

HB 286 – AS AMENDED BY THE HOUSE

29Jan2014... 2354h

2013 SESSION

13-0820
06/05

HOUSE BILL **286**

AN ACT relative to broadband infrastructure.

SPONSORS: Rep. Townsend, Graf 11; Rep. Pastor, Graf 12; Sen. Kelly, Dist 10

COMMITTEE: Science, Technology and Energy

ANALYSIS

This bill changes requirements for the issuance of broadband infrastructure bonds by municipalities.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 broadband infrastructure.

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

1 1 Findings and Purpose. The general court finds that:

2 I. Universal, easy, and affordable access to high speed Internet service in New Hampshire is
3 essential for economic development, job creation, small business growth, state, federal, and local
4 service delivery, and educational opportunities.

5 II. Current New Hampshire law makes universal access to broadband Internet services
6 effectively impossible and discourages competition. Such lack of universal access is a significant
7 missed opportunity for building the state’s economy and putting people back to work.

8 III. The state of New Hampshire must act decisively to facilitate the infrastructure
9 investments that are needed to make broadband/high speed Internet available to its citizens, just as
10 it does with electricity, telephone service, highways, and roads.

11 IV. Open access networks and universal access are the keys to establishing a thriving,
12 competitive market offering low cost, high-speed Internet services to the public.

13 V. The state should allow our counties and municipalities to provide access to service by
14 building broadband infrastructure, provided they do not provide broadband services themselves.

15 VI. The state should facilitate rigorous competition in the broadband market and remove
16 barriers that protect vested interests and discourage competition.

17 VII. Public-private partnerships are critical to achieving success in effectively building out
18 infrastructure to the premises (i.e. “Last Mile” buildout to residential and businesses in
19 communities) because more stakeholders, rather than fewer, get engaged in and take ownership of
20 any build-out initiative.

21 VIII. The state should stimulate high speed Internet expansion by providing targeted tax
22 credits and eliminating barriers that limit our counties’ and municipalities’ ability to use revenue
23 bonds and other financial instruments to access the capital needed for infrastructure development.

24 IX. Municipalities should have control over whether to develop high speed Internet
25 infrastructure, provided that their citizens request and approve such action through the local
26 legislative process.

27 2 Municipal Finance; Purpose of Issue of Bonds or Notes. Amend RSA 33:3 to read as follows:

28 33:3 Purpose of Issue of Bonds or Notes. A municipality or county may issue its bonds or notes
29 for the acquisition of land, for planning relative to public facilities, for the construction,
30 reconstruction, alteration, and enlargement or purchase of public buildings, for other public works or

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1 improvements of a permanent nature including broadband infrastructure as defined in RSA 38:38,
2 I(e), ~~[to be purchased or constructed in areas not served by an existing broadband carrier or provider]~~
3 ***providing broadband service to the municipality including, at a minimum, those areas of***
4 ***the municipality having no service or no adequate service***, for the purchase of departmental
5 equipment of a lasting character, for the payment of judgments, and for purposes of economic
6 development which shall include public-private partnerships involving capital improvements, loans,
7 and guarantees. The public benefit in any public-private partnership must outweigh any benefit
8 accruing to a private party. Bonds or notes for the purposes of economic development may be issued
9 only after the governing body of the municipality or county has held hearings and presented the
10 public benefit findings to the public and after such issuance has been approved by the legislative
11 body. A municipality or county shall not issue bonds or notes to provide for the payment of expenses
12 for current maintenance and operation except as otherwise specifically provided by law.

13 3 Definitions; Revenue-Producing Facilities. Amend RSA 33-B:1, VI to read as follows:

14 VI. "Revenue-producing facilities" means water works, broadband infrastructure as defined
15 in RSA 38:38, I(e), ~~[purchased or constructed in areas not served by an existing broadband carrier or~~
16 ~~provider,]~~ sewerage systems, sewage treatment or disposal facilities, solid waste disposal or resource
17 recovery facilities, parking facilities, facilities for the production, generation, transmission, or
18 distribution of electricity or gas, any other real or personal property or interests in a municipality or
19 regional water district owned or controlled by the municipality or regional water district, from the
20 operation of which revenues are or are expected to be derived by the municipality, or regional water
21 district, and qualifying energy conservation and clean energy improvements for which a municipality
22 provides financing pursuant to RSA 53-F.

23 4 New Sections; Issuance of Revenue Bonds. Amend RSA 38 by inserting after section 41 the
24 following new sections:

25 38:42 Issuance of Revenue Bonds. A municipality shall not issue revenue bonds under RSA 33-
26 B for the purpose of financing the development, construction, reconstruction, renovation,
27 improvement, and acquisition of broadband infrastructure unless:

28 I. A request for proposals for private broadband investment in the municipality has been
29 issued and responses considered;

30 II. The local legislative body determines that the benefit to the public accruing from any
31 planned public-private partnership relating to the issuance of revenue bonds outweighs the benefit
32 accruing to the private member of the partnership. Such public benefit requirement is satisfied
33 without limitation if the governing body of the municipality has held hearings and presented the
34 public benefit findings to its citizens, and, as a consequence of weighing the testimony elicited in
35 such hearings, the legislative body approves the issuance of such bonds as required under RSA 33-B.

36 38:43 Broadband Infrastructure; Exclusion from Debt Limit. Any debt incurred for broadband
37 infrastructure by the issuance of bonds consistent with RSA 38:42 shall be outside the debt limit

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1 prescribed in RSA 33. Such debt shall at no time be included in the net indebtedness of any
2 municipality for the purpose of determining its borrowing capacity.

3 38:44 Expenditure of Funds. Funds from the issuance of a revenue bond for broadband
4 infrastructure shall only be expended to deploy broadband infrastructure in a universal and
5 nondiscriminatory manner and, at a minimum, in those areas of the municipality having no service
6 or no adequate service.

7 38:45 License and Permit Neutrality. In determining whether the public good requires a
8 municipality to grant, change, or revoke any permit or license to any entity under RSA 231:161 or
9 RSA 231:163, the effect that such action may have upon the viability or success of the municipality's
10 broadband infrastructure, whether existing, planned, or contemplated, shall not be a factor in such
11 determination or in determining the terms and conditions of any license or permit that results.

12 5 Broadband Access; Definitions. RSA 38:38 is repealed and reenacted to read as follows:

13 38:38 Broadband Access.

14 I. In this subdivision:

15 (a) "Access tariff" means the fee charged on a monthly or annual basis to broadband
16 carriers for access to the broadband infrastructure.

17 (b) "Adequate" means an area that has broadband service that meets the FCC definition
18 of broadband as it shall be revised over time

19 (c) "Broadband" means advanced communications systems capable of providing high-
20 speed transmission of services such as data, voice, and video over the Internet and other networks
21 with transmission provided by a range of technologies including digital subscriber line and fiber optic
22 cable, coaxial cable, wireless technology, and satellite. Broadband enables the convergence of voice,
23 video, and data services onto a single network.

24 (d) "Broadband carrier" means any provider of broadband services, except aggregators of
25 broadband services, as defined in section 226 of the 1996 Telecommunications Act.

26 (e) "Broadband infrastructure" means all equipment and facilities, including all changes,
27 modifications, and expansions to existing facilities, as well as the customer premises equipment used
28 to provide broadband, and any software integral to or related to the operations, support, facilitation,
29 or interconnection of such equipment, including upgrades, and any installation, operations and
30 support, maintenance, and other functions required to support the delivery of broadband.

31 (f) "Broadband service" means the offering of broadband for a fee directly to the public,
32 or to such classes of users as to be effectively available directly to the public, regardless of the
33 facilities used.

34 (g) "Open access network" means any broadband infrastructure which is open to any
35 third party users in a nondiscriminatory manner on a fair and equitable basis using publicly
36 available access tariffs for services.

37 (h) "Open access technology" means the technical and operational means, manners, and

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1 methods for any third party access to the broadband infrastructure, which shall be provided on the
2 basis of generally acceptable industry standards available at the time of access.

3 II. Except for municipally-owned networks which exclusively serve to connect municipal or
4 school offices, or both, a municipality shall use its broadband infrastructure for the purpose of
5 providing an open access network and shall make use of open access technology. No municipality
6 shall be a provider of broadband service.

7 6 Broadband Access Tariffs. Amend RSA 38:39 to read as follows:

8 38:39 Broadband Access Tariffs. For defraying the cost of acquisition, construction, payment of
9 the interest on any debt incurred, management, maintenance, operation, and repair of broadband
10 infrastructure, or the construction, enlargement, or improvement of such systems, the governing
11 body ~~may~~ **shall** establish a scale of rates called access tariffs, ~~may~~ **shall** prescribe the manner
12 and the time for the payment of such tariffs, and may change such tariffs when it deems advisable.

13 7 New Paragraph; Pole Attachments. Amend RSA 374:34-a by inserting after paragraph VIII
14 the following new paragraph:

15 IX. Pole attachments sought by a municipality for the provision of broadband access
16 pursuant to RSA 38:38 through RSA 38:45 shall be subject to this section.

17 8 Repeal. The following are repealed:

18 I. RSA 33:3-c, I(e), relative to the issuance of bonds for preliminary expenses.

19 II. RSA 33:3-g, relative to broadband infrastructure bonds.

20 III. RSA 33:6-f, relative to exclusion from debt limit; broadband infrastructure.

21 9 Effective Date. This act shall take effect July 1, 2014.