessary to meet the bond obligations of any bonds
38 issued to fund the proposed broadband service based on the first year of the study and the
39 5-year projection and the legislative body of the municipality elects to proceed with

1 providing broadband service, the legislative body shall, at the legislative body's next
2 regular meeting after receiving the results of the feasibility study, schedule at least 2
3 public hearings to be held within 60 days of the meeting at which those public hearings
4 are scheduled and at least 7 days apart. The purpose of these public hearings is to allow
5 the public to be informed about the feasibility study through a presentation by the
6 feasibility consultant of the results of the study and an opportunity for the public to
7 question the feasibility consultant about the study.

8 **3. Public hearing notices.** The public hearing notices described under subsection 2
9 must be published in a newspaper of general circulation in the municipality at least once a
10 week for 3 consecutive weeks, with the last publication of notice at least 3 days before
11 the first public hearing. If there is no newspaper of general circulation in the
12 municipality, the municipality shall post, for each 1,000 residents, at least one notice of
13 the hearings in a conspicuous place within the municipality that is likely to give notice of
14 the hearings to the greatest number of residents of the municipality at least 7 days before
15 the first public hearing is held.

16 For purposes of the financial projections required under this section, the feasibility
17 consultant shall assume that the municipality sets prices for the proposed broadband
18 service consistent with section 9410.

19 **§9407. Municipal vote**

20 A municipality may not provide broadband service unless the municipality holds an
21 election under this section and the ballot proposition is approved. The legislative body of
22 the municipality by a majority vote must call the election on whether or not to allow the
23 municipality to provide the proposed broadband service. The election must be held at the
24 next municipal general election or at a referendum called for the purpose of deciding
25 whether to allow the municipality to provide broadband service.

26 The election must be called, advertised and conducted according to Title 30-A,
27 chapter 121, subchapter 2. Notice of the election must also include a summary of the
28 broadband service that the legislative body of the municipality proposes to provide to
29 subscribers residing within the boundaries of the municipality; the feasibility study
30 summary under section 9406; a statement that a full copy of the feasibility study under
31 section 9406 is available for inspection and copying; and the location in the municipality
32 where the feasibility study may be inspected or copied.

33 The ballot at the election must pose the question substantially as follows:

34 "Shall (name of the municipality) provide broadband service to the
35 inhabitants of (municipality)?"

36 The voters shall indicate by a cross or check mark placed against the word "Yes" or
37 "No" their opinion of the same. The results must be declared by the legislative body of
38 the municipality and due certificate of the results filed by the municipal clerk with the
39 Secretary of State. The ballot proposition takes effect immediately upon its approval by a
40 majority of the legal voters of the municipality voting at the election.

1 **§9408. Enterprise funds**

2 **1. Enterprise funds.** A municipality that provides broadband service under this
3 chapter:

4 A. Shall establish an enterprise fund to account for the municipality's operations of
5 broadband service;

6 B. Shall adopt separate operating and capital budgets for the municipality's
7 broadband service;

8 C. May not transfer any appropriation or other balance in any enterprise fund
9 established by the municipality under this section to another enterprise fund; and

10 D. May not transfer any appropriation or other balance in any other enterprise fund
11 established by the municipality to any enterprise fund established by the municipality
12 under this section.

13 **§9409. Bonding authority**

14 The legislative body of a municipality may by resolution issue one or more bonds to
15 finance the capital costs for facilities necessary to provide broadband service to
16 subscribers. The resolution must describe the purpose for which the indebtedness is to be
17 created and specify the dollar amount of the one or more bonds proposed to be issued.

18 A bond issued under this section must be secured and paid for solely from the
19 revenues generated by the municipality from providing broadband service. A
20 municipality may not pay the origination, financing or other carrying costs associated
21 with the one or more bonds issued under this section from any other funds of the
22 municipality.

23 **§9410. General operating limitations**

24 A municipality that provides broadband service under this chapter is subject to the
25 operating limitations of this section.

26 **1. Applicable laws.** In addition to complying with the provisions of this Title, a
27 municipality that provides broadband service shall comply with:

28 A. The federal Telecommunications Act of 1996, Public Law 104-104; and

29 B. The regulations issued by the Federal Communications Commission under the
30 federal Telecommunications Act of 1996, Public Law 104-104.

31 **2. Subsidization.** A municipality may not subsidize its broadband service with:

32 A. Tax dollars;

33 B. Income from other municipal or utility services;

34 C. Below-market rate loans from the municipality; or

35 D. Any other municipal funds.

1 **3. Unreasonable preference.** A municipality may not give any undue or
2 unreasonable preference or advantage to itself or to any private provider of broadband
3 service. A municipality shall apply without discrimination as to itself and to any private
4 provider the municipality's ordinances, rules and policies, including those relating to:

5 A. Obligation to serve;

6 B. Access to public rights-of-way;

7 C. Permitting;

8 D. Performance bonding;

9 E. Reporting; and

10 F. Quality of service.

11 **4. Rate calculations.** In calculating the rates charged by a municipality for
12 broadband service, the municipality:

13 A. Shall include within its rates an amount equal to all taxes, fees and other
14 assessments that apply to a similarly situated private provider of the same services,
15 including federal, state and local taxes, franchise fees, permit fees and pole
16 attachment fees; and

17 B. May not price any broadband service at a level that is less than the sum of the
18 actual direct costs of providing the service, the actual indirect costs of providing the
19 service and the amount determined under paragraph A.

20 **5. Price list.** A municipality that provides broadband service shall establish and
21 maintain a comprehensive price list of all broadband services offered by the municipality.
22 The price list must:

23 A. Include all terms and conditions relating to the provision of each broadband
24 service offered by the municipality;

25 B. Be published in a newspaper having general circulation in the municipality; and

26 C. Be available for inspection at a designated office of the municipality during
27 normal business hours.

28 **6. Price change.** At least 5 days before the date a change to a municipality's price
29 list under subsection 5 becomes effective, the municipality shall:

30 A. Notify all subscribers to the services for which the price list is being changed and
31 any other persons requesting notification of any changes to the municipality's price
32 list; and

33 B. Publish notice in a newspaper of general circulation in the municipality. If there
34 is no newspaper of general circulation in the municipality, the municipality shall
35 publish the notice in a newspaper of general circulation that is nearest the
36 municipality.

37 A municipality may not offer broadband service except in accordance with the prices,
38 terms and conditions set forth in the municipality's price list.

1 **7. Books and records.** A municipality shall keep accurate books and records of the
2 municipality's broadband service. The books and records required under this chapter are
3 subject to audit by the commission to verify the municipality's compliance with the
4 requirements of this chapter including pricing, record keeping and antidiscrimination.

5 **8. State universal service fund.** A municipality providing broadband service may
6 not receive distributions from the state universal service fund under section 7104.

7 **§9411. Eminent domain**

8 A municipality may not exercise its power of eminent domain to condemn the plant
9 and equipment of a private provider of broadband service for the purpose of providing
10 broadband service to a subscriber. A municipality may not exercise its power of eminent
11 domain to condemn any real property in whole or to obtain an easement for the purpose
12 of providing broadband service to a subscriber.

13 **§9412. Service quality**

14 **1. Ordinance adoption.** A municipality that provides broadband service shall adopt
15 an ordinance governing the quality of service the municipality must provide to its
16 subscribers. The ordinance must:

17 A. Be competitively neutral; and

18 B. Contain standards that are substantially similar to the standards imposed on
19 private providers operating within the geographic boundaries of the municipality
20 under the federal Telecommunications Act of 1996, Public Law 104-104 and
21 regulations issued by the Federal Communications Commission under the federal
22 Telecommunications Act of 1996, Public Law 104-104 and any applicable state
23 standards.

24 **§9413. Enforcement**

25 Before a person that has or is likely to have a substantial interest affected by a
26 municipality's violation of this chapter may file an action in District Court for violation of
27 this chapter, that person must file a written complaint with the municipality in accordance
28 with this section.

29 **1. Ordinance adoption.** A municipality that provides broadband service shall enact
30 an ordinance establishing a procedure for the filing and resolution of complaints relating
31 to the municipality's providing broadband service. The ordinance must:

32 A. Permit any person to file a complaint, including an individual subscriber or a
33 private provider that competes with the municipality in the geographic boundaries of
34 the municipality;

35 B. Establish an expedited process that requires within 45 days after the date the
36 complaint is filed that a hearing be held, unless the parties to the proceeding waive
37 the requirement of a hearing and a final decision is issued; and

1 C. Provide that failure to render a decision within 45 days is deemed a denial of
2 relief sought under the complaint. Failure to render a decision within 45 days may be
3 appealed in the same manner as a denial.

4 Appeal of a decision of the municipality may be made under the Maine Rules of Civil
5 Procedure, Rule 80B.

6 **SUMMARY**

7 This bill creates requirements that a municipality must meet in order to provide
8 broadband service to its residents. It requires the completion of a feasibility study and
9 requires the municipality to hold a referendum to decide whether the municipality may
10 offer broadband service. It includes general operation limitations, including those related
11 to the establishment of rates, the use of subsidization and the use of eminent domain. It
12 requires the adoption of ordinances relating to service quality and enforcement by a
13 municipality that elects to provide broadband service. It also removes antitrust liability
14 protections from a municipality as those protections relate to the municipality's offering
15 broadband service.

16 The bill also requires that in order to receive any grants from the ConnectME
17 Authority, the municipality must show evidence of compliance with the requirements of
18 the Maine Revised Statutes, Title 35-A, chapter 94.