

CHAPTER 267  
SB 101 – FINAL VERSION

02/14/13 0251s  
8May2013... 1357h  
8May2013... 1526h  
06/26/13 2185EBA

2013 SESSION

13-0907  
06/04

SENATE BILL **101**

AN ACT relative to collocation and modification of personal wireless services facilities.

SPONSORS: Sen. Bradley, Dist 3; Sen. Odell, Dist 8; Sen. Fuller Clark, Dist 21;  
Sen. Woodburn, Dist 1; Sen. Boutin, Dist 16; Rep. Copeland, Rock 19;  
Rep. Cali-Pitts, Rock 30; Rep. Devine, Rock 4; Rep. Introne, Rock 5

COMMITTEE: Energy and Natural Resources

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ANALYSIS

This bill:

I. Provides for the collocation and modification of personal wireless facilities on existing structures.

II. Provides for review of collocation and modification applications.

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Explanation: Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT                   relative to collocation and modification of personal wireless services facilities.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1           267:1 New Paragraph; Personal Wireless Services Facilities; Purposes. Amend RSA 12-K:1 by  
2 inserting after paragraph V the following new paragraph:

3           V-a. It is the policy of this state to facilitate the provision of broadband and other advanced  
4 personal wireless services across the state; and to promote access to broadband and advanced  
5 personal wireless services for all residents, students, government agencies, and businesses to ensure  
6 the availability of educational opportunities, economic development, and public safety services  
7 throughout New Hampshire. Deployment of personal wireless service facilities infrastructure is also  
8 critical to ensuring that first responders can provide for the health and safety of all residents of  
9 New Hampshire. Consistent with the federal Middle Class Tax Relief and Job Creation Act of 2012,  
10 Public Law 112-96, section 6409, which creates a national wireless emergency communications  
11 network for use by first responders that will be dependent on facilities placed on existing antenna  
12 mounts or towers, it is the policy of this state to facilitate the collocation of personal wireless services  
13 facilities on existing antenna mounts or towers in all areas of New Hampshire, while also allowing  
14 for expeditious modification of existing personal wireless service facilities to keep pace with  
15 technological improvements.

16           267:2 Personal Wireless Service Facilities; Exception. Amend RSA 12-K:1, VI to read as follows:

17           VI. ***Except as provided in RSA 12-K:10 and RSA 12-K:11***, nothing in this chapter shall  
18 be construed as altering any municipal zoning ordinance, and this chapter itself shall not be  
19 construed as a zoning ordinance.

20           267:3 Personal Wireless Facilities; Definitions. RSA 12-K:2 is repealed and reenacted to read as  
21 follows:

22           12-K:2 Definitions. In this chapter:

23           I. "Accessory equipment" means any equipment serving or being used in conjunction with a  
24 PWSF or mount. The term includes utility or transmission equipment, power supplies, generators,  
25 batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures.

26           II. "Antenna" means the equipment from which wireless radio signals are sent and received  
27 by a PWSF.

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1           III. “Applicant” means a carrier or any person engaged in the business of providing the  
2 infrastructure required for a PWSF who submits a collocation application or a modification application.

3           IV. “Authority” means each state, county, and each governing body, board, agency, office, or  
4 commission of a municipality authorized by law to make legislative, quasi judicial, or administrative  
5 decisions relative to the construction, installation, modification, or siting of PWSFs and mounts. The  
6 term shall not include state courts having jurisdiction over land use, planning, or zoning decisions  
7 made by an authority.

8           V. “Average tree canopy height” means the average height found by inventorying the height  
9 above ground level of all trees over a specified height within a specified radius.

10          VI. “Base station” means a station at the base of a mount or in the area near the PWSF that  
11 is authorized to communicate with mobile stations, generally consisting of radio transceivers,  
12 antennas, coaxial cables, power supplies, and other associated electronics.

13          VII. “Building permit” means a permit issued pursuant to RSA 676 by an authority prior to  
14 the collocation or modification of PWSFs, solely to ensure that the work to be performed by the  
15 applicant satisfies the applicable building code.

16          VIII. “Camouflaged” means for a personal wireless service facility one that is disguised,  
17 hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

18          IX. “Carrier” means a person that provides personal wireless services.

19          X. “Collocation” means the placement or installation of new PWSFs on existing towers or  
20 mounts, including electrical transmission towers and water towers, as well as existing buildings and  
21 other structures capable of structurally supporting the attachment of PWSFs in compliance with  
22 applicable codes. “Collocation” does not include a “substantial modification.”

23          XI. “Collocation application” shall mean a request submitted by an applicant to an authority  
24 for collocation on a tower or mount.

25          XII. “Director” means the director of the office of energy and planning.

26          XIII. “Disguised” means, for a PWSF, designed to look like a structure which may commonly  
27 be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles,  
28 traffic lights, or artificial tree poles.

29          XIV. “Electrical transmission tower” means an electrical transmission structure used to  
30 support high voltage overhead power lines. The term shall not include any utility pole.

31          XV. “Equipment compound” means an area surrounding or near the base of a tower or  
32 mount supporting a PWSF, and encompassing all equipment shelters, cabinets, generators, and  
33 appurtenances primarily associated with the PWSF.

34          XVI. “Equipment shelter” means an enclosed structure, cabinet, shed vault, or box near the base  
35 of a mount within which are housed equipment for PWSFs, such as batteries and electrical equipment.

36          XVII. “Height” means the height above ground level from the natural grade of a site to the

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1 highest point of a structure.

2 XVIII. “Modification” means the replacement or alteration of an existing PWSF within a  
3 previously approved equipment compound or upon a previously approved mount. Routine  
4 maintenance of an approved PWSF shall not be considered a modification.

5 XIX. “Modification application” means a request submitted by an applicant to an authority  
6 for modification of a PWSF.

7 XX. “Mount” means the structure or surface upon which antennas are mounted and includes  
8 roof-mounted, side-mounted, ground-mounted, and structure-mounted antennas on an existing  
9 building, as well as an electrical transmission tower and water tower, and excluding utility poles.

10 XXI. “Municipality” means any city, town, unincorporated town, or unorganized place within  
11 the state.

12 XXII. “Personal wireless service facility” or “PWSF” or “facility” means any “PWSF” as  
13 defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including  
14 facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes  
15 the set of equipment and network components, exclusive of the underlying tower or mount,  
16 including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations,  
17 power supplies, cabling, and associated equipment necessary to provide personal wireless services.

18 XXIII. “Radio frequency emissions” means the emissions from personal wireless service  
19 facilities, as described in the federal Telecommunications Act of 1996, 47 U.S.C. section  
20 332(c)(7)(B)(iv).

21 XXIV. “Tower” shall mean a freestanding or guyed structure, such as a monopole, monopine,  
22 or lattice tower, designed to support PWSFs.

23 XXV. “Substantial modification” means the mounting of a proposed PWSF on a tower or  
24 mount which, as a result of single or successive modification applications:

25 (a) Increases or results in the increase of the permitted vertical height of a tower, or the  
26 existing vertical height of a mount, by either more than 10 percent or the height of one additional  
27 antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is  
28 greater; or

29 (b) Involves adding an appurtenance to the body of a tower or mount that protrudes  
30 horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the  
31 tower or mount at the level of the appurtenance, whichever is greater, except where necessary to  
32 shelter the antenna from inclement weather or to connect the antenna to the tower or mount via  
33 cable; or

34 (c) Increases or results in the increase of the permitted square footage of the existing  
35 equipment compound by more than 2,500 square feet; or

36 (d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the

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1 camouflage.

2       XXVI. “Utility pole” means a structure owned and/or operated by a public utility,  
3 municipality, electric membership corporation, or rural electric cooperative that is designed  
4 specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity,  
5 or to provide lighting.

6       XXVII. “Water tower” means a water storage tank, or a standpipe or an elevated tank  
7 situated on a support structure, originally constructed for use as a reservoir or facility to store or  
8 deliver water.

9       267:4 Review of New Towers. RSA 12-K:3 is repealed and reenacted to read as follows:

10       12-K:3 Wireless Carriers Doing Business in this State. Each carrier or its appointed agent doing  
11 business, or seeking to do business, in this state shall:

12       I. Be allowed to construct new towers, provided that these towers comply with municipal  
13 regulations for maximum height or maximum allowed height above the average tree canopy height,  
14 subject to any exceptions, waivers, or variances allowed or granted by the municipality.

15       II. Comply with all applicable state and municipal land use regulations laws.

16       III. Comply with all federal, state, and municipal statutes, rules, and regulations, including  
17 federal radio frequency radiation emission regulations and the National Environmental Policy Act of  
18 1969, as amended.

19       IV. Provide information at the time of application to construct an externally visible tower or  
20 to make a substantial modification to an existing tower, mount, or PWSF, or prior to construction if  
21 no approval is required, to the municipality in which the tower, mount, or PWSF is to be constructed  
22 and to the office of energy and planning as follows:

23       (a) A copy of its license from the Federal Communications Commission (FCC)  
24 demonstrating its authority to provide personal wireless services in the geographical area where the  
25 PWSF is located, or where a person is seeking to construct a new tower or make a substantial  
26 modification to a tower, mount, or PWSF on behalf of a carrier, a signed authorization from a  
27 representative of the carrier, and a copy of the carrier’s license.

28       (b) Upon request, maps showing all of the carrier’s current externally visible tower and  
29 monopole PWSF locations in the state within a 20-mile radius of the proposed externally visible new  
30 ground-mounted PWSF, including permanent, temporary or to-be-decommissioned sites, if any.

31       (c) Upon request, a description of why less visually intrusive alternatives for this tower  
32 or mount were not proposed.

33       267:5 Fall Zones. RSA 12-K:5 is repealed and reenacted to read as follows:

34       12-K:5 Fall Zones. Zoning ordinances may include provisions for fall zones for new towers and  
35 substantial modifications to the extent necessary to protect public safety.

36       267:6 Personal Wireless Facilities Map. Amend RSA 12-K:6 to read as follows:

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1           12-K:6 Personal Wireless Services Facilities Map. The director of the office of energy and  
2 planning shall develop a personal wireless service facilities map for the state. This map shall  
3 include all externally visible tower and monopole PWSF locations in the state, both active and  
4 inactive, for all carriers. This map shall also include for each of the above locations a site  
5 description [~~as described in RSA 12-K:3, IV(e)~~]. Upon request of the director, any wireless carrier  
6 or its appointed agent doing business in this state shall provide a map of all of its existing  
7 externally visible tower and monopole PWSF locations in the state and a site description of each  
8 [~~as described in RSA 12-K:3, IV(e)~~].

9           267:7 Regional Notification. Amend RSA 12-K:7, I and II to read as follows:

10           I.(a) Any municipality or [~~state authority or agency~~] **other authority** which receives an  
11 application to construct a [PWSF] **new tower or to complete a substantial modification to an**  
12 **existing tower or mount** which will be visible from any other New Hampshire municipality within  
13 a 20-mile radius shall provide written notification of such application and pending action to such  
14 other municipality within the 20-mile radius.

15           (b) This notification shall include sending a letter to the governing body of the  
16 municipality within the 20-mile radius detailing the pending action on the application and shall also  
17 include publishing a notice in a newspaper customarily used for legal notices by such municipality  
18 within the 20-mile radius, [~~stating the specifics of~~] **presenting a synopsis of** the application, [~~the~~  
19 ~~pending action, and~~] **providing relevant information concerning the applicable permits**  
20 **required and** the date of the next public hearing on the application. **Where a public hearing is**  
21 **scheduled by the local governing body**, such notice shall be published not less than 7 days nor  
22 more than 21 days prior to the public hearing date.

23           II.(a) Any person, prior to constructing a new [PWSF] **tower** in any location where no  
24 approval is required but which will be visible from any other New Hampshire municipality within a  
25 20-mile radius, shall provide written notification of such planned construction to such other  
26 municipality within the 20-mile radius.

27           (b) This notification shall include sending a letter to the governing body of the  
28 municipality within the 20-mile radius detailing the planned construction and shall also include  
29 publishing a notice in a newspaper customarily used for legal notices by such municipality within a  
30 20-mile radius, [~~outlining~~] **presenting a synopsis of** the planned construction.

31           267:8 New Sections; Application Review; Limitations of Applications. Amend RSA 12-K by  
32 inserting after section 9 the following new sections:

33           12-K:10 Application Review. Notwithstanding any ordinance, bylaw, or regulation to the  
34 contrary, in order to ensure uniformity across New Hampshire with respect to the process for  
35 reviewing a collocation application and a modification application, each authority shall follow the  
36 following process:

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1           I. Collocation applications and modification applications shall be reviewed for conformance  
2 with applicable building permit requirements but shall not otherwise be subject to zoning or land use  
3 requirements, including design or placement requirements, or public hearing review.

4           II. The authority, within 45 calendar days of receiving a collocation application or  
5 modification application, shall:

6           (a) Review the collocation application or modification application in light of its  
7 conformity with applicable building permit requirements and consistency with this chapter. A  
8 collocation application or modification application is deemed to be complete unless the authority  
9 notifies the applicant in writing, within 15 calendar days of submission of the specific deficiencies in  
10 the collocation application or modification application which, if cured, would make the collocation  
11 application or modification application complete. Upon receipt of a timely written notice that a  
12 collocation application or modification application is deficient, an applicant shall have 15 calendar  
13 days from receiving such notice to cure the specific deficiencies. If the applicant cures the  
14 deficiencies within 15 calendar days, the collocation application or modification application shall be  
15 reviewed and processed within 45 calendar days from the initial date received by the authority. If  
16 the applicant requires more than 15 calendar days to cure the specific deficiencies, the 45 calendar  
17 days deadline for review shall be extended by the same period of time;

18           (b) Make its final decision to approve or disapprove the collocation application or  
19 modification application; and

20           (c) Advise the applicant in writing of its final decision.

21           III. If the authority fails to act on a collocation application or modification application within  
22 the 45 calendar days review period, the collocation application or modification application shall be  
23 deemed approved.

24           IV. Notwithstanding anything to the contrary in this chapter, an authority may not  
25 mandate, require or regulate the installation, location, or use of PWSFs on utility poles.

26           V. A party aggrieved by the final action of an authority, either by an affirmative denial of a  
27 collocation application or modification application under paragraph II or by its inaction, may bring  
28 an action for review in superior court for the county in which the PWSF is situated.

29           12-K:11 Limitations on Applications.

30           I. In order to ensure uniformity across New Hampshire with respect to the consideration of  
31 every collocation application and modification application, no authority may:

32           (a) Require an applicant to submit information about, or evaluate an applicant's  
33 business decisions with respect to, its designed service, customer demand for service, or quality of its  
34 service to or from a particular area or site.

35           (b) Evaluate a collocation application or modification application based on the  
36 availability of other potential locations for the placement of towers, mounts, or PWSFs.

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1           (c) Decide which type of personal wireless services, infrastructure, or technology shall be  
2 used by the applicant.

3           (d) Require the removal of existing mounts, towers, or PWSFs, wherever located, as a  
4 condition to approval of a collocation application or modification application.

5           (e) Impose environmental testing, sampling, or monitoring requirements or other  
6 compliance measures for radio frequency emissions on PWSFs that are categorically excluded under  
7 the FCC's rules for radio frequency emissions pursuant to 47 C.F.R. section 1.1307(b)(1).

8           (f) Establish or enforce regulations or procedures for radio frequency signal strength or  
9 the adequacy of service quality.

10           (g) In conformance with 47 U.S.C. section 332(c)(7)(B)(iv), reject a collocation application  
11 or modification application, in whole or in part, based on perceived or alleged environmental effects  
12 of radio frequency emissions.

13           (h) Impose any restrictions with respect to objects in navigable airspace that are greater  
14 than or in conflict with the restrictions imposed by the Federal Aviation Administration.

15           (i) Prohibit the placement of emergency power systems that comply with federal and  
16 New Hampshire environmental requirements.

17           (j) Charge an application fee, consulting fee or other fee associated with the submission,  
18 review, processing, and approval of a collocation application or modification application that is not  
19 required for similar types of commercial development within the authority's jurisdiction. Fees  
20 imposed by an authority or by a third-party entity providing review or technical consultation to the  
21 authority must be based on actual, direct, and reasonable administrative costs incurred for the  
22 review, processing, and approval of a collocation application or modification application.  
23 Notwithstanding the foregoing, in no event shall an authority or any third-party entity include  
24 within its charges any travel expenses incurred in a third-party's review of a collocation application  
25 or modification application, and in no event shall an applicant be required to pay or reimburse an  
26 authority for consultant or other third-party fees based on a contingency or result-based  
27 arrangement.

28           (k) Impose surety requirements, including bonds, escrow deposits, letters of credit, or  
29 any other type of financial surety, to ensure that abandoned or unused facilities can be removed  
30 unless the authority imposes similar requirements on other permits for other types of commercial  
31 development or land uses. If surety requirements are imposed, they shall be competitively neutral,  
32 non-discriminatory, reasonable in amount, and commensurate with the historical record for local  
33 facilities and structures that are abandoned.

34           (l) Condition the approval of a collocation application or modification application on the  
35 applicant's agreement to provide space on or near any tower or mount for the authority or local



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1 governmental services at less than the market rate for space or to provide other services via the  
2 structure or facilities at less than the market rate for such services.

3 (m) Limit the duration of the approval of a collocation application or modification  
4 application.

5 (n) Discriminate on the basis of the ownership, including by the authority, of any  
6 property, structure, or tower when evaluating collocation applications or modification applications.

7 II. Notwithstanding the limitations in paragraph I, nothing in this chapter shall be  
8 construed to:

9 (a) Limit or preempt the scope of an authority's review of zoning, land use, or permit  
10 applications for the siting of new towers or for substantial modifications to existing towers, mounts,  
11 or PWSFs.

12 (b) Prevent a municipality from exercising its general zoning and building code  
13 enforcement powers pursuant to RSA 672 through RSA 677 and as set forth in this chapter.

14 267:9 New Paragraph; Powers of Zoning Boards of Adjustment. Amend RSA 674:33 by inserting  
15 after paragraph V the following new paragraph:

16 VI. Neither a special exception nor a variance shall be required for a collocation or a  
17 modification of a personal wireless service facility, as defined in RSA 12-K:2.

18 267:10 New Paragraph; Power to Review Site Plans; Collocation or Modification of Personal  
19 Wireless Service Facility. Amend RSA 674:43 by inserting after paragraph IV the following new  
20 paragraph:

21 V. Site plan review shall not be required for a collocation or a modification of a personal  
22 wireless service facility, as defined in RSA 12-K:2.

23 267:11 New Paragraph; Building Permits Restricted. Amend RSA 676:13 by inserting after  
24 paragraph III the following new paragraph:

25 IV. The time for the building inspector to act upon building permits for collocation  
26 applications and modification applications for personal wireless service facilities shall be governed by  
27 RSA 12-K:10. In the event that the form or set of standards for a building permit application  
28 conflicts with any of the limitations under RSA 12-K:11 for a collocation application or a modification  
29 application for a personal wireless service facility, the limitations in RSA 12-K:11 shall control.

30 267:12 Severability. If any provision of this chapter or the application thereof to any person or  
31 circumstance is held invalid, such invalidity shall not affect other provisions or applications of the  
32 chapter which can be given effect without the invalid provision or application, and to that end the  
33 provisions of this chapter are declared to be severable.

34 267:13 Contingency. If SB 124-FN of the 2013 regular legislative session becomes law, RSA  
35 674:33, VI, as inserted by section 9 of this act, shall be renumbered as RSA 674:33, VII.

36 267:14 Effective Date. This act shall take effect 60 days after its passage.

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- 1 Approved: July 24, 2013
- 2 Effective Date: September 22, 2013