

CHAPTER 28  
HB 1111 - FINAL VERSION

11Mar2020... 1011h  
06/16/2020 1479s  
30Jun2020... 1628EBA

2020 SESSION

20-2051  
10/06

HOUSE BILL            ***1111***

AN ACT                relative to municipal broadband infrastructure bonds and establishing communications districts.

SPONSORS:            Rep. Grote, Rock. 24; Rep. K. Murray, Rock. 24; Rep. Cannon, Straf. 18; Rep. Woodcock, Carr. 2; Sen. Sherman, Dist 24

COMMITTEE:          Municipal and County Government

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AMENDED ANALYSIS

This bill allows municipalities to determine locations within the municipality unserved by a broadband provider. This bill also provides for the establishment of communication districts.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                   relative to municipal broadband infrastructure bonds and establishing communications districts.

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

1           28:1 Municipal Finance Act; Broadband Infrastructure Bonds. Amend RSA 33:3-g, I to read as  
2 follows:

3           I. A municipality or communications district formed under RSA 53-G may issue bonds for  
4 the purpose of financing the development, construction, reconstruction, **renovation**, ~~and~~  
5 improvement, **and acquisition** of broadband infrastructure in any locations within a municipality  
6 unserved by broadband as defined in RSA 38:38, I(c). Without limiting the foregoing, broadband  
7 infrastructure may be the subject of public-private partnerships established in accordance with the  
8 provisions of RSA 33:3.

9           28:2 Municipal Finance Act; Broadband Infrastructure Bonds. Amend RSA 33:3-g, III to read as  
10 follows:

11           III. A municipality shall not issue bonds for the purpose of financing the development,  
12 construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure  
13 in any location within a municipality unserved by broadband as defined in RSA 38:38, I(c) unless a  
14 request for information has been issued, at a minimum, to all providers serving the issuing  
15 community and such providers have been given 2 months to respond to the request. The request for  
16 information may include, but is not limited to, information identifying locations within a  
17 municipality ~~unserved~~ **served** by broadband as defined in RSA 38:38, I(c). After completing,  
18 issuing, and receiving responses to such request for information, a municipality may issue a request  
19 for proposals for the purpose of engaging in a public-private partnership pursuant to RSA 33:3 or  
20 RSA 33-B for the deployment of broadband infrastructure, as defined in RSA 38:38, I(e), and the  
21 provision of broadband service as defined in RSA 38:38, I(f). A municipality may select a proposal  
22 based on criteria including, but not limited to, provider ability to deploy, manage, and maintain a  
23 broadband network~~[which meets or exceeds the anticipated needs of the community]~~. A  
24 municipality may determine that no provider has met the criteria included in the request for  
25 proposals and may issue bonds for purposes pursuant to RSA 33:3 and RSA 33-B, including but not  
26 limited to, open networks. ***If a broadband provider does not respond to a request for***  
27 ***information pursuant to this paragraph, the locations served by that broadband provider***

1 *shall be considered unserved, unless those locations are served by a broadband provider*  
2 *who responded to that municipality's request for information.*

3 *IV. Any request for information issued pursuant to this section after December 31,*  
4 *2020 shall conform with a model request for information issued by the New Hampshire*  
5 *department of business and economic affairs.*

6 28:3 New Paragraph; Broadband Access. Amend RSA 38:38 by inserting after paragraph II the  
7 following new paragraph:

8 III. If a broadband provider does not respond to a request for information issued pursuant to  
9 sections RSA 33:3-g, III and RSA 33:3-g, IV, the locations served by that broadband provider shall be  
10 considered unserved unless those locations are served by a broadband provider who responded to  
11 that municipality's request for information.

12 28:4 Communications Districts; Purpose. The general court recognizes that towns require  
13 communications infrastructure and service to retain and attract residents and businesses and many  
14 rural towns, individually, lack the resources and population to attract infrastructure suppliers and  
15 service providers. Communications districts allow municipalities to join together by formal  
16 agreement to create a separate authority for communications. A district may be established for the  
17 purposes of contracting and bonding the creation or maintenance of communications infrastructure  
18 and for contracting with service providers. Districts may define an agreement that allows revenue  
19 bonds and/or taxpayer-funded bonds, as well as other funding as described in 53-G:3, XI.

20 28:5 Municipal Revenue Bonds; Definitions; Municipality. Amend RSA 33-B:1, V to read as  
21 follows:

22 V. "Municipality" means a city, town, [ø] village district, *or communications district*  
23 *formed under RSA 53-G.*

24 28:6 Broadband Infrastructure Bonds. Amend RSA 33:3-g, I to read as follows:

25 I. A municipality *or communications district formed under RSA 53-G* may issue bonds  
26 for the purpose of financing the development, construction, reconstruction, and improvement of  
27 broadband infrastructure in any locations within a municipality unserved by broadband as defined  
28 in RSA 38:38, I(c). Without limiting the foregoing, broadband infrastructure may be the subject of  
29 public-private partnerships established in accordance with the provisions of RSA 33:3.

30 28:7 New Chapter; Communications Districts. Amend RSA by inserting after chapter 53-F the  
31 following new chapter:

32 CHAPTER 53-G

33 COMMUNICATIONS DISTRICTS

34 53-G:1 Definitions. In this chapter:

35 I. "Board" means the governing board of the district.

36 II. "District" means a communications district of 2 or more municipalities established under  
37 this chapter.

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1           III. "Equipment and infrastructure" means any and all parts of any communications system,  
2 owned, leased, or otherwise contracted by the district, whether using wires, cables, fiber optics,  
3 wireless, other technologies, or a combination thereof, and used for the purpose of transporting or  
4 storing information, in whatever forms, directions, and media, together with any improvements  
5 thereto constructed or acquired after the effective date of this chapter, and all other facilities,  
6 equipment, and appurtenances necessary or appropriate to such system. "Equipment and  
7 infrastructure" shall not apply to communications facilities, or portions of any communications  
8 facilities, intended for use by, and solely used by, a district member and its own officers and  
9 employees in the operation of municipal departments or systems of which such communications are  
10 merely an ancillary component.

11           IV. "Governing body" means "governing body" as defined in RSA 21:48.

12           V. "Legislative body" means "legislative body" as defined in RSA 21:47.

13           VI. "Long-term contract" means a contract for communications services, or an equipment or  
14 infrastructure lease for 5 years or more.

15           VII. "Member" means any city, town, unincorporated town, or unorganized place that elects  
16 to form or join a communications district under this chapter.

17           VIII. "Municipality" means any city, town, unincorporated town, or unorganized place.

18           IX. "Person" means any individual, partnership, company, corporation, firm, governmental  
19 unit or agency, or any other legal entity.

20           53-G:2 Communications District Planning Committee; Formation and Responsibilities.

21           I. The governing bodies of 2 or more municipalities may at their discretion, and shall upon a  
22 vote of their respective legislative bodies, create a special unpaid committee to be known as a  
23 communications district planning committee, consisting of at least 2 persons from each municipality  
24 appointed by the respective governing bodies. The committee shall elect a chairperson, clerk, and  
25 treasurer. Members may be reimbursed by the committee for costs of performing duties directly  
26 related to the committee.

27           II. The committee may accept funds from any public or private source and may expend  
28 money for planning purposes which may include, but not be limited to, engaging legal counsel,  
29 accountants, engineers, contractors, consultants, and other advisors, paying for member expenses, or  
30 organizational and secretarial assistance. The committee shall report in a timely fashion to each  
31 governing body the sources and amounts of such funds. Each municipality represented on the  
32 committee may appropriate funds to the committee.

33           III. The committee shall study the advisability of establishing a communications district by  
34 examining the types of equipment and infrastructure that would be needed; the methods of  
35 organizing, operating, and financing such a district; and the potential benefits and disadvantages to  
36 member municipalities. The committee may consider specific sites inside or outside the proposed

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1 district for equipment location or which municipalities may have equipment or infrastructure, or  
2 both, located within them.

3 IV. If the committee determines that the formation of a district is desirable, it shall prepare  
4 a proposed district agreement in accordance with RSA 53-G:4 and hold a public information session  
5 in each municipality which is named in the district agreement as a site. Copies of the proposed  
6 agreement and of RSA 53-G shall be made available at and prior to any hearing. Notice of any  
7 hearing shall be published in one or more newspapers of general circulation in the proposed district  
8 or posted on the website of each member municipality and posted in one public place in each member  
9 municipality, and sent to the governing bodies of participating municipalities.

10 V. After the public hearing and information session, the committee may amend the contents  
11 of the proposed agreement and shall send it for review to the attorney general. The attorney general  
12 shall approve any proposed agreement unless it is in improper form or is incompatible with the  
13 requirements of this chapter and the laws of this state. The attorney general shall inform the  
14 governing bodies and the planning committee in writing of any specific respects in which the  
15 proposed agreement fails to meet the requirements of law. Approval by the attorney general shall be  
16 required for any district agreement to be legally valid. Failure by the attorney general to disapprove  
17 an agreement within 30 days of its submission shall constitute approval.

18 VI. The committee may revise the proposed district agreement as it deems necessary and  
19 shall resubmit it to the attorney general. A public hearing shall be held in at least one of the  
20 participating municipalities if the agreement is substantially revised. The committee may give final  
21 approval to a proposed agreement after approval by the attorney general.

22 VII. The committee shall report its findings and recommendations, along with any proposed  
23 district agreement, to the governing bodies of the participating municipalities.

24 53-G:3 Communications District Agreements. The business affairs and actions of a district shall  
25 be conducted and governed pursuant to the terms, conditions, and provisions of its district  
26 agreement. The agreement shall include but not be limited to the following:

27 I. A list of the municipalities included in the district.

28 II. Provisions for the sharing of planning, construction, operating, and maintenance of  
29 equipment, infrastructure, and services, if any.

30 III. The method of selection and method of removal of representatives to the district  
31 governing board, whether by legislative or governing bodies; the number of representatives; the  
32 terms of office of the representatives; rules of procedure concerning the method of conducting the  
33 board's business; and, except as provided otherwise by law, the powers, duties, and authorities of the  
34 district governing board officers.

35 IV. A description of equipment, infrastructure, and sites, if applicable.

36 V. The terms by which other municipalities may be admitted to the district or a member  
37 municipality may withdraw from the district before or after debt has been incurred.

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1 VI. The method by which the district agreement may be amended including conditions  
2 under which an amendment shall be approved by the governing or legislative bodies of member  
3 municipalities.

4 VII. The procedure for dissolution of the communications district before or after debt has  
5 been incurred.

6 VIII. Provisions for varied levels of participation by member municipalities in equipment  
7 and infrastructure, if applicable.

8 IX. The procedure for the preparation and adoption of the annual budget, including the  
9 apportionment of district expenses and a schedule of payments, if applicable, and other procedures  
10 relative to governing the district's fiscal affairs in accordance with RSA 53-G:9.

11 X. The procedure, if any, for establishing the district when not all of the legislative bodies  
12 vote to approve the district agreement, as provided in RSA 53-G:4, II.

13 XI. The funding sources that are acceptable to the district such as: federal, state, regional  
14 broadband and economic development grants or loans, general obligation bonds, revenue bonds,  
15 private investment or loans, subscriber fees, and member contributions.

16 53-G:4 Vote on Establishing District.

17 I. The governing bodies shall cause the question of accepting any proposed agreement to be  
18 presented for determination by vote of the respective legislative bodies. In municipalities that hold  
19 town meetings, the proposed agreement shall be voted on at the next annual town meeting or at a  
20 special town meeting called for such purpose. In all other municipalities, the legislative bodies shall  
21 vote on the proposed agreement within 60 days of the governing bodies' receipt of the proposed  
22 agreement, as approved by the attorney general under RSA 53-G:2, V. The question to be voted on  
23 shall be: "Shall the (insert name of municipality) accept the provisions of RSA 53-G:1-RSA 53-G:11  
24 providing for the establishment of a communications district, together with the municipalities of  
25 \_\_\_\_\_ in accordance with the provisions of the proposed agreement filed with the (insert  
26 appropriate office for governing body)?"

27 Approval by a legislative body shall be by simple majority. If all of the legislative bodies vote in the  
28 affirmative, the proposed communications district shall thereby be established in accordance with  
29 the terms of the proposed agreement. Otherwise, the district shall not be established, except as  
30 specified in paragraph II.

31 II. The proposed agreement may contain a provision for the establishment of the district  
32 when more than one but not all of the legislative bodies vote in the affirmative. Such provision need  
33 not require any additional votes by the legislative bodies in order to establish the district, but it may  
34 not include in the district any municipality, the legislative body of which did not approve the  
35 proposed agreement.

36 53-G:5 Corporate Body; Powers. A communications district established under this chapter shall  
37 be a body politic and corporate and a political subdivision and public instrumentality of the state

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1 carrying out a public purpose and an essential governmental function with the following powers,  
2 which are subject to the provisions and limitations of the district agreement:

3 I. To adopt a name and a corporate seal. The engraved or printed facsimile of the seal  
4 appearing on a bond or note of the district shall have the same legal effect as if it were impressed  
5 thereon.

6 II. To receive federal or state grants and loans, revenue from subscribers, access fees from  
7 subscribers, access to broadband infrastructure bonds, revenue bonds, pledge revenues, and accept  
8 member contributions or private investment.

9 III. To adopt a budget in accordance with 53-G:9.

10 IV. To establish and adjust fees.

11 V. To establish public/private partnerships and enter into broadband agreements with  
12 Internet service providers as necessary to build and operate the network.

13 VI. To provide or contract for communications infrastructure and services for its district  
14 members, including the residential and business locations located therein and provide for  
15 communications infrastructure and services for such other residential and business locations as its  
16 equipment, infrastructure, and obligations may allow, provided such other locations are in a  
17 municipality that is contiguous with the town limits of a district member.

18 VII. To cause to be operated, or contract for the construction, ownership, management,  
19 financing, and operation of a communications plant for the delivery of communications services.

20 VIII. To sue and be sued, but only to the same extent and upon the same conditions that a  
21 municipality may be sued.

22 IX. To hold, deal with, mortgage, pledge, encumber, purchase, acquire, lease, sell, convey,  
23 and otherwise dispose of real and personal property of all kinds in furtherance of the purposes of the  
24 district, subject to any and all operating agreements.

25 X. Each communications district shall have the power, by vote of the members, to borrow  
26 money and issue its notes or bonds in accordance with RSA 33, subject to the following:

27 (a) In the case of broadband infrastructure bonds, under RSA 33:3-g.

28 (b) In the case of revenue bonds, under RSA 33-B, when the board, at a regular or  
29 special meeting called for such purpose, determines by resolution passed by a vote of a majority of  
30 members present and voting that the public interest or necessity demands communications plant  
31 improvements, or a long-term contract, and that the cost of the same will be too great to be paid out  
32 of the ordinary annual income and revenue of the district, the board may pledge communications  
33 plant net revenues and enter into long-term contracts to provide for such improvements. In this  
34 chapter, a "long term contract" means an agreement in which the district incurs direct or conditional  
35 obligations for which the costs are too great to be paid out of the ordinary annual income and  
36 revenues of the district, in the judgment of the board. In this chapter, the term "communications  
37 plant improvements" includes improvements that may be used for the benefit of the public, whether

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1 or not publicly owned or operated. The pledge of communications plant net revenues and other  
2 obligations allowed by law may be authorized for any purpose permitted by this chapter, or any  
3 other applicable statutes.

4 XI. To receive and disburse funds for any district purpose.

5 XII. To incur temporary debt in anticipation of revenue to be received.

6 XIII. To engage legal counsel, accountants, engineers, contractors, consultants, agents, and  
7 other advisors.

8 XIV. To enter into contracts with any person consistent with the authority that a district  
9 has under this chapter.

10 XV. To utilize powers delegated to the district through the district agreement by member  
11 municipalities to enact bylaws and regulations concerning communications.

12 XVI. To insure against liability and other risks, and otherwise to obtain all insurance  
13 deemed by the governing board to be necessary or appropriate to the district and its operations.

14 XVII. To guarantee obligations and to give indemnities to third parties, when in the best  
15 interests of and for the benefit of the district.

16 XVIII. To make contracts, leases, or other agreements with any member municipality within  
17 which equipment or infrastructure, or both, is or is to be located. Such contracts, leases, or other  
18 agreements may provide for benefits, privileges, payments, or other considerations for such host  
19 member municipality which, with respect to that equipment or infrastructure, or both, are different  
20 from and not otherwise available to the other member municipalities. The governing body of each  
21 member municipality shall be given written notice of the general purposes of the long-term contract,  
22 a summary of the terms of the long-term contract, and a copy of the long-term contract within 7 days  
23 after the authorization.

24 53-G:6 Governing Board.

25 I. The powers, duties, and liabilities of a district shall be vested in and exercised by a  
26 governing board organized in accordance with the district agreement. The governing board shall  
27 authorize and govern all actions of a district, and the governing board's actions which are consistent  
28 with the district agreement and this chapter are binding on member municipalities without any  
29 additional action by the governing or legislative bodies of those municipalities. A majority of  
30 governing board members shall constitute a quorum. A simple majority of the voting authority  
31 present shall be sufficient to approve an action by the committee except as otherwise provided in the  
32 district agreement.

33 II. The board shall choose a chairperson by ballot from its membership. It shall appoint a  
34 secretary and a treasurer, who may be the same person, but who need not be members of the  
35 committee, and such other officers as may be provided for in the district agreement. The treasurer  
36 shall receive and take charge of all money belonging to the district and shall pay any debt of the  
37 district which has been approved by the committee. The treasurer may, by vote of the committee, be



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1 compensated for his or her services. Proceedings of the committee shall be held in accordance with  
2 RSA 91-A.

3 III. The committee shall send to the member municipalities, by January 31 of each year, a  
4 report on the general activities and affairs of the district, including a detailed financial report.

5 53-G:7 Admission of Additional District Members. The board may authorize the inclusion of  
6 additional district members in the multi-town communications district upon such terms and  
7 conditions as it in its sole discretion shall deem to be fair, reasonable, and in the best interests of the  
8 district. The legislative body of any nonmember municipality which desires to be admitted to the  
9 district shall make application for admission to the board. The board shall determine the financial  
10 and operational effects that are likely to occur if such municipality is admitted and thereafter either  
11 grant or deny authority for admission of the petitioning municipality. If the board grants such  
12 authority, it shall also specify any terms and conditions, including financial obligations, upon which  
13 such admission is predicated. Upon resolution of the board, such applicant municipality shall  
14 become a district member.

15 53-G:8 Member Withdrawal. A district member may vote to withdraw in the same manner as  
16 the vote for admission to the district. If a majority of the voters of a district member present and  
17 voting at a meeting duly warned for such purpose votes to withdraw from the district, the vote shall  
18 be certified by the clerk of that municipality and presented to the board. Thereafter, the board shall  
19 give notice to the remaining district members of the vote to withdraw and shall hold a meeting to  
20 determine if it is in the best interest of the district to continue to exist. Representatives of the  
21 district members shall be given an opportunity to be heard at such meeting together with any other  
22 interested persons. After such a meeting, the board may declare the district dissolved or it may  
23 declare that the district shall continue to exist despite the withdrawal of such member. The  
24 membership of the withdrawing municipality shall terminate after the vote to withdraw.

25 53-G:9 Adoption of Budget. Annually, the governing board shall determine the amounts  
26 necessary to be raised to maintain and operate the district during the next calendar year, and the  
27 amounts required for payment of debt and interest incurred by the district that will be due in the  
28 next year. The committee shall prepare a budget no later than December 31. The committee shall  
29 give at least 7 days' notice of the budget hearing by publication of the budget in a newspaper of  
30 general circulation within the district, and by posting a copy of the budget in a public place in each  
31 municipality in the district. After the hearing the committee shall adopt a budget.

32 53-G:10 Audits. The governing board shall hire a certified public accountant or a public  
33 accountant licensed by the state under RSA 309-B:5 to conduct a financial audit, in accordance with  
34 generally accepted governmental auditing standards as adopted by the United States General  
35 Accounting Office and applicable state statutes, to be completed within 6 months after the close of  
36 each fiscal year. Upon completion of an audit, the governing board shall review and vote on  
37 acceptance of the audit and send a copy of the audited financial statements, the auditor's opinion on

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1 those statements, a report on internal control, a report on compliance, and any other auditor reports  
2 to the governing body of each of the member municipalities and to the department of revenue  
3 administration. At least every 2 years, the governing board shall vote on whether to contract for a  
4 performance audit of the district in accordance with the generally accepted governmental auditing  
5 standards. Upon completion of a performance audit, the committee shall review and vote on  
6 acceptance of the audit and send a copy of the resulting materials to the governing body of each of  
7 the member municipalities and to the department of revenue administration.

8 53-G:11 Severability. If any portion of this chapter or the application thereof to any person or  
9 circumstances is held invalid, such invalidity shall not affect other provisions or applications of the  
10 chapter which can be given effect without the invalid provisions or applications, and to this end the  
11 provisions of this chapter are severable.

12 hb111

13 28:8 Effective Date.

14 I. Sections 1-3 of this act shall take effect 60 days after its passage.

II. The remainder of this act shall take effect upon its passage.

Approved: July 22, 2020

Effective Date:

I. Sections 1-3 shall take effect September 20, 2020.

II. Remainder shall take effect July 22, 2020.