

**HOUSE . . . . . No. 4158**

By Mr. Murphy of Burlington, for the committee on Ways and Means, that the Bill relating to economic recovery through broadband initiatives in Massachusetts (printed in House, No. 4076) ought to pass with an amendment substituting therefore a bill with the same title (House, No. 4158). July 14, 2009.



**The Commonwealth of Massachusetts**

In the Year Two Thousand and Nine.

**AN ACT RELATING TO ECONOMIC RECOVERY THROUGH  
BROADBAND INITIATIVES IN MASSACHUSETTS.**

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is forthwith to access available federal funds and ensure Massachusetts' immediate economic recovery by increasing broadband access and infrastructure, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. Section 3 of chapter 40A of the General Laws, as appearing in the 2008
- 2 Official Edition, is hereby amended by striking out, in lines 49 and 57, the word "energy"
- 3 and inserting in place thereof the following words:- cable or the department of public
- 4 utilities,
- 5
- 6 SECTION 2. Said section 3 of said chapter 40A of the General Laws, as so appearing; is
- 7 hereby further amended by striking out, in line 61, the word "public" and inserting in
- 8 place thereof the following words:- public. For the purpose of this section the petition of

9 a public service corporation relating to siting of a communications or cable television  
10 facility shall be filed with the department of telecommunications and cable. All other  
11 petitions shall be filed with the department of public utilities.

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13 SECTION 3. Section 6B of chapter 40J of the General Laws, as so appearing, is hereby  
14 amended by inserting after the word "financed", in line 58, the following words:- or  
15 acquired.

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17 SECTION 4. Said section 6B of said chapter 40J of the General Laws, as so appearing, is  
18 hereby amended by inserting after the word "entities", in line 61, the following words:- ;  
19 provided, however, that acquisition of (i) an indefeasible right of use of facilities used for  
20 the transmission of intelligence by electricity for a period of no less than 20 years, or for  
21 such lesser term and subject to such other conditions as the board may determine to be  
22 appropriate to protect the public interest or (ii) a license or other agreement to use  
23 electromagnetic spectrum licensed by the federal government shall be considered to be  
24 acquisition of an ownership interest in broadband infrastructure.

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26 SECTION 5. Said section 6B of said chapter 40J of the General Laws, as so appearing, is  
27 hereby further amended by inserting at the end of subsection (d) the following  
28 paragraphs:-

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30 Notwithstanding any general or special law or regulation to the contrary, the department  
31 of highways may lease or license for a term not to exceed 25 years any interest in real  
32 property deemed appropriate by the corporation and the commissioner of the department  
33 of highways to promote the objectives of this chapter. The nature and extent of such  
34 interest shall be transferred on such terms and conditions as the commissioner of the  
35 department of highways may determine. The terms and conditions of any conveyance  
36 executed pursuant to this subsection shall be approved by the commissioner of the  
37 division of capital asset and management, in consultation with the inspector general and  
38 the secretary of transportation. Any interest acquired by the corporation may be  
39 transferred, leased or licensed by the corporation for use by public entities or non-profit  
40 or for-profit private sector entities subject to the approval of the commissioner of the  
41 department of highways and subject to the provisions of this section, including without  
42 limitation, such right of reverter at the expiration of the term. The corporation shall lease  
43 or license any such interest using such competitive processes and procedures as may be  
44 reviewed and approved by the inspector general. Notice that such interest is available for  
45 lease or license shall be publicly advertised in 2 daily newspapers of general circulation  
46 published in the city of Boston, and, if such real property is located in any other city or  
47 town, in a newspaper of general circulation published in such other city or town, once a

48 week for 2 successive weeks. Such advertisements shall state the availability of such  
49 interest, the nature of the competitive process and other information deemed relevant,  
50 including the time and place where all pertinent information relative to the interest to be  
51 leased or licensed may be obtained, the criteria for selection of a successful proponent,  
52 and the time, place and manner for the submission of bids, proposals and the opening  
53 thereof. The consideration for any such interest shall be within the estimated range of the  
54 fair market value of the interest as determined by the corporation based upon an  
55 independent professional appraisal. Any such interest conveyed by the department of  
56 highways shall revert to the commonwealth at the expiration of any such term.  
57

58 The corporation may exercise any of its powers to assist or enable the institute to  
59 fulfill its purposes as set forth in section 6B, including without limitation the powers set  
60 forth in paragraph (e) of section 4, and such purposes are hereby deemed and held to be  
61 purposes of the corporation. Without limiting the generality of the foregoing, the  
62 corporation shall have the power to develop, lease or otherwise acquire, own, hold,  
63 dispose of and encumber conduit, fiber, towers and other real and personal property  
64 related to broadband infrastructure that shall be necessary or convenient to the fulfillment  
65 of such purposes. The exercise by the corporation of any such powers shall be deemed  
66 and held to be an essential governmental function.