

CHAPTER 118
SB 170 - FINAL VERSION

01/03/2018 2497s
04/26/2018 1808EBA

2018 SESSION

17-0794
06/01

SENATE BILL **170**

AN ACT relative to the authority of towns to issue bonds for the expansion of broadband infrastructure.

SPONSORS: Sen. Kahn, Dist 10; Rep. Bordenet, Ches. 5

COMMITTEE: Public and Municipal Affairs

ANALYSIS

This bill permits municipalities to issue bonds for the purpose of providing or expanding broadband infrastructure.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the authority of towns to issue bonds for the expansion of broadband infrastructure.

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

1 118:1 Municipal Finance Act; Definitions; Location. Amend RSA 33:1, III to read as
2 follows:

3 III. "Net indebtedness," all outstanding and authorized indebtedness, heretofore
4 or hereafter incurred by a municipality, exclusive of the following: unmatured tax
5 anticipation notes issued according to law; or notes issued in anticipation of grants of
6 federal or state aid or both; debts incurred for supplying the inhabitants with water or
7 for the construction, enlargement, improvement or maintenance of water works; debts
8 incurred to finance the cost of sewerage systems or enlargements or improvements
9 thereof, or sewage or waste disposal works when the cost thereof is to be financed by
10 sewer rents or sewer assessment; debt incurred pursuant to RSA 31:10; debts incurred to
11 finance energy production projects, the reconstruction or enlargement of a municipally
12 owned utility, or the manufacture or furnishing of light, heat, power or water for the
13 public, or the generation, transmission or sale of energy ultimately sold to the public;
14 debts incurred to finance small scale power facilities under RSA 374-D; debts incurred
15 outside the statutory debt limit of the municipality under any general law or special act
16 heretofore or hereafter enacted (unless otherwise provided in such legislation); and
17 sinking funds and cash applicable solely to the payment of the principal of debts
18 incurred within the debt limit[.];

19 *IV. "Location," property, parcel, or address where broadband could be purchased*
20 *by a customer.*

21 118:2 Municipal Finance Act; Purpose of Issue of Bonds. Amend RSA 33:3 to read as
22 follows:

23 33:3 Purpose of Issue of Bonds or Notes. A municipality or county may issue its
24 bonds or notes for the acquisition of land, *for economic development*, for planning
25 relative to public facilities, for the construction, reconstruction, alteration, and
26 enlargement or purchase of public buildings, for other public works or improvements, *or*
27 *for the financing of improvements*, of a permanent nature including broadband
28 infrastructure as defined in RSA 38:38, I(e), [~~to be purchased or constructed in areas not~~
29 ~~served by an existing broadband carrier or provider,~~] *to serve any location within a*

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1 *municipality unserved by broadband as defined in RSA 38:38, I(c)* for the purchase of
2 departmental equipment of a lasting character, *and* for the payment of judgments~~[-and~~
3 ~~for purposes of economic development which].~~ *The issuance of such bonds or notes* shall
4 include, *but not be limited to,* public-private partnerships involving capital
5 improvements, loans, *financing,* and guarantees. The public benefit in any public-
6 private partnership must outweigh any benefit accruing to a private party. Bonds or
7 notes for the purposes of economic development may be issued only after the governing
8 body of the municipality or county has held hearings and presented the public benefit
9 findings to the public and after such issuance has been approved by the legislative body.
10 A municipality or county shall not issue bonds or notes to provide for the payment of
11 expenses for current maintenance and operation except as otherwise specifically
12 provided by law.

13 118:3 Municipal Finance Act; Issue of Bonds for Preliminary Expenses. Amend RSA
14 33:3-c, I to read as follows:

15 I. A municipality or county may issue its bonds or notes for the purpose of
16 defraying the cost of preliminary or final plans and specifications or other preliminary
17 expenses incidental to, or connected with, any proposed public work or improvement of
18 a permanent nature consisting of the construction, reconstruction, alteration,
19 enlargement, ~~[or]~~ improvement, *or the financing of the construction, reconstruction,*
20 *alteration, enlargement, or improvement* of the following:

21 (a) A public building.

22 (b) A water works.

23 (c) A sewerage system or sewage or waste treatment facility.

24 (d) A solid waste disposal or resource recovery facility.

25 (e) Broadband infrastructure as defined in RSA 38:38, *I(e)* ~~[to be purchased or]~~
26 ~~constructed [in areas not served]~~ *to serve any locations within a municipality unserved*
27 ~~by [an existing] broadband [carrier or provider]~~ *as defined in RSA 38:38, I(c).*

28 118:4 Municipal Finance Act; Broadband Infrastructure Bonds. Amend RSA 33:3-g to
29 read as follows:

30 33:3-g Broadband Infrastructure Bonds.

31 I. A municipality may issue bonds for the purpose of financing the development,
32 construction, reconstruction, ~~[renovation,]~~ *and* improvement~~[-and acquisition]~~ of
33 broadband infrastructure in ~~[areas not served by an existing broadband carrier or~~
34 ~~provider that would be provided at a fee to broadband carriers that provide broadband~~
35 ~~services]~~ *any locations within a municipality unserved by broadband as defined in RSA*
36 *38:38, I(c).* Without limiting the foregoing, broadband infrastructure may be the subject
37 of public-private partnerships established in accordance with the provisions of RSA 33:3.

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1 II. Bonds issued under this section shall be payable in annual payments so that
2 the amount of annual payment of principal and interest in any year on account of any
3 bond shall be not less than the amount of principal and interest payable in any
4 subsequent year by more than 5 percent of the principal of the entire bond. The total
5 amount of payments shall be sufficient to extinguish the entire bond at such bond's
6 maturity. The first payment of principal on any bond shall be made no later than 5 years
7 and the last payment not later than 30 years after the date issued. Each authorized issue
8 of bonds shall be a separate and distinct loan.

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

30 118:5 Municipal Revenue Bonds; Definitions; Revenue-producing Facilities. Amend
31 RSA 33-B:1, VI to read as follows:

32 VI. "Revenue-producing facilities" means water works, broadband infrastructure
33 as defined in RSA 38:38, I(e), purchased or constructed [~~in areas not served by an~~
34 ~~existing broadband carrier or provider~~] **to serve any location within a municipality**
35 **unserved by broadband as defined in RSA 38:38, I(c)**, sewerage systems, sewage
36 treatment or disposal facilities, solid waste disposal or resource recovery facilities,
37 parking facilities, facilities for the production, generation, transmission, or distribution

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1 of electricity or gas, any other real or personal property or interests in a municipality or
2 regional water district owned or controlled by the municipality or regional water
3 district, from the operation of which revenues are or are expected to be derived by the
4 municipality, or regional water district, and qualifying energy conservation and clean
5 energy improvements for which a municipality provides financing pursuant to RSA 53-F.

6 118:6 Broadband Access; Definitions. Amend RSA 38:38, I to read as follows:

7 I. In this subdivision:

8 (a) "Access tariff" means the fee charged on a monthly or annual basis to
9 broadband [earriers] **providers** for access to the broadband infrastructure.

10 (b) "Areas not served" means any part of a municipality without a wireless or
11 facilities based broadband service or a wireless or facilities based broadband service
12 provider. Wireless shall not include subscription satellite service.

13 (c) "Broadband" means the transmission of information, between or among
14 points specified by the user, with or without change in the form or content of the
15 information as sent and received, at rates of transmission defined by the Federal
16 Communications Commission as ["broadband."] **a wireline advanced telecommunications**
17 **capability as defined by section 706 of the Telecommunications Act of 1996, irrespective**
18 **of the network technology used.**

19 (d) "Broadband [earrier] **provider**" means any provider of broadband services,
20 except aggregators of broadband services, as defined in section 226 of the 1996
21 Telecommunications Act.

22 (e) "Broadband infrastructure" means all equipment and facilities, including
23 all changes, modifications, and expansions to existing facilities, as well as the customer
24 premises equipment used to provide broadband, **as defined in subparagraph (c)**, and any
25 software integral to or related to the operations, support, facilitation, or
26 interconnection of such equipment[, ~~including upgrades, and any installation,~~
27 ~~operations and support, maintenance, and other functions required to support the~~
28 ~~delivery of broadband~~].

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

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

35 (h) "Open network interfaces" means the technical and operational means,
36 manners, and methods for any third party access to the broadband infrastructure, which
37 shall be provided on the basis of generally acceptable industry standards available at

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1 the time of access.

2 118:7 Broadband Fund. Amend RSA 38:40, I to read as follows:

3 I. The funds received from the collection of access tariffs shall be kept as a
4 separate fund to be known as the broadband fund. Such fund shall be allowed to
5 accumulate from year to year, shall not be commingled with town or city tax revenues,
6 and shall not be deemed part of the municipality's general fund accumulated surplus.
7 Such fund may be expended only for the purposes specified in RSA [~~38:38, or for the~~
8 ~~previous expansion or replacement of broadband infrastructure~~] **33:3 and RSA 33-B.**

9 118:8 Repeal. RSA 38:38, I(b), relative to the definition of areas not served by
10 broadband, is repealed.

118:9 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 30, 2018
Effective Date: July 29, 2018