

# Bill as Introduced

**HB 389-FN-LOCAL - AS INTRODUCED**

2011 SESSION

11-0503  
06/03

HOUSE BILL            **389-FN-LOCAL**

AN ACT                relative to broadband infrastructure.

SPONSORS:            Rep. Pastor, Graf 9; Rep. Remick, Coos 2; Rep. Rappaport, Coos 1; Rep. Pierce,  
Graf 9; Sen. Houde, Dist 5

COMMITTEE:          Science, Technology and Energy

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ANALYSIS

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

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eleven*

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 by discouraging 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 technology platforms and universal access are the keys to establishing a
- 12 thriving, 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. The purpose of this section is to give municipalities local control over whether to utilize
- 25 these tools to build-out high speed Internet infrastructure, provided that their citizens request and
- 26 approve such action through the local 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
- 31 improvements of a permanent nature including broadband infrastructure as defined in RSA 38:38,

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

11 3 Definitions; Revenue-Producing Facilities. Amend RSA 33-B:1, VI to read as follows:

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

20 4 New Sections; Issuance of Revenue Bonds. Amend RSA 38 by inserting after section 41 the  
21 following new sections:

22 38:42 Issuance of Revenue Bonds. A municipality shall not issue revenue bonds under RSA 33-  
23 B for the purpose of financing the development, construction, reconstruction, renovation,  
24 improvement, and acquisition of broadband infrastructure unless:

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

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

34 38:43 Broadband Infrastructure; Exclusion from Debt Limit. Any debt incurred for broadband  
35 infrastructure by the issuance of bonds consistent with RSA 38:42 shall be outside the debt limit  
36 prescribed in RSA 33. Such debt shall at no time be included in the net indebtedness of any  
37 municipality for the purpose of determining its borrowing capacity.

1 38:44 Expenditure of Funds. Funds from the issuance of a revenue bond for broadband  
2 infrastructure shall only be expended to deploy broadband infrastructure in a universal and non  
3 discriminatory manner and, at a minimum, in those areas of the municipality having the least  
4 adequate access to broadband service.

5 38:45 License and Permit Neutrality. In determining whether the public good requires a  
6 municipality to grant, change, or revoke any permit or license to any entity under RSA 231:161 or  
7 RSA 231:163, the effect that such action may have upon the viability or success of the municipality's  
8 broadband infrastructure, whether existing, planned, or contemplated, shall not be a factor in such  
9 determination or in determining the terms and conditions of any license or permit that results.

10 5 Broadband Access; Definitions; Broadband. RSA 38:38, I(c) is repealed and reenacted to read  
11 as follows:

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

17 6 Broadband Access. Amend RSA 38:38, II to read as follows:

18 II. A municipality ~~[may]~~ **shall** use its broadband infrastructure for the purpose of providing  
19 an open network ~~[and assuring that third party access is available in accordance with current state  
20 and federal regulations]~~ **and shall make use of open network interfaces. No municipality**  
21 **shall be a retail provider of broadband service.**

22 7 Broadband Access Tariffs. Amend RSA 38:39 to read as follows:

23 38:39 Broadband Access Tariffs. For defraying the cost of acquisition, construction, payment of  
24 the interest on any debt incurred, management, maintenance, operation, and repair of broadband  
25 infrastructure, or the construction, enlargement, or improvement of such systems, the governing  
26 body ~~[may]~~ **shall** establish a scale of rates called access tariffs, ~~[may]~~ **shall** prescribe the manner  
27 and the time for the payment of such tariffs, and may change such tariffs when it deems advisable.

28 8 New Paragraph; Pole Attachments. Amend RSA 374:34-a by inserting after paragraph VII the  
29 following new paragraph:

30 VIII. Pole attachments sought by a municipality for the provision of broadband access  
31 pursuant to RSA 38:38-45 shall be subject to this section.

32 9 Repeal. The following are repealed:

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

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

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

36 IV. RSA 38:38, I(b), relative to the definition of "areas not served."

37 10 Effective Date. This act shall take effect July 1, 2011.

LBAO  
11-0503  
01/07/11

**HB 389-FN-LOCAL - FISCAL NOTE**

AN ACT relative to broadband infrastructure.

**FISCAL IMPACT:**

The New Hampshire Municipal Association and the Department of Revenue Administration state this bill may increase local expenditures by an indeterminable amount in FY 2012 and in each fiscal year thereafter. There will be no fiscal impact on state and county revenues or expenditures or local revenues.

**METHODOLOGY:**

The New Hampshire Municipal Association states this bill changes the requirements for issuance of broadband infrastructure revenue bonds by municipalities. The Association states this bill may increase local expenditures in FY 2012 and in each fiscal year thereafter, as municipalities may incur costs associated with the bill's requirement related to deploying such infrastructure in a "universal and non-discriminatory" basis. The Association further states these costs are indeterminable and would likely preclude broadband infrastructure revenue bonds from being economically viable.

The Department of Revenue Administration states this bill may increase local expenditures by an indeterminable amount in FY 2012 and in each fiscal year thereafter. The Department is unable to estimate this bill's fiscal impact as it is unable to predict how many municipalities would attempt to pass bonds locally or what project costs may be.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 389-FN-L

**BILL TITLE:** relative to broadband infrastructure.

**DATE:** 2-22-11

**LOB ROOM:** 3-4      **Time Public Hearing Called to Order:** 2:53 pm

**Time Adjourned:** 3:56 pm

(please circle if present)

**Committee Members:** Reps. Garrity, Holden, Introne, Cataldo, Devine, Remick, Rappaport, Cox,  
MacMahon, O'Connor, Panek, Parison, Summers, Kaen, Cali-Pitts, Read, Levasseur and Pastor

**Bill Sponsors:** Reps. Pastor, Remick, Rappaport, Pierce and Sen. Houde

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

\***Rep. Beatriz Pastor, prime sponsor** – Handouts #1 testimony from Elizabeth Merry; #1A on interim study; i.e. presented by Dianne Schuett. Handout #3 Chapter 225, HB 653.

**Q: Rep. William Panek** – We have talked about satellite land quoted contracts of data within the bill.

**A:** It is better to not close any options.

**Q: Rep. William Remick** - This is a simple local control issue?

**A:** Yes.

**Q: Rep. Nickolas Lavesseur** – Any state or county?

**A:** This concerns a lot of members and the answer would be best to be on board.

**Thomas Murray, TDS Telecom** – Broadband provider. Opposes the bill and 90% of broadband is available and I believe that 95% will be reached soon. Start of the fiber optic service in Vermont. Bill looks more like an open access model. We provide broadband connections. Feds have issued a broadband networks.

**Q: Rep. Rappaport** – Public money- do you use i.e. “grants”?

**A:** No, some receive stimulus dollars and we have unusual service report.

**Q:** Some cost less and some have a package?

**A:** Resources in smaller towns are serviced better -- municipalities do get into it and many mistakes are made.

**Rep. Naida Kaen** -- If a community builds its community?

**A:** Penetration and band ratings can be affected.

**Q: Rep. Levasseur** -- Would a company like yours look at smaller towns?

**A:** We are well on our way to complete our broadband goals.

**Chris Hodgdon, Comcast** -- Based on issuing of banding and implementation via stimulus and broadband is well covered in NH. Serve close to 425,000 homes. Paying taxes for right of way becomes an expense when town and municipalities create higher costs and drive away providers.

Respectfully Submitted:

A handwritten signature in cursive script that reads "Sam Cataldo".

Sam Cataldo, Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

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Bill Sponsors: Reps. Pastor, Remick, Rappaport, Pierce and Sen. Houde

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

Rep Pastor Handouts (D) + (IA) = interview Study  
restimony from Eligible Agency  
- v.e presented by Rep Pastor  
Dianne Shutt

Handout 3) Chap 225 (HB 653)

Rep Panik B) we have tapes about interest to and quoted contents of data on the bill  
A) it is better to not see any options

Rep Pastor B) ~~lawyer's view in SAT house~~  
Rep Remick B) This is a simple local control issue  
2:53

Rep. James ... Day state or county

A) This concerns a lot of members  
and the answer would be best to  
be on board

Thomas Murray

Hardart

(4)

- TDS Telecom - Broadband provider  
is oppositor and 90% of  
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believe that 95% will be  
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- Start of the fiber optic service  
in Vermont. Bill looks  
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model. They've provided  
Broadband connection.  
Feds have issued a broadband  
network. —

Rep. Rep. report

Q) Put money - do you use the  
Grants.

A) No - some rec. stimulus \$\$  
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Q) some cost less + some have a  
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A) Resources in smaller towns  
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Rep. Hair Q ~~is~~ if a community build its community

A) penetration and bond ratings can be affected

Rep. Vase Q) would a company like yours look @ smaller towns

A) we are willing our way to complete our broadband goals.

~~Dennis Swett~~ - Testimony Handout (1)

Chris Hodgden - Comcast - opposition

based on issuing of bonding + implemented via stimulus + broadband is well covered in N.H. State don't to 425,000 homes

- paying taxes for right of way becomes an expense when town and ~~municipality~~ municipalities create higher costs and - since away provides

# Testimony

①

**From:** Elizabeth Merry <estikemerry@metrocast.net>  
**Date:** February 21, 2011 8:35:58 PM EST  
**To:** Beatriz Pastor <beatriz.pastor@dartmouth.edu>  
**Subject:** HB 389

Beatriz: I would appreciate your providing hard copies of this to your fellow committee members. thank you. Liz

**Testimony from Liz Merry, former State Representative, recently appointed member of the New Hampshire TAB and consultant in the telecom industry.**

I also participated as facilitator during the last legislative session for a subcommittee that reviewed, researched and developed these amendments.

Thank you for hearing my testimony today: my only regret is that I am away on business working with a rural telco in Tennessee.

But my work in Tennessee has provided me with great insights into the need for flexibility when it comes to funding options for building out broadband service in low density, rough terrain. What they are doing there is what is also needed here in NH.

My support from this comes from another place though. I live in a town that is divided by Highway 93. On the east side there is high speed internet service via Metrocast, but they have advised the town that they do not have any plans to expand to the western side of our town. Fairpoint has had conversations with the town but while they have plans for expansion into that area, I am not sure of the speed of service and capacity of service that will come. So as a result, I have a large population without high speed service. What does this mean? Small businesses are suffering as customers cannot reach them easily; kids need to have their parents drive them to the nearest library (when it is open) to go on line and do research and homework. The normal transactions many of us take for granted, ie. banking, daily living (weather reports, etc) are not available to them. This is impacting home prices and development particularly B&Bs which cannot run in that part of town as tourists expect broadband service.

I know this is only one snapshot and that many other towns are worse off, particularly in the north. But when I was an elected representative, it was a critical issue for many of my constituents.

Today, you will hear from incumbent service providers that this bill will provide unfair advantage to some service providers as towns and municipalities would subsidizing the build out. I ask that you balance this argument with the



understanding that this bill allows towns to raise revenue bonds and obtain capital for building out the infrastructure. All service providers will then be able to access the system if it is willing to provide service to unserved and underserved areas. These would be open to all interested providers as the Towns and Municipalities would not be service providers themselves.

Broadband is the new telephone service, the new utilities services to our citizens. What this bill proposes is that we provide alternative tools to towns to raise capital and help them bring this service to their residents.

I assume you will hear from many about the financial challenges of providing towns with the ability to issue revenue bonds for broadband buildout and some will suggest that this proposed bill will downshift costs to municipalities and towns. But I ask that you pull yourself out of the financial discussion and raise the debate to the policy issue of whether we should take the shackles off towns and allow them to participate in the process of speeding the buildout of high speed internet in our rural and remote communities. Funding is a separate issue: revenue bonds are difficult at best for towns to access as they have a high threshold of due diligence to ensure there is a solid business case for paying off the bonds. Further, the legislative bodies of towns and municipalities will have to vote on whether or not to approve the bonds and any proposed plan.

This proposed bill closes the gap that existed in the RSAs that makes it impossible for towns to get revenue bonds for broadband build out. First, it clarifies that towns will not become service providers themselves. Second, the bill encourages competition in that the only stipulation is that the broadband system be open and accessible by all providers. Third, it will require that building to unserved as well as underserved areas be part of the purpose of any revenue bonds issued.

So the policy questions to be answered include: should the State government stimulate the buildout of high speed internet service across NH? does the State legislature support the principle that competition and market demands are the best way to bring accessible, affordable high speed Broadband service to the "last mile" of our system? do you, who are voting on this bill, believe that towns and municipalities are capable enough to oversee this buildout and to manage it as they do other infrastructure projects?

If you answer yes, I submit that you should vote "Ought to Pass" on this bill and remove one of the final barriers to getting high speed internet out to "the last mile" residences, small businesses and institutions that are not already nor will there be in the foreseeable future any possibility of reaching their constituents.

Lets remove the barriers that were inserted in RSA... and move forward to meet the needs of our citizens.

Testimony of Representative Beatriz Pastor, Grafton 9 Re. HB 389

1A

House committee on Science Technology and Energy

February 22, 2011

***Interim Study Findings:***

At the end of the Interim Study conducted in the Summer of 2010 on HB 1242 the Committee concluded that:

1. The State should provide an environment that stimulates broadband build out to unserved areas. This will require a variety of stimulants from municipal revenue bonds to government funds and encouraging public private partnerships.
2. The State should consider BB infrastructure as the new investment it needs to support to keep our citizens competitive, small businesses thriving, our children participating fully in their education and our public services (hospitals, libraries and others) fully supporting our needs within communities.
3. Municipalities should be allowed to issue bonds to build Broadband infrastructure in order to provide coverage where needed and not be restricted by only providing to unserved areas.
4. Increasing competition by allowing municipalities to become players would spur last mile high-speed broadband deployment in our state to the benefit of our citizens.
5. Publicly funded build out should be affordable and service providers using public funds need to keep prices competitive and equal across all their customers in a region. Moreover, the quality and speed of service should meet the expectations and needs of customers who want timely, interactive video, data and voice transmission capability from their service provider.

***Business Models:***

An effective approach to universal broadband coverage in the State should incorporate multiple business models. There are a number of options available:

1. State funding for unserved area build out: Establish a universal BB fund managed by a state authority.
2. Public private partnerships for commercially viable areas, such as FastRoads and New Hampshire Network Now.
3. Hybrid: towns and municipalities getting grants, loans and issuing revenue bonds to get the funding to build broadband infrastructure and cover the last mile.

***The Findings and Purpose section of HB 389 states:***

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

II. Current New Hampshire law makes universal access to broadband internet services effectively impossible by discouraging competition. Such lack of universal access is a significant missed opportunity for building the state's economy and putting people back to work.

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

IV. Open access technology platforms and universal access are the keys to establishing a thriving, competitive market offering low cost, high-speed internet services to the public.

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

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

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

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

IX. The purpose of this section is to give municipalities local control over whether to utilize these tools to build-out high speed internet infrastructure, provided that their citizens request and approve such action through the local legislative process.

***What does HB 389 do?***

1. It enables municipalities to issue bonds for the purpose of building broadband infrastructure without the restriction to do so only in unserved areas (Amends RSA 33:3 and RSA 33-B-1).

2. It encourages competition by stipulating that a municipality shall use its broadband infrastructure for the purpose of providing an open network
3. It levels the playing field by stipulating that no municipality shall be a retail provider of broadband services.

HB 389 is not a mandate. It is enabling legislation. It removes existing barriers to municipal initiatives.

Its goals are:

1. To give towns the freedom to manage their resources to address the needs of their people regarding internet access
2. To allow their voters to decide on the best way to provide universal, affordable access to high speed internet.

~~III. Service credit purchased under this section shall be creditable service for the purpose of eligibility for retirement and other benefits under this act, as amended.~~

~~IV. A service buyback will not be allowed if the service buyback would violate section 415(n) of the Internal Revenue Code of 1986, as amended.~~

~~V. Service buybacks made pursuant to this section shall comply with all informational requirements appearing on the "Application for Acceptance of Tax Sheltered Funds for Service Buybacks" which is provided by the retirement system.~~

~~224:2 Effective Date. This act shall take effect upon its passage.~~

~~(Approved: June 1, 2006)~~

~~(Effective Date: June 1, 2006)~~

*Statute unchanged  
Since 2006*

**CHAPTER 225 (HB 653)**

**AN ACT RELATIVE TO BONDS FOR CONSTRUCTION, DEVELOPMENT, IMPROVEMENT, AND ACQUISITION OF BROADBAND FACILITIES.**

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

**225:1 Bonds for Broadband Infrastructure Added to Permissible Bonds for Counties and Municipalities.** Amend RSA 33:3 to read as follows:

**33:3 Purpose of Issue of Bonds or Notes.** A municipality or county may issue its bonds or notes for the acquisition of land, for planning relative to public facilities, for the construction, reconstruction, alteration, and enlargement or purchase of public buildings, for other public works or improvements of a permanent nature including broadband infrastructure as defined in RSA 38:38, I(e), to be purchased or constructed in areas not served by an existing broadband carrier or provider, for the purchase of departmental equipment of a lasting character, for the payment of judgments, and for purposes of economic development which shall include public-private partnerships involving capital improvements, loans, and guarantees. The public benefit in any public-private partnership must outweigh any benefit accruing to a private party. Bonds or notes for the purposes of economic development may be issued only after the governing body of the municipality or county has held hearings and presented the public benefit findings to the public and after such issuance has been approved by the legislative body. A municipality or county shall not issue bonds or notes to provide for the payment of expenses for current maintenance and operation except as otherwise specifically provided by law.

**225:2 Issue of Bonds for Certain Preliminary Expenses.** RSA 33:3-c is repealed and reenacted to read as follows:

**33:3-c Issue of Bonds for Preliminary Expenses.**

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

- (a) A public building.
- (b) A water works.
- (c) A sewerage system or sewage or waste treatment facility.
- (d) A solid waste disposal or resource recovery facility.

(e) Broadband infrastructure as defined in RSA 38:38 to be purchased or constructed in areas not served by an existing broadband carrier or provider.

II. Bonds or notes shall mature over a period of not more than 5 years from the date of issue unless they are issued at the same time as bonds or notes for the public work or improvement for which such expenses were incurred, in which case said bonds or notes shall mature over a period not exceeding the expected useful life of such public work or improvement. A municipality or county may issue its bonds or notes in accordance with this section for planning and other preliminary expenses relating to solid waste disposal or resource recovery facilities to serve the municipality or county, notwithstanding that the facilities may later be owned by a private entity, but only for such expenses incurred prior to any binding contractual commitment to a proposed private owner, and only if such bonds or notes do not constitute "private activity bonds" as defined in section 103(n)(7) of the United States Internal Revenue Code of 1954, as amended.

**225:3 New Section; Broadband Infrastructure Bonds Authorized.** Amend RSA 33 by inserting after section 3-f the following new section:

**33:3-g Broadband Infrastructure Bonds.**

I. A municipality may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider that would be provided at a fee to broadband carriers that provide broadband services. Without limiting the foregoing, broadband infrastructure may be the subject of public-private partnerships established in accordance with the provisions of RSA 33:3.

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

III. A municipality shall not issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in areas not served by an existing broadband carrier or provider unless a request for proposals has been issued and no broadband carrier or provider has responded positively within 2 months or deployed broadband service within 14 months of the issuance of the request for proposals.

**225:4 New Section; Extension From Debt Limit; Broadband Infrastructure.** Amend RSA 33 by inserting after section 6-e the following new section:

**33:6-f Exclusion From Debt Limit; Broadband Infrastructure.** Municipalities may incur debt for broadband infrastructure as defined in RSA 38:38, I(e) by the issue of bonds or notes authorized under this chapter. Any debt incurred for this purpose shall be outside the debt limit prescribed in this chapter. Such debt shall at no time be included in the net indebtedness of any municipality for the purposes of determining its borrowing capacity.

**225:5 Definitions; "Broadband Infrastructure" Added to Definition of "Revenue-Producing Facilities."** Amend RSA 33-B:1, VI to read as follows:

VI. "Revenue-producing facilities" means water works, broadband infrastructure as defined in RSA 38:38, I(e), purchased or constructed in areas not served by an existing broadband carrier or provider, sewerage systems, sewage treatment or disposal facilities, solid waste disposal or resource recovery facilities, parking facilities, facilities for the production, generation, transmission, or distribution of electricity or gas and any other real or personal property or interests in a municipality or regional water district owned or controlled by the municipality or regional water district, from the operation of which revenues are or are expected to be derived by the municipality, or regional water district.

**225:6 New Subdivision; Broadband Access.** Amend RSA 38 by inserting after section 37 the following new subdivision:

**Broadband Access**

**38:38 Broadband Access.**

I. In this subdivision:

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

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

(c) "Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at rates of transmission defined by the Federal Communications Commission as broadband.

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

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

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

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

*Not used* → (h) "Open network interfaces" means the technical and operational means, manners, and methods for any third party access to the broadband infrastructure, which shall be provided on the basis of generally acceptable industry standards available at the time of access.

II. A municipality may use its broadband infrastructure for the purpose of providing an open network and assuring that third party access is available in accordance with current state and federal regulations.

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

**38:40 Broadband Fund.**

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

II. Except when a capital reserve fund is established pursuant to paragraph III, all broadband funds shall be held in the custody of the municipal treasurer. Estimates of anticipated revenues and anticipated expenditures from the broadband fund shall be prepared and submitted to the governing body as a special warrant article as set forth in RSA 32, if applicable, and shall be included as part of the municipal budget submitted to the local legislative body for approval. Expenditures shall be within amounts appropriated by the local legislative body.

III. At the option of the local governing body, all or part of any surplus in the broadband fund may be placed in one or more capital reserve funds held in the custody of the trustees of trust funds pursuant to RSA 35:10. If such a reserve fund is created, then the governing body, may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 38:41. This paragraph shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to broadband access.

**38:41 Broadband Fund Report.** The governing body shall annually make a report of the broadband fund to the municipality showing the expenses and income of the fund, and all other material facts. This report shall be published in the annual report of the municipality.

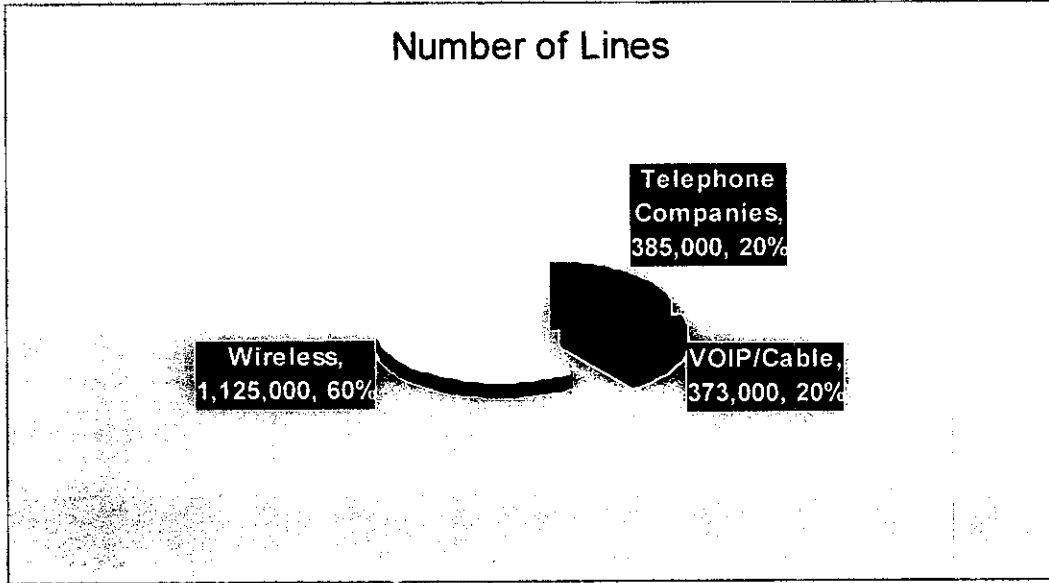
**225:7 Effective Date.** This act shall take effect 60 days after its passage.

(Approved: June 1, 2006)

(Effective Date: July 31, 2006)



## New Hampshire's Local Telephone Competition



Source: FCC Local Competition Report: Status as of December 31, 2009  
[http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2011/db0111/DOC-304054A1.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0111/DOC-304054A1.pdf)

### Other interesting highlights from the report:

\*49% of New Hampshire's landline telephone service is provided by a VOIP/Cable provider, the 2<sup>nd</sup> highest percentage in the Nation.

\* Only 1 zip code in New Hampshire is served by only one provider, a large majority of the state's zip codes have 6 or more providers.

# Voting Sheets

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 389-FN-L

**BILL TITLE:** relative to broadband infrastructure.

**DATE:** 3-10-11

**LOB ROOM:** 304

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. O'Connor

Seconded by Rep. Holden

Vote: 9-7 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:** Consent or Regular (circle One)

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Sam Cataldo, Clerk

HOUSE COMMITTEE ON SCIENCE, TECHNOLOGY AND ENERGY

EXECUTIVE SESSION on HB 389-FN-L

BILL TITLE: relative to broadband infrastructure.

DATE: 3-10-11

LOB ROOM: 304

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: ~~OTP~~, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. O'BONORE

Seconded by Rep. HODGES

Vote: 9-8 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

PASSED MINORITY REPORT

CONSENT CALENDAR VOTE: Consent or Regular (circle One)

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Sam Cataldo, Clerk

SCIENCE, TECHNOLOGY AND ENERGY

Bill #: HB 389-FN Title: \_\_\_\_\_

PH Date: 1 / 1

Exec Session Date: 3 / 10 / 11

Motion: ITL

Amendment #: NONE

MEMBER	YEAS	NAYS
Garrity, James M, Chairman	Y	
Holden, Frank R, V Chairman	Y	
Introne, Robert E	-	ABSENT
Cataldo, Sam A	Y	
Devine, James E	-	ABSENT
Remick, William J		N
Rappaport, Laurence M		N
Cox, Sean C	Y	
MacMahon, Bruce A	-	ABSENT
O'Connor, William H	Y	
Panek, William D	Y	
Parison, James A		N
Summers, James D	-	NO
Kaen, Naida L	-	ABSENT
Cali-Pitts, Jacqueline A	Y	N
Read, Robin P		N
Levasseur, Nickolas J		N
Pastor, Beatriz		N
<u>OBER KAPLER</u>	<u>Y Y</u>	
TOTAL VOTE:	<u>9</u>	<u>8</u>

# Committee Report

**REGULAR CALENDAR**

**March 10, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Majority of the Committee on SCIENCE,**

**TECHNOLOGY AND ENERGY to which was referred**

**HB389-FN-L,**

**AN ACT relative to broadband infrastructure. Having  
considered the same, report the same with the following**

**Resolution: RESOLVED, That it is INEXPEDIENT TO  
LEGISLATE.**

**Rep. William H O'Connor**

**FOR THE MAJORITY OF THE COMMITTEE**

**MAJORITY  
COMMITTEE REPORT**

Committee: **SCIENCE, TECHNOLOGY AND ENERGY**  
Bill Number: **HB389-FN-L**  
Title: **relative to broadband infrastructure.**  
Date: **March 10, 2011**  
Consent Calendar: **NO**  
Recommendation: **INEXPEDIENT TO LEGISLATE**

**STATEMENT OF INTENT**

This bill would allow municipalities to bond for and build out broadband infrastructure. The majority had several problems with the bill: First, we do not believe that high-speed, inexpensive broadband access is a fundamental right. Second, allowing local governments to become competitors to private industry by building communications infrastructure would discourage private providers from expanding or upgrading their existing networks and lead to less competition and higher costs to consumers. Third, it creates an uncomfortable potential conflict of interest when a local government, which is the taxing and franchising authority over current providers, also becomes a competitor with those same providers. Fourth, the state's first broadband director was hired in November 2009 with the expectation that collaborative solutions can be found to address the needs of populations in un-served and underserved areas. FairPoint Communications has built their broadband infrastructure to 85% of their operating area with a goal to reach 95% of the state, and several smaller telephone companies serve 100% of their customers. Fifth, similar schemes in other states have had mixed results at best and in some cases, as in Burlington, Vermont, have been a financial and policy disaster.

Vote 9-8

Rep. William H O'Connor

Original: House Clerk  
Cc: Committee Bill File



FOR THE MAJORITY

Original: House Clerk  
Cc: Committee Bill File

REGULAR CALENDAR

SCIENCE, TECHNOLOGY AND ENERGY

**HB389-FN-L**, relative to broadband infrastructure. **INEXPEDIENT TO LEGISLATE.**  
Rep. William H O'Connor for the **Majority** of SCIENCE, TECHNOLOGY AND ENERGY. This bill would allow municipalities to bond for and build out broadband infrastructure. The majority had several problems with the bill: First, we do not believe that high-speed, inexpensive broadband access is a fundamental right. Second, allowing local governments to become competitors to private industry by building communications infrastructure would discourage private providers from expanding or upgrading their existing networks and lead to less competition and higher costs to consumers. Third, it creates an uncomfortable potential conflict of interest when a local government, which is the taxing and franchising authority over current providers, also becomes a competitor with those same providers. Fourth, the state's first broadband director was hired in November 2009 with the expectation that collaborative solutions can be found to address the needs of populations in unserved and underserved areas. FairPoint Communications has built their broadband infrastructure to 85% of their operating area with a goal to reach 95% of the state, and several smaller telephone companies serve 100% of their customers. Fifth, similar schemes in other states have had mixed results at best and in some cases, as in Burlington, Vermont, have been a financial and policy disaster.

**Vote 9-8.**

Original: House Clerk  
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Science Technology + Energy  
BILL NUMBER: HB-389  
TITLE: relative to broadband infrastructure

DATE: 3/10/2011 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- RETAINED
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.

STATEMENT OF INTENT:

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COMMITTEE VOTE: \_\_\_\_\_

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. William Dew  
For the Committee

**Stapler, Carol**

**From:** Garrity, Jim  
**Sent:** Thursday, March 10, 2011 12:52 PM  
**To:** Stapler, Carol  
**Cc:** Bill OConnor  
**Subject:** HB-389 Majority Blurb  
HB389 – ITL - Rep. William O'Connor, ST&E

**Majority Blurb**

This bill would allow municipalities to bond for and build out broadband infrastructure. The majority had several problems with the bill: First, we do not believe that high-speed, inexpensive broadband access is a fundamental right. Second, allowing local governments to become competitors to private industry by building communications infrastructure would discourage private providers from expanding or upgrading their existing networks and lead to less competition and higher costs to consumers. Third, it creates an uncomfortable potential conflict of interest when a local government, which is the taxing and franchising authority over current providers, also becomes a competitor with those same providers. Fourth, the state's first broadband director was hired in November 2009 with the expectation that collaborative solutions can be found to address the needs of populations in un-served and underserved areas. FairPoint Communications has built their broadband infrastructure to 85% of their operating area with a goal to reach 95% of the state, and several smaller telephone companies serve 100% of their customers. Fifth, similar schemes in other states have had mixed results at best and in some cases, as in Burlington, Vermont, have been a financial and policy disaster.

**Approved by....**

**James M. Garrity**  
**Chairman**  
**House Science, Technology and Energy Committee**  
**State Representative (Rockingham District 6 - Atkinson)**  
**Office: 603-362-9416**  
**Home: 603-362-8250**  
**Email: [Jim.Garrity@Leg.state.nh.us](mailto:Jim.Garrity@Leg.state.nh.us)**

**REGULAR CALENDAR**

**March 10, 2011**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Minority of the Committee on SCIENCE,**

**TECHNOLOGY AND ENERGY to which was referred**

**HB389-FN-L,**

**AN ACT relative to broadband infrastructure. Having considered the same, and being unable to agree with the Majority, report with the recommendation that the bill OUGHT TO PASS.**

**Rep. Beatriz Pastor**

**FOR THE MINORITY OF THE COMMITTEE**

**MINORITY  
COMMITTEE REPORT**

Committee: **SCIENCE, TECHNOLOGY AND ENERGY**  
Bill Number: **HB389-FN-L**  
Title: **relative to broadband infrastructure.**  
Date: **March 10, 2011**  
Consent Calendar: **NO**  
Recommendation: **OUGHT TO PASS**

**STATEMENT OF INTENT**

This bill gives municipalities local control over broadband expansion by allowing them to bond for the purpose of building broadband infrastructure. The minority believes that universal, affordable access to high-speed internet service is essential in New Hampshire for economic development, job creation, small business growth, local services delivery, and educational opportunities. The state should allow our counties and municipalities to use open access technology to provide low cost high-speed internet access without providing broadband services themselves. This bill gives towns the freedom to manage their resources to address the needs of their people regarding internet access; and it lets voters decide on the best way to provide universal, affordable access to high-speed internet services.

Rep. Beatriz Pastor  
FOR THE MINORITY

Original: House Clerk  
Cc: Committee Bill File

REGULAR CALENDAR

SCIENCE, TECHNOLOGY AND ENERGY

**HB389-FN-L**, relative to broadband infrastructure. **OUGHT TO PASS.**

Rep. Beatriz Pastor for the **Minority** of SCIENCE, TECHNOLOGY AND ENERGY. This bill gives municipalities local control over broadband expansion by allowing them to bond for the purpose of building broadband infrastructure. The minority believes that universal, affordable access to high-speed internet service is essential in New Hampshire for economic development, job creation, small business growth, local services delivery, and educational opportunities. The state should allow our counties and municipalities to use open access technology to provide low cost high-speed internet access without providing broadband services themselves. This bill gives towns the freedom to manage their resources to address the needs of their people regarding internet access; and it lets voters decide on the best way to provide universal, affordable access to high-speed internet services.

Original: House Clerk  
Cc: Committee Bill File

**Stapler, Carol**

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**From:** Garrity, Jim  
**Sent:** Thursday, March 10, 2011 12:24 PM  
**To:** Stapler, Carol  
**Subject:** RE: Emailing: HB 389 Minority Blurb.doc  
Minority blurb HB-389:

Approved by...

**James M. Garrity**  
**Chairman**  
**House Science, Technology and Energy Committee**  
**State Representative (Rockingham District 6 - Atkinson)**  
**Office: 603-362-9416**  
**Home: 603-362-8250**  
**Email: [Jim.Garrity@Leg.state.nh.us](mailto:Jim.Garrity@Leg.state.nh.us)**

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**From:** Stapler, Carol  
**Sent:** Thu 3/10/2011 12:21 PM  
**To:** Garrity, Jim  
**Subject:** Emailing: HB 389 Minority Blurb.doc

<<HB 389 Minority Blurb.doc>>

The message is ready to be sent with the following file or link attachments:

HB 389 Minority Blurb.doc

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



HB 389

## Minority Blurb OTP

This bill gives municipalities local control over broadband expansion by allowing them to bond for the purpose of building broadband infrastructure. The minority believes that universal, affordable access to high speed Internet service is essential in New Hampshire for economic development, job creation, small business growth, local services delivery and educational opportunities. The state should allow our counties and municipalities to use open access technology to provide low cost high-speed Internet access without providing broadband services themselves. This bill gives towns the freedom to manage their resources to address the needs of their people regarding Internet access; and it lets voters decide on the best way to provide universal, affordable access to high speed Internet services.

Bret Ehr

Sam Farity

## HB 389 Minority Blurb

This bill gives municipalities local control over broadband expansion by allowing them to bond for the purpose of building broadband infrastructure. The minority believes that universal, affordable access to high-speed internet service is essential in New Hampshire for economic development, job creation, small business growth, local services delivery, and educational opportunities. The state should allow our counties and municipalities to use open access technology to provide low cost high-speed internet access without providing broadband services themselves. This bill gives towns the freedom to manage their resources to address the needs of their people regarding internet access; and it lets voters decide on the best way to provide universal, affordable access to high-speed internet services.