

# Bill as Introduced

SB 133-FN - AS INTRODUCED

2011 SESSION

11-0970  
10/03

SENATE BILL        ***133-FN***

AN ACT            relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

SPONSORS:        Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Rep. Major, Rock 8; Rep. Griffin, Rock 4

COMMITTEE:      Ways and Means

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ANALYSIS

This bill reestablishes the property tax exemption for telecommunications poles and conduits.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 reestablishing the exemption from property taxation for telecommunications poles and conduits.

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

1       1 Purpose. Telecommunications poles and conduits have never been subject to local property  
2 taxation in this state. A specific exemption for these items has been in place since 1998, but the  
3 exemption was repealed as of July 1, 2010, and the property will be considered taxable property as of  
4 April 1, 2011. In order to ensure that this property does not for the first time become subject to local  
5 property tax, and in order to protect New Hampshire taxpayers from having to absorb the costs of  
6 this new tax through higher telecommunications bills, this bill is intended to reenact this long-  
7 standing tax exemption.

8       2 Reference Corrected. Amend RSA 72:8-a to read as follows:

9       72:8-a Telecommunications Poles and Conduits. Except as provided in RSA [~~72:8-b~~] 72:8-c, all  
10 structures, poles, towers, and conduits employed in the transmission of telecommunication, cable, or  
11 commercial mobile radio services shall be taxed as real estate in the town in which such property or  
12 any part of it is situated. The valuation of such property shall be based on its value as real estate.  
13 Other devices and equipment, including wires, fiber optics, and switching equipment employed in the  
14 transmission of telecommunication, cable, or commercial mobile radio services shall not be taxable as  
15 real estate.

16       3 New Section; Property Taxation; Exemption Added. Amend RSA 72 by inserting after section  
17 8-b the following new section:

18       72:8-c Telecommunications Poles and Conduits Exemption. Notwithstanding any other  
19 provision of this chapter, any conduit that is not a part of a building and any whole or partial  
20 interest in wooden poles, employed in the transmission of communication services that are subject to  
21 the tax imposed under RSA 82-A, and owned by a retailer as that term is defined in RSA 82-A:2, X,  
22 shall be exempt from being taxed as real estate under RSA 72:8-a.

23       4 Application. RSA 72:8-c as inserted by section 3 of this act shall be considered effective as of  
24 July 1, 2010 at 12:01 a.m. and shall apply to the assessment of property taxes under RSA 72.

25       5 Effective Date. This act shall take effect upon its passage.

LBAO  
11-0970  
02/10/11

**SB 133-FN - FISCAL NOTE**

AN ACT           relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

**FISCAL IMPACT:**

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill as it is awaiting information from the Department of Revenue Administration. When completed, the fiscal note will be forwarded to the Senate Clerk's Office.

**SB 133 FISCAL NOTE**

AN ACT relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

**FISCAL IMPACT:**

The Department of Revenue Administration and the New Hampshire Municipal Association state there will be no fiscal impact to state, county or local revenues or expenditures.

**METHODOLOGY:**

The Department of Revenue Administration and the New Hampshire Municipal Association states this bill would shift the burden of tax among local taxpayers without affecting the total amount of revenue received from the tax.

# Committee Minutes

**SENATE CALENDAR NOTICE  
WAYS AND MEANS**

Senator Bob Odell Chairman  
 Senator Jim Luther V Chairman  
 Senator David Boutin  
 Senator Lou D'Allesandro  
 Senator Chuck Morse  
 Senator Jim Rausch

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

**Date: February 16, 2011**

**HEARINGS**

**Tuesday**

**2/22/2011**

**WAYS AND MEANS**

**SH 100**

**1:00 PM**

(Name of Committee)

(Place)

(Time)

**EXECUTIVE SESSION MAY FOLLOW**

**Comments:** \*Please note that SB78, SB138 and SB23 were recessed from 2/15/11.

1:00 PM	SB78-FN-A-L	relative to motor vehicle registration fees.
1:05 PM	SB138-FN-A	eliminating the lottery commission and establishing the education lottery authority.
1:15 PM	SB23-FN	establishing a revenue assistant position within the department of justice.
1:20 PM	SB131-FN	repealing the exemption for water and air pollution control facilities from local property taxation.
1:35 PM	SB133-FN	relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.
1:50 PM	SB126-FN	relative to net operating loss carryovers under the business profits tax.
2:05 PM	SB168-FN	conforming the interest and dividends tax to federal tax definitions.

**Sponsors:**

<b>SB78-FN-A-L</b>			
Sen. Andy Sanborn	Sen. Peter Bragdon	Sen. James Forsythe	Sen. Raymond White
Sen. Jeb Bradley	Sen. Fenton Groen	Sen. Tom De Blois	Rep. Thomas Keane
Rep. Seth Cohn	Rep. Kenneth Kreis	Rep. Jennifer Coffey	Rep. David Bettencourt
<b>SB138-FN-A</b>			
Sen. Lou D'Allesandro	Sen. John Gallus		
<b>SB23-FN</b>			
Sen. Bob Odell			
<b>SB131-FN</b>			
Sen. John Gallus	Rep. Neal Kurk	Rep. Kathleen Taylor	
<b>SB133-FN</b>			
Sen. Sharon Carson	Sen. Lou D'Allesandro	Rep. Norman Major	Rep. Mary Griffin
<b>SB126-FN</b>			
Sen. Jim Luther	Sen. John Barnes, Jr.	Sen. David Boutin	Sen. Peter Bragdon
Sen. Sharon Carson	Sen. James Forsythe	Sen. John Gallus	Sen. Fenton Groen
Sen. Gary Lambert	Sen. Jim Rausch	Sen. Andy Sanborn	Sen. Raymond White
Rep. David Bettencourt	Rep. Norman Major	Rep. Gene Chandler	Rep. Pamela Tucker
<b>SB168-FN</b>			
Sen. Jim Luther	Sen. Jeb Bradley	Sen. Raymond White	Sen. Gary Lambert
Sen. Bob Odell			

Sonja Caldwell 271-2117

Sen. Bob Odell

Chairman

# Ways and Means Committee

## Hearing Report

**To:** Members of the Senate

**From:** Sonja Caldwell  
*Legislative Aide*

**Re:** **SB133-FN** *-relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.*

**Hearing date:** February 22, 2011

**Members present:** Sen. Odell, Sen. Luther, Sen. Boutin, Sen. D'Allesandro, Sen. Morse, Sen. Rausch

**Members absent:**

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**Sponsor(s):** Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Rep. Major, Rock 8; Rep. Griffin, Rock 4

**What the bill does:** This bill reestablishes the property tax exemption for telecommunications poles and conduits.

**Who supports the bill:** Sen. Sharon Carson, Rep. Norman Major, Glenn Brackett (IBEW 2320), Sen. Lou D'Allesandro, Felicia Augevich (CWA), Jay Ward (SEA), Rick Trombly (NEA-NH), Bill Stafford (Granite State Tel/NH Tel Assoc), Ellen Scarponi (Fairpoint), Roy Drukker (Fairpoint), Laura Hainey (AFT-NH), Bill Durand (New England Cable and Telecom), Maura Weston (New England cable and Telecom), Chris Williams (Greater Nashua Chamber of Comm.), Mike Shelton (Greater Manchester Chamber), Stuart Trachy (AT&T)

**Who opposes the bill:** Jim Michaud (CAE, Town of Hudson), Guy Scaife (Town of Milford), Kathryn Temchock (City of Concord), Cordell Johnston (NH Municipal Assoc), Mary Beth Walz (Self), Rex Norman (Windham), John Anderson (Derry), Brian Fogg (George Sansoucy), Angels Silva (Seabrook),

**Taking no position:**

**Summary of testimony received:**

Senator Odell opened the hearing at 2:47



Senator D'Allesandro introduced the bill for Senator Carson. He said this bill has been introduced before and he was the prime sponsor last year when the bill passed the Senate but failed in the House. He said that when we introduced the Communication Services Tax (CST) in 1990, it was supposed to be temporary and the other part of the deal was to exempt poles. The CST is now permanent at 7% but the exemption is not permanent. We ask companies to improve broadband and make investments. This new tax would not be consistent with that policy. This bill is vital to continue expanding telecommunications.

Glenn bracket - IBEW - testified in support. He represents the organized workers of Fairpoint. They have seen a decline of landline business. There is a central office in seacoast area that provides dial tone throughout state, it runs at 17% capacity. Fairpoint is operating under archaic rules. They are a regulated utility. His concern is jobs. The last thing they need is another item on a landline telephone bill. Their customer base is shrinking, they can't afford to pass it along.

Senator Odell said we heard a bill that would help with deregulation and are sensitive to his point. That bill has been deferred to next year.

Guy Scaife - Town Administrator for Milford. Testified in opposition. He said this is burden shifting, not a new tax. Comcast pays this tax in all other states except NH and PA. He asked if it is the legislature's responsibility to regulate competition within this industry. This is real income producing property. 97% of poles are joint use with electrical companies.

Senator Luther asked how big the exemption is for Milford. Mr. Scaife said he didn't know. He mentioned a study by Hudson and said it's a relatively small amount. The poles and conduits are at a depreciated value.

Felicia Augevich - resident of Freemont, NH and an employee of Fairpoint. She represents CWA and testified in support of the bill. Fairpoint and CWA have a good partnership. Fairpoint recently came out of bankruptcy. If they had another tax in addition to the CST they already pay, that would be a burden on the company.

Cordell Johnston - testified in opposition, representing the NH Municipal Association. He asked why should they get an exemption just because of the business they are in. He used the House's passage of a bill to prohibit funding of public television as an analogy. When cities and towns are in dire straits, he asked why they are required to spend money to fund a telephone company and a cable company. He said it's not direct funding, but they get a property

tax exemption. He said that Fairpoint argued last year this would be a tax on the poor and elderly because they would pass it onto customers and their argument was that those who use landlines are poor and elderly. Mr. Johnston said there is no demographic information to back that up. He also said it's not true that they have to pass the cost onto customers. Fairpoint has an unregulated internet business and attachments on their poles. The wireless, electric and cable companies all put attachments on the polls for which they pay attachment fees. He argued they can pass the cost onto the electricity, cable and wireless companies. He also asked, even if the cost did have to be passed onto landline customers, what is wrong with that, as that's how business works. He asked when is it acceptable to take taxpayer money to fund private business. This is another downshifting of state priorities. The Communications service tax is not paid by the telephone company, it is paid by consumers.

Senator Luther asked how big the exemption is.

Mr. Johnston said that a 2004 study committee estimated that Verizon, at the time, would pay an additional \$3 million statewide.

Marybeth Walz testified in opposition. She said she chaired the committee this bill went to last year. They killed the bill last year. From her point of view, electrical poles and phone polls are same. She asked why we have identical property treated differently. She said the argument is this is an offset to communications services tax, however there is an electrical consumption tax on electrical bills. She said they thought they were leveling the playing field when they voted to eliminate the exemption. She said Fairpoint told her this was a small factor for them. She estimates the impact at \$5 million state wide.

Bill Stafford of Granite State Telephone testified in support. They are a 3<sup>rd</sup> generation family owned telephone company with 7,900 access lines. When the CST was established in 1990, it established equity between wireless and landlines. It has been going on for 20 years. They have never paid this tax in 20 years so it would be a new tax. The tax would take away their ability to put money to other uses and it will be passed on to customers. He said it would amount to \$68,000 in additional taxes that they would have to pay equating to 72 cents a line per month, or a 4.6% increase. He also added that its not true that all poles are same.

Senator Rausch asked about the effective date of the repeal.

Mr. Stafford said that on April First the towns would be free to tax them.

Brian Fogg – representing George Sansoucy. His company has developed models for valuation for telecommunications. In assessing work, there are

two principles, fair market value and proportionality. The exemption is inconsistent with proportionality. He said there are several towns where PSNH and Fairpoint share the polls.

Ellen Scarponi and Roy Drukker of Fairpoint, testified in support of the bill. They questioned why the House voted to diminish the decisions of past legislatures and the Supreme Court by repealing the exemption last year. This is new tax. The municipalities have never had this money before. It is a new tax and would affect consumers. There is no formula set out for how big the tax exemption is. It ranges from \$3 million to \$30 million. This is also a double tax. This would be passed on to their consumers. The CST was established to put them on an equal playing field with other telecommunications providers. This tax would serve as a disincentive to hire new people, develop new products, or expand broadband. This exemption has been reaffirmed twice by the Supreme Court that poles should not be taxed as real estate. If we make this exemption permanent it wouldn't come up every year.

Senator Odell – asked if they collect the CST on behalf of the State of NH. They answered yes.

Maura Weston and Bill Durand - New England Cable and Telecommunications Association – testified in support. They said they support Fairpoint's position. There will be an impact on the cable industry from this bill. Mr. Durand said he agrees with Bill from the small company. He represents all cable companies in new England. This isn't a major impact on Comcast but it's a message. They made a deal back in 1990. The CST was supposed to be temporary. They need a predictable tax structure. He said NH is a great place to do business and he asked that was please continue it. Senator Luther asked him to explain the 7% CST. He answered that it is usually on gross revenues but they also pay it on internet product though they aren't technically supposed to, as there is a federal moratorium on taxation of internet product. The tax is on any two-way communications.

Senator Odell said the intent of the CST was to make landlines and cell phones equal.

Chris Williams - Nashua Chamber of Commerce, representing 700 businesses, testified in support of the bill.

Mike Skelton - Manchester Chamber of Commerce - 14 communities, 1000 members. Testified in support the bill. This is not the right time to pass on new taxes to the business community. Failure to restore the exemption will

create an uneven playing field in the telecommunications industry.

Senator Odell closed the hearing at 3:38

# Speakers

# SENATE WAYS & MEANS COMMITTEE

Date 2/22/11

Time 1:35 p.m.

Public Hearing on

SB133-FN

(relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.)

Please check box(es) that apply.

SPEAKING FAVOR    OPPOSED

NAME (Please print)

REPRESENTING

X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SENATOR SHARON CARSON	SD # 14
X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	REP NORMAN MAJCA	ROCK 8
X	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	GLENN BRACKETT	IBEW 2320
X	<input type="checkbox"/>	<input type="checkbox"/>	Jim Michael, CAE	Town of Hudson
X	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Senator D'Allessandro	District 20
X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Guy Scaife	Town of Milford
X	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Felicia Argeovich	CWA
●	<input type="checkbox"/>	<input type="checkbox"/>	Kathryn Temchack	City of Concord
X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Cordeell Johnston	NH Municipal Ass'n
X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Margareth Walz	self
X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	JAY WARD	SEA
X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Rick TROWBLY	NEA-NH
X	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	BILL STAFFORD	GRANITE STATE TEL / NH TEL ASSN
X	<input type="checkbox"/>	<input type="checkbox"/>	REX NORRAN	WINDHAM
o	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Jan Andersen	Derry
X	<input checked="" type="checkbox"/>	<input type="checkbox"/>	BRIAN FOGG	George Sawsoocy
X	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Ellen Scarpini/Roy Drukler	FarPoint
X	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Laura Hainey	AFT-UIH
X	<input type="checkbox"/>	<input type="checkbox"/>	Angela Silva	Seabrook
	<input type="checkbox"/>	<input type="checkbox"/>		



# Testimony



**WRITTEN TESTIMONY  
OF  
WILLIAM D. DURAND, ESQ.  
ON BEHALF OF  
THE NEW ENGLAND CABLE  
&  
TELECOMMUNICATIONS ASSOCIATION, INC.  
IN SUPPORT OF  
SENATE BILL 133-FN**

**February 22, 2011**

**Introduction:**

Mr. Chair and members of the Committee, my name is Bill Durand and I represent the New England Cable & Telecommunications Association, Inc., NECTA. Our members include substantially all of the major cable operating and programming companies in the six state New England region, including Comcast, Time Warner and Metrocast. The cable industry employs over 2000 people in New Hampshire. We pass approximately 600,000 homes and businesses and have deployed over 10,000 miles of fiber optic/co-axial cable. We provide approximately \$600,000 in free service to schools, libraries and non-profits and we pay over \$10 million annually in franchise fees to New Hampshire municipalities. We pride ourselves on making positive contributions to the state and communities that we serve.

Over many years we have supported the property tax exemption for poles and conduits based on the principals of equitable and sound tax policy. Today, NECTA respectfully submits this testimony in support of SB 133-FN, an act relative to re-establishing the exemption from property taxation for telecommunications poles and conduits.

**This bill will re-instate sound tax policy**

We support this bill to reinstate the local property tax exemption for wooden poles and conduits. If the exemption is not reinstated cable company and thus our customers will experience higher costs in two different ways.

First, cable companies will pay **higher pole rental rates** to Fairpoint and other pole owners.

Under the law pole owners have the right to pass along their higher costs to those entities which attach to

their poles. Thus, the pole tax will be a new cost which is incorporated into pole attachment rates which will be paid by cable companies. Ultimately, it is the cable customer who feels the burden of higher costs of doing business.

Additionally, cable companies own conduit. This new tax will be **assessed directly on our conduit**. As is the case with pole attachment rates, a new tax on conduit will also be a factor in our rates. At a time when many people are faced with economic challenges, an increase in cable rates due to new taxes will not be viewed favorably.

The cable industry is also concerned that the impact of the pole and conduit taxes collectively may put our providers at a competitive disadvantage. In 1990 New Hampshire chose to adopt the Communications Services tax which ensured that all two-way providers of telecommunications services were treated equally. By levying a tax on the service and not the infrastructure, tax policy correctly avoided picking winners and losers based on technology in a competitive industry. The imposition of a property tax runs contrary to the fairness imposed by the CST. We do not believe that taxing providers of telecommunication services differently based on the technology they deploy is sound.

Cable customers are already at a competitive disadvantage because we pay franchise fees of up to five percent (5%) to municipalities. Satellite providers pay no franchise fees, have no facilities or real estate in New Hampshire and will not pay this new tax. Not only does this create an unlevel playing field, it could lead to reduced franchise fees to municipalities if cable customers are lost to satellite companies, for example.

**The pole and conduit tax negatively impact economic development:**

Cable companies are investing millions of dollars in upgrades to provide high speed internet connections to urban and rural areas alike. Our members are trying to respond to demands by policy makers and in the market for broadband by deploying to or upgrading plant to small businesses, municipalities, hotels, hospitals, schools and individual homes. People around this State are anxious to receive the benefits of our services and these upgrades. Any new tax is a disincentive to cable companies

to continue to deploy new infrastructure and upgrade facilities. This would be true particularly in rural areas of the state where the number of subscribers per mile is low and thus the cost of attaching to poles and deploying infrastructure is disproportionately higher. Our industry too must make difficult choices in difficult economic times. Where we invest capital is determined in large part by the business climate and cost of doing business in a state. The imposition of a new tax on technology does not lend itself to a friendly and predictable business climate and runs exactly opposite to the national trend where government is seeking to provide tax incentives for the deployment of broadband infrastructure. Negative signals to business threaten to slow the deployment of broadband and put New Hampshire's economy at risk.

**Conclusion:**

Allowing municipalities to move forward and impose this tax will have a chilling effect on the investment of capital in New Hampshire and economic development in general. Furthermore, this tax reverses long standing tax policy seeking parity among the various telecommunications companies regardless of the technology they deploy. We urge you to encourage the deployment of broadband and competition among providers by implementing a fair tax policy and reinstating the property tax exemption on poles and conduits.

Thank you for the opportunity to testify and I will answer any questions.

Respectfully submitted,

William D. Durand, Esq.  
Executive Vice President Chief Counsel  
New England Cable & Telecommunications Association, Inc.  
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City of Concord  
Assessing Department  
City Hall, 41 Green Street  
Concord NH 03301  
PH (603) 225-8550 – FAX (603) 225-8534

February 22, 2011

Bob Odell, Chairman  
Ways and Means Committee  
State House  
33 North State Street  
Concord, NH 03301

RE: SB 133-FN

Dear Chairman Odell,

SB 133-FN, if passed, would provide for Fairpoint Communications' underground conduit system, poles, and aerial cable to be tax exempt yet again. The property tax exemption for wooden poles and conduits expired on July 1<sup>st</sup>, 2010, and Fairpoint has yet to pay any taxes on their poles and conduit, a fact that has been true since 1990.

During that same period, electric utilities paid taxes, and continue to pay taxes, on their poles as real property.

As this bill is being pushed as fighting against a 'new tax', we implore that the committee not fall for that line of reason as patently unfair. Every private business pays property taxes. In this particular scenario, the reality is that for decades the communications industry has been untaxed for the same poles for which the electric companies have been taxed.

In fact, telecommunications companies pay either personal or property taxes on telephone poles in 48 other states.

The impact (estimated based on Fairpoint's 2009 Annual Report) to the State's taxpayers includes losing the tax revenue on a taxable value of \$965,420,000, which every other taxpayer will continue to pay.

Besides the 'new tax' myth being raised by the telecommunications industry representatives, other misleading / incorrect / false claims include, but not limited to:

- Assuming their fair share of taxes means that the telecommunications industry will have to pass this cost of doing business onto the elderly and low-income customers.

- FACT: Much of the cost will be passed to cable, electric, and wireless companies who attach equipment to poles;

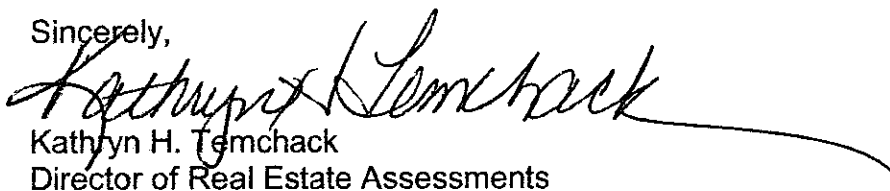
These companies will pass cost onto their landline, wireless, cable and electric customers, spreading out the costs.

Regardless of how the cost is borne, property taxation is a cost of doing business for all businesses – why should the telecommunications industry be exempt?

- Exemption for the telecommunications industry is required to level the playing field.
  - FACT: It is every taxpayer (individuals and other companies) who need a fairer, level playing field; certainly not the telecommunications industry.

Concord opposes SB 133-FN and asks that you vote this proposed legislation as inexpedient to legislate.

Sincerely,



Kathryn H. Temchack  
Director of Real Estate Assessments

CC: Ways and Means Committee Members  
Thomas Aspell, Concord City Manager  
Judy Silva, Local Government Center ✓



## New Hampshire Municipal Association

February 22, 2011

Hon. Bob Odell, Chairman  
Senate Ways & Means Committee  
State House, Room 302  
Concord, New Hampshire

*Re: SB 133—Property Tax Exemption for Telephone Poles and Conduits*

Dear Sen. Odell:

I write to express the New Hampshire Municipal Association's opposition to SB 133, which would reinstate the expired property tax exemption for poles and conduits own by telecommunication companies. Opposition to this exemption is one of the Municipal Association's standing legislative policy positions.

I apologize for the length of this letter, because this really is a simple issue—there is no principled reason for this tax exemption. It has existed historically simply as a favor to one influential industry. No one can explain why that industry should enjoy a tax exemption for property that, in the hands of someone else, would be fully taxable.

However, supporters of the exemption will advance a number of rationalizations to make the issue seem more complicated, and those arguments need to be addressed.

### History

Until 1990, the state assessed a *personal* property tax on telecommunication poles and conduits. The tax was paid to the state. During the same period, and continuing to the present, poles and conduits owned by *electric* utilities have been taxed as *real* property; the company pays property taxes to the municipalities in which the poles and conduits are located. *See* RSA 72:8.

In 1990, the state repealed the personal property tax on telecommunication poles and conduits. The same year, it enacted RSA 82-A, the communications services tax (CST), a tax (now 7 percent) on the gross charges for telecommunication services. This is a tax *on the customer*, not on the company.

After the repeal of the personal property tax on telecommunication poles and conduits, some municipalities began trying to tax the poles and conduits as real property. In 1996, the New Hampshire Supreme Court ruled that they could not do this, because the poles and conduits were treated as personal property, not real estate, under New Hampshire law.

In 1998, the legislature enacted RSA 72:8-a, stating that "all structures, poles, towers, and conduits employed in the transmission of telecommunication, cable or commercial mobile radio services shall be taxed as real estate" (thus effectively overruling the 1996 Supreme Court decision). However, at the same time, the legislature enacted RSA 72:8-b, which gave a *temporary* exemption to "any conduit that is not part of a building and any whole or partial interest in wooden poles, employed in the transmission of

communications that are subject to the [CST].” That exemption was to last as long as the rate of the CST remained above 4.5 percent, but was to expire, in any event, on July 1, 1999.

The “temporary” exemption under RSA 72:8-b was extended in 1999, 2001, 2003, 2004, and 2005. It finally expired last year, when the legislature killed a bill to extend it again.

### The current law

Under the current law in New Hampshire, poles and conduits owned by *electric* utilities are fully taxable as real estate in the municipality in which they are located. That has been the law at least since 1905. Until last year, identical poles and conduits owned by *telephone* companies were exempt from any taxation. If a pole was jointly owned by an electric company and a telephone company, the electric company’s share was taxed, and the telephone company’s share was exempt. With last year’s defeat of a continued exemption, telephone poles are now taxable in the same manner as electric poles.

### Taxation of telephone poles in other states

According to a survey done by the legislature in 2003, *48 states tax telephone poles as either real or personal property*. In some of those states the tax is imposed at the state level, but in many of those cases, the state shares the revenue with municipalities. Until last year, *only two states—New Hampshire and Pennsylvania—did not tax the poles at all*. Now, to our knowledge, Pennsylvania is the only one.

### Pole ownership and use

According to a legislative committee report issued in 2004, at that time Verizon used 505,000 poles in New Hampshire. Of those, 434,000 were owned jointly by Verizon and electric utilities; 15,000 were owned solely by Verizon; and 56,000 were owned solely by electric utilities (with Verizon’s equipment attached to them). We understand that these numbers have not changed significantly since then, except that FairPoint bought Verizon’s interest in the poles.

Telephone and electric companies routinely enter into agreements allowing other users, including electric, cable, and wireless telephone companies, to attach equipment to the poles. They charge pole attachment fees to these users, and are able to recover a portion of the cost of maintaining the poles through these fees. According to the 2004 committee report, *Verizon was earning \$1.85 million dollar a year in attachment fees at that time*.

### The tax impact of eliminating the exemption

No one knows how much the telecommunication companies will pay in additional property taxes with the exemption eliminated. The only “objective” estimate appears in the 2004 study committee report. That report, based on a number of assumptions, suggested that Verizon would pay approximately \$3 million more in property taxes. It is impossible to know how close that is to the actual figure, but it seems fair to conclude that the number will be in the millions of dollars, but not in the tens of millions. Of course, other telephone and cable companies will pay some additional amount as well.

When telecommunication companies begin paying property taxes on their poles and conduits, other taxpayers’ bills will be reduced accordingly. If the total amount statewide is only a few million dollars, the effect on an individual tax bill will be minimal—probably a few dollars a year. Similarly, the effect on landline, wireless, internet, and cable bills (assuming the affected companies pass the cost on to their

customers) will be minimal. However, the numbers are not what matters; what matters is the principle that the telecommunications industry should not be immune from a tax that everyone else pays.

#### A "new tax"?

Many legislators this year are calling for the elimination of all new taxes and fees that were instituted in the last four years. Telecommunications industry representatives are trying to squeeze onto that wagon by claiming that ending the pole exemption has created a "new tax."

We are confident that Senators are too smart to fall for that. Obviously, there is no "new tax" here. Everyone else pays property taxes. Electric companies have paid taxes on the exact same poles for over a century. The end of the exemption merely means that telecommunication companies will now pay the same taxes that everyone else has paid forever.

The claim of a "new tax" implies that new revenues are being raised, but they are not. Increases in municipal tax revenues occur only when a city or town votes to raise additional funds. Elimination of the pole exemption does not affect the total amount of revenues raised by municipalities—it simply means that pole owners will pay a share of the taxes that *are* raised. Thus, *elimination of the pole exemption will result in a tax reduction for almost all taxpayers.*

#### Arguments for reinstating the exemption

No one disputes that the poles and conduits owned by telecommunication companies are identical to those owned by electric companies. No one claims there is any principled reason to exempt this class of property from taxation. All of the arguments for continuing the exemption are based on a desire to accommodate the telecommunications industry and its customers.

*The cost to telephone customers.* In recent years, the most common argument for continuing the exemption was that if landline telephone companies were required to pay taxes on their poles, they would pass the cost on to their customers, and this would disproportionately harm customers who are unable to switch entirely to wireless phone service. In fact, FairPoint claimed last year that the entire cost would be borne by its customers, and it therefore would constitute a tax on "the elderly and low-income."

That is simply not true. Everyone in the industry knows the landline companies will pass much of the cost on to the cable, electric, and wireless companies by raising the fees they charge those companies to attach equipment to the poles. Those companies, in turn, will pass the cost on to *their* customers. Further, FairPoint uses the poles and conduits not only for its landline telephone operations, but for its internet business. Thus, the cost will be spread among landline, wireless, cable, internet, and electric customers.

Even if all of the cost were borne by landline customers, it is unclear why there would be anything wrong with that. Property taxes are a cost of doing business, typically passed on to customers. That is how business works. When one industry is exempt from property taxes, that burden is shifted to other taxpayers. It makes no sense to require *taxpayers* to bear one industry's costs of doing business.

*The level playing field.* A related argument is that landline phone companies need the exemption to maintain a "level playing field" with wireless companies, because wireless companies operate without poles and conduits, and therefore would escape the tax. Although wireless companies do not own wooden poles, they do own towers, and those towers are subject to property taxes. The wooden poles owned by landline companies were exempt until last year. How anyone could consider that a "level playing field" is a mystery.



In any event, this issue does *not* pit landline companies against wireless companies. Representatives of the major wireless companies (as well as the cable companies) have lobbied *for* continuing the exemption. Presumably this is because they recognize that they will bear part of the cost if the landline companies are taxed on the poles. Instead, this issue pits the entire telecommunications industry—all of which has benefited from the exemption—against municipalities and taxpayers.

*The "double tax."* Another argument is that phone companies are already burdened by the CST, and the pole exemption is necessary to avoid a "double tax." This is nonsense. The CST is paid by *customers*, not by the phone company. The company merely collects the tax for the state. In this respect, it is identical to the meals and rooms tax, the tobacco tax, the gasoline tax, and—most notably—the electricity consumption tax under RSA 83-E, which is *collected* by the electric utility, but *paid* by the customer. Yet no one suggests that restaurants, hotels, convenience stores, gas stations, or electricity poles should be exempt from property taxes.

*"Same pants, different pocket."* A frequently heard comment is "What difference does it make? We'll pay for it in our taxes or in our phone bill. It's all the same."

That suggestion—that it shouldn't matter whether a business is funded by customer revenue or by tax dollars—is astonishing. The House recently passed, by an overwhelming margin, a bill prohibiting the state from using tax dollars to fund public television. Part of the argument was that taxpayers should not be forced to subsidize a television station. If it is wrong to make state taxpayers spend \$2.7 a year to support a television station, why is it permissible to require local property taxpayers to spend over \$3 million a year to support a telephone company?

For these reasons, I urge the committee to find SB 133 *Inexpedient to Legislate*.

Sincerely,

  
Cordell A. Johnston  
Government Affairs Counsel

Testimony on behalf of FairPoint Communications  
In support of SB 133  
February 22, 2011

Good Morning Mr. Chairman and members of the Committee.

I am Ellen Scarponi from FairPoint Communications. Joining me today is Roy Drukker - the Director of our tax department and a Certified Public Accountant.

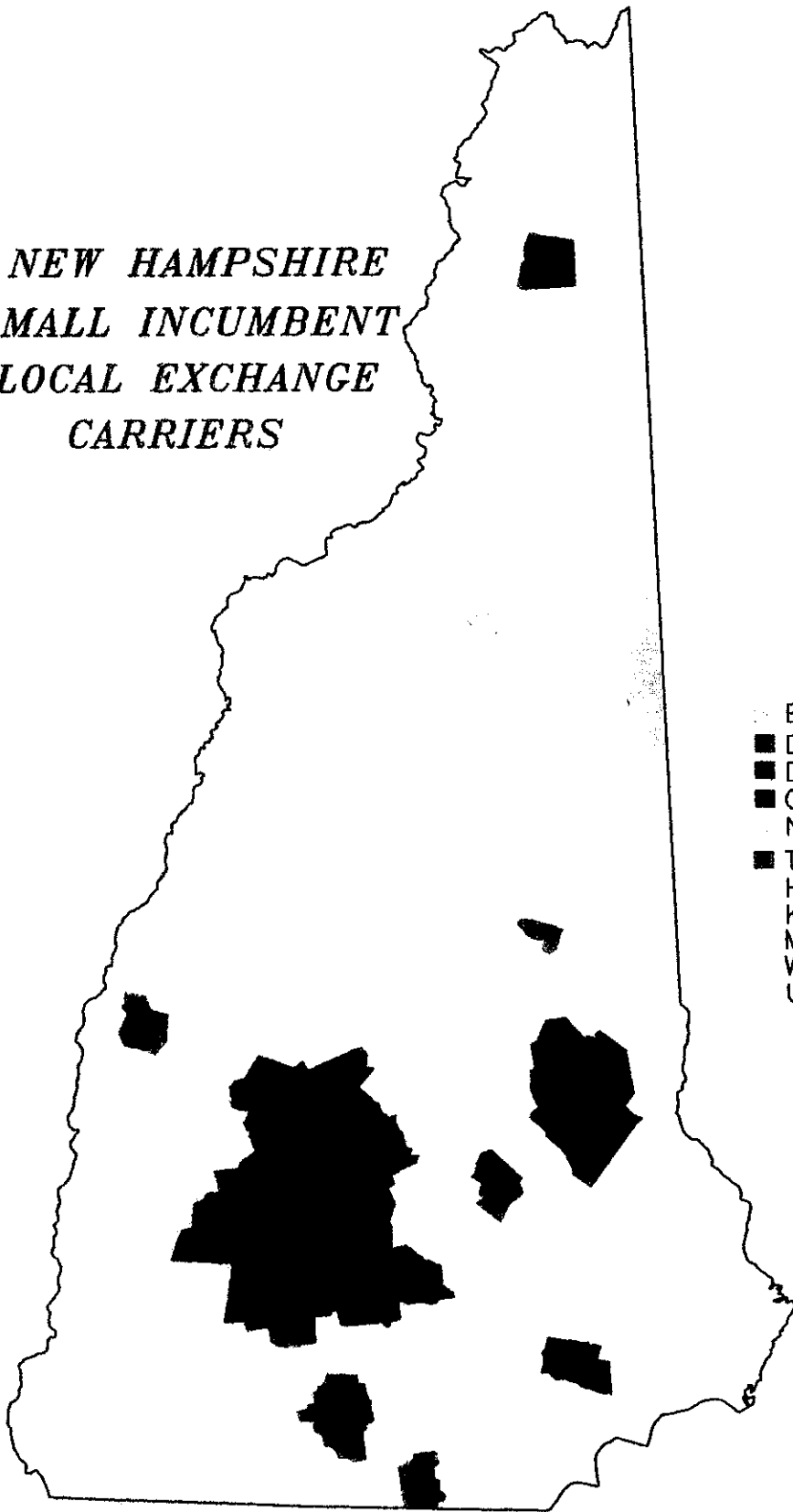
FairPoint Communications strongly supports SB 133 that re-establishes the property tax exemption for telecommunications poles and conduits. Some key points:

1. Passing SB 133 will prevent a new tax - passed by the previous legislature - from being imposed.
2. Not passing SB 133 will allow the new tax to be imposed on hundreds of thousands of NH phone and internet consumers (residence and business) - and other telecommunications companies that attach to landline poles.
3. Telephone poles and conduits have never been taxed by municipalities. This new tax would cost consumers between \$3 and \$30 million annually. The wide range is a result of great uncertainty about how each individual municipality would assess poles, wires and conduits - and then impose this new tax.
4. This new pole tax would be double taxation on consumers - they already pay the Communications Services Tax (CST). The CST is a major reason why the exemption from municipal taxes on poles, wires and conduits was passed in the late '90s and repeatedly extended - until last year.
5. This new tax will hit hardest the people who least can afford it - they will pay the highest percentage increase on their bills -and it will hit only those who use landline providers.
6. This new tax would not only hurt hundreds of thousands of consumers by raising their bills - it would add additional costs to telecommunications companies to administer and collect it. It would be a disincentive for telecommunications companies to create new jobs and further expand broadband internet service.
7. Legislators since 1990 have studied, and enacted, exemptions for taxation of telephone poles and conduits because they concluded that a tax on telecommunications needed to be a tax on service, not on infrastructure, so that it was fair to all providers - and consumers - and did not discriminate on one form of technology versus another. The NH Supreme Court has twice upheld this policy.
8. Stopping the new tax, by enacting SB 133 and permanently creating the exemption will not increase the State budget deficit. This is a new municipal tax that will be felt by the taxpayers in their communities, on their telecommunications bills.

This Legislature has an opportunity to prevent this new tax from being imposed by passing SB 133.

Thank you for your time and we would be happy to answer any questions.

*NEW HAMPSHIRE  
SMALL INCUMBENT  
LOCAL EXCHANGE  
CARRIERS*



- BRETTON WOODS TELEPHONE CO.
- DIXVILLE TELEPHONE COMPANY
- DUNBARTON TELEPHONE COMPANY
- GRANITE STATE TELEPHONE
- NORTHLAND TELEPHONE CO. OF NH
- TDS
- HOLLIS TELEPHONE COMPANY
- KEARSARGE TELEPHONE COMPANY
- MERRIMACK COUNTY TELEPHONE
- WILTON TELEPHONE COMPANY
- UNION TELEPHONE COMPANY

**Caldwell, Sonja**

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**From:** rpojr@aol.com  
**Sent:** Wednesday, February 23, 2011 8:29 PM  
**To:** Caldwell, Sonja  
**Subject:** Fwd: Support of SB 133-Pole Tax Exemption  
**Follow Up Flag:** Follow up  
**Flag Status:** Red

Sonja:

This should be put in the file for the Pole Tax bill.

Thanks.

Bob Odell

-----Original Message-----

**From:** Stafford, Bill <billstafford@gsn.net>  
**To:** rpojr@aol.com; Robert E. Dunn <rdunn@devinemillimet.com>  
**Sent:** Wed, Feb 23, 2011 12:22 pm  
**Subject:** Support of SB 133-Pole Tax Exemption

Dear Senator Odell...I wish to thank you for allowing me the opportunity to speak in support of SB 133 at your hearing yesterday. I am not a professional lobbyist but I am Chief Operating Officer of Granite State Telephone, a small, third generation family-owned local exchange carrier who is very concerned about the impact that the repeal of the exemption as passed last year will have on our company and its customers. I can appreciate the sense of frustration shared by many in the room that this issue can't seem to go away, but I believe it also underscores the importance of it. We are not a Comcast or a FairPoint but a small yet very progressive telecommunications company committed to offering our customers the very latest in technology at reasonable rates and at the highest level of service. I heard yesterday from some folks talking about the impact to FairPoint and that nobody should be concerned because the financial impact to them would be lost in the rounding. As you heard FairPoint testify that is certainly not the case and it is most definitely not the case for us ! We have seen a 27 % drop in revenue over the last six years primarily through competition from wireless and VoiP providers, so we are extremely sensitive to increases in expenses such as the estimated \$ 68000 in additional property taxes the elimination of the exemption would bring. In a different day and time, we could potentially weather that increase but not in today's environment. We would definitely seek an estimated 5% increase in rates that I do not believe would be deemed reasonable by our customers many of whom are already impacted by the economic downturn. As a summary to my testimony yesterday, we are in favor of SB1 33 for the following reasons:

- 1) This new tax will destroy the level playing field in tax equity between wireline and wireless carriers that was created by the passing of the CST in 1990.
- 2) This is definitely a new tax despite the arguments put forth to the contrary by various parties. We have never paid this tax and to start paying it is definitely a new tax.
- 3) As in the case with all taxes money being used to pay this tax will not be available for important tasks such as the further development of broadband or the creation of jobs.
- 4) This tax will undoubtedly be passed along to our customers and will not be minimal as several parties suggested.
- 5) This bill will have no impact at all on the rights of municipalities to tax rights-of-ways.

- 6) It is not true as the municipalities claim that a "a pole is a pole is pole." Electricity is only delivered one way over wires. Communications are delivered by various means and that is way the State established a specific type of tax structure for communications services. It would be foolish to ignore this tax structure as it relates to the subjects of the tax. A pole involved in one type of tax system is different from a pole involved in another. To say otherwise is to ignore the essential tax characteristic of the pole. The Supreme Court opinion in 1997 confirmed this point.
- 7) The bottom line is not that "a pole is a pole is a pole", but rather than " a tax is a tax is a tax." We believe this tax is anti-growth and counter to the benefit of small companies.

I therefore respectfully request your support of SB 133.

Sincerely,

Bill Stafford

# Voting Sheets

# Senate Ways & Means Committee

## EXECUTIVE SESSION

Bill # SB133

Hearing date: 2-22  
 Executive session date: 2-23  
 Motion of: OTR

Room: State House - Room 100

VOTE: 4-2

Made by Odell   
Senator: D'Allesandro   
 Luther   
 Boutin   
 Morse   
 Rausch

Seconded Odell   
by Senator: D'Allesandro   
 Luther   
 Boutin   
 Morse   
 Rausch

<u>Committee Member</u>	<u>Present</u>	<u>exc</u>	<u>YES</u>	<u>NO</u>	<u>Reported out by</u>
Senator Odell	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Senator D'Allesandro left	<input type="checkbox"/>	✓	<input checked="" type="checkbox"/>	<input type="checkbox"/>	D'Allesandro
Senator Luther	<input type="checkbox"/>	✓	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator Boutin	<input type="checkbox"/>	✓	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator Morse	<input type="checkbox"/>	✓	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Senator Rausch	<input type="checkbox"/>	✓	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

\*Amendments:

NOTES: history is clear w/ regard to implementation of exemption  
 they collect the comm serv tax for us & remit it to us every  
 month.

# Committee Report



STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: February 23, 2011

THE COMMITTEE ON Ways and Means

to which was referred Senate Bill 133-FN

AN ACT                      relative to reestablishing the exemption from property  
taxation for telecommunications poles and conduits.

Having considered the same, the committee recommends that the Bill:

**OUGHT TO PASS**

BY A VOTE OF:    4-2

AMENDMENT #        s

Senator Lou D'Allesandro  
For the Committee

Sonja Caldwell 271-2117

New Hampshire General Court - Bill Status System

**Docket of SB133**

Docket Abbreviations

**Bill Title:** relative to reestablishing the exemption from property taxation for telecommunications poles and conduits.

*Official Docket of SB133:*

<b>Date</b>	<b>Body</b>	<b>Description</b>
2/3/2011	S	Introduced and Referred to Ways & Means, <b>SJ 5</b> , Pg.45
2/17/2011	S	Hearing: 2/22/11, Room 100, State House, 1:35 p.m.; <b>SC12</b>
2/24/2011	S	Committee Report: Ought to Pass, 3/9/11; <b>SC14</b>
3/9/2011	S	Ought to Pass, MA, VV; OT3rdg; <b>SJ 8</b> , Pg.98
3/9/2011	S	Passed by Third Reading Resolution; <b>SJ 8</b> , Pg.99
3/16/2011	H	Introduced and Referred to Municipal and County Government; <b>HJ 28</b> , Pg.882
3/17/2011	H	Public Hearing: 3/24/2011 10:00 AM LOB 301 ==Executive Session To Follow==
3/22/2011	H	==CANCELLED== Executive Session: 3/29/2011 1:30 PM LOB 301
3/24/2011	H	Majority Committee Report: Ought to Pass for Mar 30 (Vote 9-7; RC); <b>HC 27</b> , PG.819-820
3/24/2011	H	Minority Committee Report: Inexpedient to Legislate; <b>HC 27</b> , PG.819-820
3/30/2011	H	Ought to Pass: MA DIV 186-180; <b>HJ 34</b> , PG.1122
3/30/2011	H	Reconsideration (Rep Sterling): MA DIV 193-174; <b>HJ 34</b> , PG.1122
3/30/2011	H	Ought to Pass; <b>HJ 34</b> , PG.1122
3/30/2011	H	Lay on the Table (Rep Jasper): MA DIV 243-124; <b>HJ 34</b> , PG.1122

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NH House	NH Senate
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# Other Referrals

# COMMITTEE REPORT FILE INVENTORY

SB133 ORIGINAL REFERRAL \_\_\_\_\_ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

\_\_\_\_ - AMENDMENT # \_\_\_\_\_      \_\_\_\_ - AMENDMENT # \_\_\_\_\_  
\_\_\_\_ - AMENDMENT # \_\_\_\_\_      \_\_\_\_ - AMENDMENT # \_\_\_\_\_

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED      \_\_\_\_ AS AMENDED BY THE HOUSE  
\_\_\_\_ FINAL VERSION      \_\_\_\_ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): revised fiscal note

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 7-22-11 SLC  
BY COMMITTEE AIDE