

HOUSE No. 4158

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Relating to economic recovery through broadband initiatives in Massachusetts.

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” and
3 inserting in place thereof the following words:- cable or the department of public utilities,

4 SECTION 2. Said section 3 of said chapter 40A of the General Laws, as so appearing, is
5 hereby further amended by striking out, in line 61, the word “public” and inserting in place
6 thereof the following words:- public. For the purpose of this section the petition of a public
7 service corporation relating to siting of a communications or cable television facility shall be
8 filed with the department of telecommunications and cable. All other petitions shall be filed with
9 the department of public utilities.

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

12 SECTION 4. Said section 6B of said chapter 40J of the General Laws, as so appearing, is
13 hereby amended by inserting after the word “entities”, in line 61, the following words:- ;

provided, however, that acquisition of (i) an indefeasible right of use of facilities used for the transmission of intelligence by electricity for a period of no less than 20 years, or for such lesser term and subject to such other conditions as the board may determine to be appropriate to protect the public interest or (ii) a license or other agreement to use electromagnetic spectrum licensed by the federal government shall be considered to be acquisition of an ownership interest in broadband infrastructure.

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

Notwithstanding any general or special law or regulation to the contrary, the department of highways may lease or license for a term not to exceed 25 years any interest in real property deemed appropriate by the corporation and the commissioner of the department of highways to promote the objectives of this chapter. The nature and extent of such interest shall be transferred on such terms and conditions as the commissioner of the department of highways may determine. The terms and conditions of any conveyance executed pursuant to this subsection shall be approved by the commissioner of the division of capital asset and management, in consultation with the inspector general and the secretary of transportation. Any interest acquired by the corporation may be transferred, leased or licensed by the corporation for use by public entities or non-profit or for-profit private sector entities subject to the approval of the commissioner of the department of highways and subject to the provisions of this section, including without limitation, such right of reverter at the expiration of the term. The corporation shall lease or license any such interest using such competitive processes and procedures as may be reviewed and approved by the inspector general. Notice that such interest is available for lease or license shall be publicly advertised in 2 daily newspapers of general circulation

published in the city of Boston, and, if such real property is located in any other city or town, in a newspaper of general circulation published in such other city or town, once a week for 2 successive weeks. Such advertisements shall state the availability of such interest, the nature of the competitive process and other information deemed relevant, including the time and place where all pertinent information relative to the interest to be leased or licensed may be obtained, the criteria for selection of a successful proponent, and the time, place and manner for the submission of bids, proposals and the opening thereof. The consideration for any such interest shall be within the estimated range of the fair market value of the interest as determined by the corporation based upon an independent professional appraisal. Any such interest conveyed by the department of highways shall revert to the commonwealth at the expiration of any such term.

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