



131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1791

S.P. 716

In Senate, April 25, 2023

**An Act to Make the ConnectMaine Authority Responsible for
Attachments to and Joint Use of Utility Poles and to Establish
Procedures for Broadband Service Infrastructure Crossing Railroad
Tracks**

Reference to the Committee on Energy, Utilities and Technology suggested 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 Senator: GROHOSKI of Hancock.

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

2 **Sec. 1. 35-A MRSA §711**, as amended by PL 2017, c. 199, §1, is further amended
3 to read:

4 **§711. Joint use of equipment**

5 **1. Joint use permitted.** The ~~commission~~ authority may order that joint use be
6 permitted and prescribe reasonable compensation and reasonable terms and conditions for
7 the joint use when, after a hearing had upon its own motion or upon complaint of a joint
8 use entity affected, it finds the following:

9 A. That public convenience and necessity require a joint use entity to provide
10 nondiscriminatory access to any poles, ducts, conduits or rights-of-way owned or
11 controlled by another joint use entity;

12 B. That joint use will not result in irreparable injury to the owner or other users of the
13 poles, ducts, conduits or rights-of-way or in any substantial detriment to the service;

14 C. That the joint use entities have failed to agree upon the use or the terms and
15 conditions or compensation for the use; and

16 D. That the joint use entity seeking access to the poles, ducts, conduits or rights-of-
17 way owned or controlled by another joint use entity has the technical and financial
18 capabilities to fulfill its obligations related to such joint use.

19 **2. Liability of user.** If joint use is ordered, the joint use entity to whom the use is
20 permitted is liable to the owner or other users of the poles, ducts, conduits or rights-of-way
21 for damage that may result from its use to the property of the owner or other users.

22 **3. Interests of customers.** Any actions taken or orders issued by the ~~commission~~
23 authority under this section must take into account the interests of the customers of the
24 affected joint use entities.

25 **4. Rules.** The ~~commission~~ authority shall adopt rules governing the resolution of pole
26 attachment disputes and the rates, make-ready work, terms and conditions of joint use. The
27 rules must promote competition, further the state broadband policy set forth in section
28 9202-A and ensure safe, nondiscriminatory access on just and reasonable terms. The rules
29 must also include a process for ensuring that a new joint use entity seeking access to the
30 poles, ducts, conduits or rights-of-way of another joint use entity meets the requirements
31 of subsection 1, paragraph D. In establishing rates, the ~~commission~~ authority shall consider
32 various formulas, including, but not limited to, the formula adopted by the Federal
33 Communications Commission as codified in 47 Code of Federal Regulations, Part 1,
34 Subpart J, as amended. Rules adopted or amended pursuant to this subsection are routine
35 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

36 **6. Limited jurisdiction.** A joint use entity not otherwise subject to the jurisdiction of
37 the ~~commission~~ authority is subject to ~~commission~~ authority jurisdiction only for the
38 limited purpose of matters relating to the use of the poles, conduits, ducts or rights-of-way
39 in accordance with this section.

40 **7. Definitions.** As used in this section, unless the context otherwise indicates, the
41 following terms have the following meanings.

1 A. "Information service provider" means a provider of information service as that term
2 is defined in 47 United States Code, Section 153(24).

3 A-1. "Authority" means the ConnectMaine Authority established under section 9203.

4 B. "Joint use entity" means a public utility, voice service provider, dark fiber provider,
5 wholesale or retail competitive local exchange carrier, cable television system, unlit
6 fiber provider, telecommunications service provider or information service provider.

7 B-1. "Make-ready work" has the same meaning as in section 2524, subsection 1,
8 paragraph A.

9 C. "Telecommunications service provider" means a provider of telecommunications
10 service as that term is defined in 47 United States Code, Section 153(53).

11 D. "Unlit fiber" means one or more strands within a bundle of fiber-optic cable through
12 which an associated light signal or light communication transmission must be provided
13 to provide communications service, but excluding the electronic equipment required in
14 order to render the fiber capable of transmitting communications.

15 E. "Unlit fiber provider" means a provider of unlit fiber.

16 8. Authority fees. The authority may charge and make part of a rate for an attachment
17 and joint use of a pole a reasonable fee to pay for the administration of this section.

18 **Sec. 2. 35-A MRSA §2311**, as amended by PL 2001, c. 608, §1, is further amended
19 to read:

20 **§2311. Lines along railroads; application to Public Utilities Commission when**
21 **disagreement**

22 A person maintaining or operating a telephone or electric line may construct a line
23 across, upon or along any railroad with the written permit of the person owning or operating
24 the railroad. If the person maintaining or operating a telephone or electric line and the
25 person owning or operating the railroad can not agree as to the construction or manner of
26 construction of lines upon, along or across the railroad or as to the continued operation of
27 lines constructed upon, along or across the railroad, either party may apply to the
28 commission, who, after notice to those interested, shall hear and determine the matter. The
29 commission's decision is binding upon the parties. The commission may grant the person
30 seeking to construct or operate a line a permit with appropriate terms and conditions to
31 construct or operate the line along, upon or across the railroad or, in the case of a line across
32 the railroad, authorize, subject to appropriate terms and conditions, the person to take by
33 eminent domain an easement across the railroad. The taking of an easement authorized by
34 the commission pursuant to this section must be in accordance with the procedures
35 established in chapter 65. This section does not permit the commission to authorize the
36 taking of an easement over lands owned by the State. The person seeking to construct lines
37 on the railroad shall pay the expenses of the hearing, except that if the commission finds
38 that parties owning or operating the railroad have unreasonably refused their consent, those
39 parties shall pay the expenses. Without limiting the commission's jurisdiction under this
40 section, if a railroad company and a telephone or transmission and distribution utility enter
41 into an agreement involving a utility crossing of railroad property and that agreement or
42 some other agreement provides that the commission shall resolve disputes arising under
43 the original agreement, the commission may resolve those disputes. As used in this section,
44 the term "railroad" includes, but is not limited to, a railroad whose abandonment has been

1 approved pursuant to 49 United States Code, Chapter 109. This section does not apply to a
2 broadband service provider under section 9411.

3 **Sec. 3. 35-A MRSA §2523**, as enacted by PL 2013, c. 369, Pt. E, §1, is amended to
4 read:

5 **§2523. Street lights; use of poles**

6 This section governs street lights that are attached to utility poles in the public way.
7 For purposes of this section, "authority" means the ConnectMaine Authority under section
8 9203.

9 **1. Ownership and maintenance options.** On or after October 1, 2014, a transmission
10 and distribution utility shall provide the following options to municipalities for street and
11 area lighting provided by light fixtures attached to poles owned by the transmission and
12 distribution utility or on shared-use poles in the electrical space under the contractual
13 management of the transmission and distribution utility located in the public way:

14 A. The transmission and distribution utility provides all of the components of the street
15 lighting system, including installation on the utility poles and maintenance, and
16 provides electricity delivery to the street lighting system from a power vendor selected
17 by the municipality. The transmission and distribution utility shall apply a monthly
18 charge for these services as approved by the commission that reflects the total cost to
19 provide street lighting equipment for each light and a separate charge for power
20 delivery consistent with subsection 3;

21 B. The transmission and distribution utility installs all of the components of the street
22 lighting hardware as selected, purchased and owned by the municipality on utility poles
23 owned by the transmission and distribution utility or in the electrical space under
24 contractual management of the transmission and distribution utility on shared-use poles
25 and connects the light to the power source on the pole. The transmission and
26 distribution utility may apply a one-time charge per light fixture for installation as
27 established by the ~~commission~~ authority.

28 Any repairs made by the transmission and distribution utility to the mounting hardware
29 or the power supply wire connection following installation must be billed at a rate
30 established by the ~~commission~~ authority. Maintenance of all components of the light
31 fixture is the responsibility of the municipality or its contractor. Any person
32 performing maintenance work on behalf of the municipality pursuant to this provision
33 must be qualified pursuant to applicable federal or state standards or any standards
34 established by the ~~commission~~ authority for such work and must have liability
35 insurance in an amount and with terms determined by the ~~commission~~ authority. Light
36 locations, the street lighting hardware installed and delivery charges are governed by
37 subsections 2 and 3; and

38 C. The transmission and distribution utility connects to the power lines a light fixture
39 either owned by or owned and installed by the municipality or its contractor on a pole
40 owned by the transmission and distribution utility or on a shared-use pole in the
41 electrical space under the contractual management of the transmission and distribution
42 utility. Light locations, the street lighting hardware installed and delivery charges are
43 governed by subsections 2 and 3. Maintenance of the light fixture and mounting
44 hardware is the responsibility of the municipality or its contractor. Any person

1 installing or working on municipally owned street lighting equipment pursuant to this
2 paragraph on behalf of the municipality must be qualified pursuant to applicable federal
3 and state standards or any standards established by the ~~commission~~ authority for such
4 work and must have liability insurance in an amount and with terms determined by the
5 ~~commission~~ authority. The transmission and distribution utility may apply a one-time
6 power connection charge per light fixture as established by the ~~commission~~ authority.

7 **2. Lighting location and installation.** For municipally owned street lighting
8 hardware located on poles owned by the transmission and distribution utility or in the
9 electrical space under the contractual management of the transmission and distribution
10 utility on shared-use poles in the public way, the location on the pole and the street lighting
11 hardware installed, as well as any associated charges, are governed by the following
12 provisions.

13 A. The ~~commission~~ authority shall establish criteria, based on standard utility industry
14 practice, for determining possible locations on the utility pole for the street lighting
15 hardware, determining any changes that may be needed, including, but not limited to,
16 relocating equipment already on the pole, installing a taller pole or bracing an existing
17 pole, as well as determining any one-time fees the transmission and distribution utility
18 may charge the municipality for making the determinations and undertaking the work
19 necessitated by the determinations. The criteria must also specify the conditions under
20 which a request from a municipality to locate a light fixture on a pole may reasonably
21 be denied by the transmission and distribution utility.

22 B. The ~~commission~~ authority shall establish basic criteria, consistent with standard
23 utility industry practice, for municipally owned street lighting hardware installed on
24 utility poles that address any reasonable safety and compatibility issues with other
25 equipment on or uses of the pole. The criteria must provide a basis for determining
26 when no additional assessment work, and related fees pursuant to paragraph A, would
27 be warranted for a replacement light fixture because the new light fixture places
28 comparable or lower demands on the utility pole and related utility equipment than the
29 light fixture being replaced.

30 **3. Delivery rates and associated charges.** The commission shall establish through
31 appropriate proceedings the charges for the transmission and distribution utility to deliver
32 electricity to the municipal street lighting systems as provided in subsection 1. For
33 municipal street lighting system options described in subsection 1, paragraphs B and C, the
34 commission shall determine what, if any, ongoing fees beyond the power-only delivery
35 charge may be assessed, including except a pole attachment fee, which is determined by
36 the authority under section 711, subsection 4. In making this determination, the
37 commission shall weigh, among other factors, the municipal interest to serve the general
38 public and the location of the poles in municipal rights-of-way.

39 **4. Transfer of ownership.** A transmission and distribution utility shall allow a
40 municipality to transfer utility-owned street and area lighting for which the municipality is
41 billed to either form of municipal ownership in subsection 1, paragraphs B and C in a time
42 frame and under terms established by the ~~commission~~ authority. The ~~commission~~ authority
43 shall also determine a fair and equitable cost for all aspects of the transfer and establish
44 guidelines to best enable the contiguous ownership of lighting fixtures.

45 **Sec. 4. 35-A MRSA §9204-A, sub-§9** is enacted to read:

1 **9. Attachments and joint use of utility poles.** The authority shall manage and
2 administer the joint use of and attachments to utility poles under section 711.

3 **Sec. 5. 35-A MRSA §9411** is enacted to read:

4 **§9411. Fiber-optic broadband lines crossing railroads**

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

7 A. "Actual flagging expenses" means expenses directly attributable to the cost of
8 maintaining flaggers at the point of a crossing during the period of time construction is
9 actually occurring.

10 B. "Broadband service provider" means a provider of broadband Internet access service
11 as defined in section 9301, subsection 1, paragraph A.

12 C. "Crossing" means the point at which a broadband service provider's infrastructure
13 crosses the tracks of a railroad, including a railroad whose abandonment has been
14 approved pursuant to 49 United States Code, Chapter 109.

15 D. "Direct expenses" means:

16 (1) The cost of inspecting and monitoring a crossing site;

17 (2) Administrative and engineering costs for review of specifications and for
18 entering a crossing on the railroad's books, maps and property records and other
19 reasonable administrative and engineering costs incurred as a result of the crossing;

20 (3) Document and preparation fees associated with a crossing and any engineering
21 specifications related to the crossing; and

22 (4) Actual flagging expenses associated with a crossing.

23 E. "Fiber-optic broadband line" means:

24 (1) A fiber-optic cable consisting of one or more thin flexible fibers with a glass
25 core through which light signals can transmit data as pulses, a coaxial cable or
26 other wireline system of technology used for broadband distribution; or

27 (2) The middle mile infrastructure to Internet service providers.

28 F. "License fee" means the fee under subsection 7 to be paid by a broadband service
29 provider to the railroad company for a crossing, including all occupancy or real
30 property rights.

31 G. "Railroad company" includes a company, trustee or other person that owns, leases
32 or operates a railroad or owns or leases the land upon which a railroad is operated and
33 any company, trustee or other person to which a railroad company has granted rights
34 to collect or retain all or a portion of any revenue stream owed by a 3rd party for use
35 of or access to a railroad company's facilities or property.

36 **2. Application to railroad company.** If a broadband service provider determines it
37 necessary in the construction of the provider's systems to cross the infrastructure of a
38 railroad company, including the company's tracks, bridges, facilities and all railroad
39 company rights-of-way and easements, the broadband service provider shall submit an
40 application for the crossing to the railroad company. The application must include:

- 1 A. The license fee described in subsection 7;
- 2 B. Plans prepared by a registered professional engineer including design plans,
- 3 construction plans, bore plans, fraction mitigation plans, dewatering plans, rigging and
- 4 lifting plans and any other pertinent plans considered necessary;
- 5 C. The location of the crossing, including whether the crossing is located in a public
- 6 right-of-way;
- 7 D. The proposed date of commencement of work;
- 8 E. The anticipated duration of the work on the crossing;
- 9 F. The areas in which personnel will work; and
- 10 G. The contact information of the broadband service provider's point of contact.

11 Notice must also be provided to the transmission and distribution utility in whose service
12 territory the crossing is proposed to be located.

13 **3. Application procedure.** The procedure for an application under subsection 2 is as
14 set out in this subsection.

15 A. Upon receipt of the application, the railroad company shall acknowledge receipt to
16 the broadband service provider of the application.

17 B. The railroad company shall review the application and may request additional
18 information or clarification from the broadband service provider within 15 days of
19 receipt of the application. If additional information or clarification is requested, the
20 broadband service provider must respond within 10 days of the receipt of the request.

21 C. The railroad company shall approve the broadband service provider's crossing
22 application within 35 days from the date the application is received unless the railroad
23 company petitions the commission pursuant to subsection 9.

24 **4. Crossing requirements.** A proposed crossing must be:

25 A. Located, constructed and operated so as not to impair, impede or obstruct, in any
26 material degree, the works and operations of the railroad to be crossed;

27 B. Supported by permanent and proper structures and fixtures; and

28 C. Controlled by customary and approved appliances, methods and regulations to
29 prevent damage to the works of the railroad and ensure the safety of the railroad's
30 passengers.

31 **5. Coordination of schedules.** Within 30 days of the approval of the crossing
32 application or such later date as indicated in the application or mutually agreed upon by the
33 railroad company and the broadband service provider, the railroad company and the
34 broadband service provider shall coordinate the schedule of the construction dates under
35 subsection 2, paragraphs D and E.

36 **6. Responsibilities of the railroad company and the broadband service provider.**

37 The broadband service provider is responsible for all aspects of the implementation of the
38 crossing, including the construction and installation of the fiber-optic broadband lines and
39 all related equipment, conduits, wire masts, poles, towers, attachments and other
40 infrastructure. The broadband service provider is responsible for ensuring that the crossing
41 is constructed and operated in accordance with accepted industry standards, including

1 standards established by the National Electrical Safety Code, good utility practice and
2 industry-standard joint use processes of electric utilities. The railroad company is
3 responsible for flagging operations and other protective measures that the railroad company
4 determines appropriate during the actual construction of fiber-optic broadband lines.

5 **7. Costs; license fee.** The broadband service provider is responsible for the costs of a
6 crossing under this section. The license fee is \$2,000 for each crossing, unless:

7 A. Otherwise agreed to by the broadband service provider and the railroad company;

8 B. The railroad company has petitioned the commission under subsection 9 and the
9 commission has ordered a fee of a different amount, in which case the broadband
10 service provider shall pay the railroad company the different amount; or

11 C. The crossing is within a public right-of-way, in which case no license fee may be
12 assessed.

13 **8. Reimbursement of railroad company direct expenses.** The broadband service
14 provider shall reimburse the railroad company for direct expenses in addition to the license
15 fee. Direct expenses may not exceed \$5,000 unless otherwise agreed to by the broadband
16 service provider and the railroad company or the railroad company petitions the
17 commission under subsection 9 for additional reimbursement and the commission has
18 ordered a different amount of reimbursement. The railroad company shall substantiate with
19 documentation and other direct evidence the direct expenses incurred to qualify for
20 reimbursement. Actual flagging expenses are pass-through expenses and may not exceed
21 the expense incurred by the railroad company.

22 **9. Petition to commission by railroad company.** If the railroad company asserts that
23 the license fee is not adequate compensation for the proposed crossing, the proposed
24 crossing will cause undue hardship on the railroad company or the proposed crossing will
25 create the imminent likelihood of danger to public health or safety, the railroad company
26 may petition the commission for relief and provide simultaneous notice to the broadband
27 service provider within 35 days from the date the broadband service provider's application
28 is submitted under subsection 2. The commission may make any necessary findings of fact
29 and determinations related to the adequacy of compensation, the existence of undue
30 hardship on the railroad company or the imminent likelihood of danger to public health or
31 safety and any relief to be granted, including any amount to which the railroad company is
32 entitled in excess of the license fee set out in subsection 7. If the railroad company asserts
33 only that the license fee is not adequate compensation for the specified crossing, the issue
34 of compensation may be considered by the commission after the commencement or
35 completion of the work.

36 **10. Petition to commission by broadband service provider.** The broadband service
37 provider may petition the commission for relief if the railroad company does not comply
38 with this section or has otherwise wrongfully rejected or delayed its application. Upon
39 receipt of a petition under this subsection, the commission:

40 A. May employ expert engineers, to be paid equally by the railroad company and the
41 broadband service provider, to advise the commission or a representative of the
42 commission in examining the location, plans, specifications and descriptions of
43 appliances and the methods proposed to be employed;

1 B. Shall hear any objections and consider any modifications offered by the railroad
2 company; and

3 C. At such time as the commission may determine, shall reject, approve or modify the
4 plans and specifications or issue a ruling on any other matter brought before the
5 commission.

6 **11. Period of adjudication.** The commission shall issue a final order on any matter
7 adjudicated under subsection 9 or 10 within 90 days of the petition's initial filing. The
8 commission has sole jurisdiction to hear and resolve claims between a railroad company
9 and a broadband service provider concerning a crossing under this section.

10 **12. Abandoned track.** Notwithstanding the provisions of subsection 7, if a broadband
11 service provider submits an application to a railroad company to cross a section of track
12 that has been legally abandoned pursuant to an order of a federal or state agency having
13 jurisdiction over the track and that is not being used for railroad service, the license fee
14 may not exceed \$1,000.

15 **13. State right-of-way.** The State shall grant a right-of-way to a broadband service
16 provider seeking to use the right-of-way for broadband deployment to the extent that the
17 State owns an interest in real property crossed by a railroad or manages real property not
18 owned by the State that is crossed by a railroad.

19 **14. Insurance.** A broadband service provider shall maintain a commercial general
20 liability insurance policy or railroad protective liability insurance policy that:

- 21 A. Does not exclude work within 50 feet of a railroad right-of-way;
- 22 B. Includes the railroad company as an additional insured; and
- 23 C. Remains in effect during the period of time construction pursuant to this section is
24 occurring.

25 **15. Liberal construction.** The provisions of this section must be liberally construed
26 and construed in favor of broadband expansion.

27 **SUMMARY**

28 This bill directs that the ConnectMaine Authority be responsible for the management
29 and administration of attachments to and joint use of utility poles. The bill also establishes
30 a procedure by which broadband service providers that need to cross a railroad track with
31 broadband infrastructure may apply to a railroad company, provides for responsibility of
32 costs in the crossing by the broadband service provider and provides for payment of a
33 license fee and reimbursement of expenses to the railroad company. The bill also
34 establishes procedures for either the railroad company or the broadband service provider to
35 petition the Public Utilities Commission if the railroad company and broadband service
36 provider cannot agree on the terms of the crossing of the railroad track.