



Request for Proposals CARROLL COUNTY COMMUNICATIONS DISTRICT PLANNING COMMITTEE

CONSULTANT/CONSULTANTS TO ASSIST THE CARROLL COUNTY COMMUNICATIONS DISTRICT PLANNING COMMITTEE ("Planning Committee") WITH DRAFTING AN AGREEMENT AND PUBLIC MEETING REQUIREMENTS PER NH RSA 53-G, TO FORM A COMMUNICATIONS DISTRICT FOR THE PURPOSE OF BRINGING HIGH SPEED INTERNET ACCESS TO EVERY PREMISE IN THE DISTRICT COMPRISED OF MEMBER CARROLL COUNTY TOWNS

1.0 Project Purpose

The Carroll County Communications District Planning Committee (Planning Committee) was initiated to establish a Carroll County Communications District ("Communications District"), comprised of the Carroll County Towns of Albany, Conway, Harts Location, Hales Location, Chatham, Eaton, Madison, Tamworth, Ossipee, Freedom, Effingham, Brookfield, Moultonborough, and Tuftonboro, is soliciting proposals from qualified firms to determine need, feasibility and justification for an internet solution serving the residents of the Towns in Carroll County.

Carroll County Communications District Planning Committee's vision for establishing a Communications District per NH RSA 53-G is:

To establish a Communications District that that brings high speed internet infrastructure and services to all premises in the member Towns to serve residents, seasonal residents, businesses, and visitors with competitive, reliable, and scalable (future proof) service that meets the minimum requirements of symmetrical 100/100 Mbps.

The Planning Committee's requirements and needs in the formation of the Communications District, include but not limited to, are:

- 1) Legal and technical assistance drafting a Communications District agreement as required in RSA 53-G;
- 2) Meeting all the legal requirements documented in RSA 53-G;
- 3) Assistance drafting the core governing structure (By-Laws) and membership requirements of the Communications District;
- 4) Assistance identifying appropriate business and governance plans;

- 5) Evaluation and recommendation of the financial and operational strengths and weaknesses of general approaches to Communications District to include working with existing ISP providers, attracting new competitive ISP providers, partnerships with ISP providers applying for public and private infrastructure grants/funding, possibly establishing a municipal network as a last resort, or some combination of the above;
- 6) Evaluation and recommendation of various organizational and operational models which have proven success in similar rural situations, which are permissible under current New Hampshire law/statutes;
- 7) Assistance scheduling and conducting the required public hearings in each interested Carroll County Town and assisting the Towns at their 2023 Annual Town meetings to answer any questions.

2.0 Background

The 14 Towns listed above have a minimum of 2 representatives appointed by their respective Select Boards/Governing Body to serve on this Planning Committee per RSA 53-G. The Towns are currently partially served by Spectrum (fiber-coax), Consolidated Communications (DSL), satellite, cellular or are unserved and under-served. The Planning Committee initially met in March 2022 and meet monthly or at the call of the Chair.

In 2019, a separate committee, Carroll County Broadband Committee (CCB) was formed consisting of all 19 Towns, planning commissions, economic councils, SAUs and local State Representatives and Senator in Carroll County. The CCB was responsible for and met many times over the past 3 years recommending legislation, performing a feasibility study of the county (attached) and organizing the formation of this Communications District planning committee. They also solicited the County Commissioners and received a grant from the county's ARPA funds. The committee also met regularly with several internet providers, establishing good sources for future partnerships and maintaining open lines of communications.

2.1 Background

The following attachments are provided at the end for your information:

- Attachment A: Carroll County Broadband Feasibility Study, March 2022
- Attachment B: RSA 53-G Communications Districts
- Attachment C: RSA 91-A - Access to Government Records and Meetings - Right to Know
- Attachment D: RSA 33 – Municipal Finance Act – Broadband Infrastructure Bonds
- Attachment E: RSA 33-B Municipal Revenue Bonds
- Attachment F: Sample By-Laws Draft
- Attachment G: Conflict of Interest Affidavit and Disclosure

3.0 Scope of Services

Formation of a Carroll County Communications District is the product that will be produced through this project and will advance the vision of the Carroll County Communications District Planning Committee.

3.1 Vision

To establish a Communications District for internet partnerships or networks that serve all permanent residents, seasonal residents, businesses and visitors with competitive, reliable, and scalable (future proof) service that meets the minimum requirements of symmetrical 100/100 Mbps working with existing providers in a public/private partnership, facilitating with a partner to obtain funding and grants both public and private, attracting new competitive providers, help facilitate infrastructure for last mile connections where it is possible, and as a last resort establishing a municipal network.

The Towns' residents, businesses and visitors need this service to:

- Accommodate the growing needs of its traditional students and teachers, and of the growing needs of other non-traditional education resources.
- Accommodate community telehealth needs, especially considering the distance to healthcare facilities.
- Expand employment opportunities for resident through ability to conduct on-line job searches, virtual interviews and employment options. Accommodate the needs of a growing "work from home" segment of the population. Many higher paying professional jobs now allow for or require remote employment. The Towns cannot grow and prosper without affordable and robust internet.
- Give subscribers/consumers a choice in internet services for their personal entertainment, social networking and email. The Towns have many areas that are unserved/underserved or served by only one provider with minimal speed that has no competition.
- Give local businesses the ability to expand and grow their business services with high-speed internet connections.
- Give the Towns an advantage with economic development and attracting new business.

3.2 Consultant Deliverables

To help achieve this vision and pursue improved internet service, the Planning Committee seeks a legal, and possibly a technical consultant, to:

- Produce for the Planning Committee final review and approval, a detailed and accurate Communications District Agreement and other applicable documents fulfilling all requirements of NH Laws/Statutes through the 2023 Annual Town Meetings, to include but not limited to the following:
 - NH RSA 53-G:1 - Definitions
 - NH RSA 53-G:2 - Communications District Planning Committee; Formation and Responsibilities
 - NH RSA 53-G:3 - Communications District agreement
 - NH RSA 53-G:4 - Vote on Establishing District.
 - NH RSA 53-G:5 - Corporate Body: Powers
 - NH RSA 53-G:6 - Governing Board
 - NH RSA 53-G:7 - Admission of Additional District Members
 - NH RSA 53-G:8 - Member Withdrawal
 - NH RSA 53-G:9 - Adoption of Budget
 - NH RSA 53-G:10 - Audits
 - NH RSA 53-G:11 - Severability

- No Town General Municipal bonding binding the property tax payers to pay; consider Revenue bond option.
 - Agreement Clause – help determine how Towns exit or join the Communications District after it is formed and determine how to incorporate a financial penalty for a buy-in after it is formed. Also determine how to incorporate a financial penalty for any Town that wishes to leave.
 - No Town or Communications District ownership of infrastructure equipment.
 - All meetings will be public under NH RSA 91-A except non-public negotiations.
 - The consultant to make sure that all NH RSA 91-A postings for meetings and public hearings with Towns are in place.
- Draft Operational/Governance/By-laws/Procedures document for a Communications District.
 - Provide guidance for NH RSA 53-G:6 - Governing Board.
 - After review of the NH Statutes regarding all aspects of forming a Communications District, identify and inform the Planning Committee of any overlooked legal or technical issue.
 - Represent the Planning Committee as the communication and legal liaison with NH State Attorney General's office for questions and required approvals.
 - Meeting obligations:
 - Consultant to coordinate with the Planning Committee and applicable Towns' Governing Body and administration to schedule, attend and facilitate Communications District discussions at each Town public hearing(s), Town or county meetings and Town Annual Meetings, within prescribed NH RSA timelines.
 - Prepare and provide meeting notices, handouts and presentations to meeting participants for public hearings and 2023 Annual Town Meetings.
 - Generate recommended strategies and a timeline for completion at 2023 Town Meetings.
 - Planning Committee meetings, 2023 Town public hearings, 2023 Town Meetings.
 - Provision for providing a living question/answer (FAQ) document for citizens/voters.
 - Offer any advice on what may be missing in this RFP.
 - Consultant availability after the initial work (post 2023 Town Meeting) is completed.

3.3 Specific Consultant Services

Specific services expected from the legal and/or technical consultant are:

- Generate project timeline from start to completion.
- Meet with the Planning Committee and Town representatives to review the timeline and study elements, respond to questions and solicit input from Committee members and Town representatives.
- As elements of the Communications District are developed, develop content for the Planning Committee and Towns' education and consideration throughout the process. These should include, but may not be limited to, the existing state of internet service across the region, the pros and cons of possible solutions including technical and

- economic aspects, and more refined content as this process develops.
- As the Communications District agreement is developed, collaborate with the Planning Committee in producing options that may include more cost-effective solutions relevant in providing internet service in more sparsely populated areas and some consideration of not providing services in extremely hard-to-serve locations.
- Meeting attendance could be in person or virtual dependent upon the need at that meeting.

4.0 PROPOSAL CONTENTS

4.1 Statement of Qualifications

All respondents must submit a written Statement of Qualifications to include information about the respondent directly related to each of the Selection Criteria.

Proposals must detail the team that will be working on the project. The Legal Consultant may want to incorporate a Technical Consultant and must state this in their proposal.

A separate technical consultant may be necessary as an advisor and shall be at the discretion of the Planning Committee.

All information should be submitted succinctly.

References: Provide names, addresses, telephone numbers, and e-mail addresses of clients for whom the Consultant has performed projects of a similar type and size within the last 5 years. Please provide a brief description of projects performed of similar type and size. A completed Conflict of Interest Affidavit and Disclosure form (Attachment G) and a proposed contract with costs must be submitted with the proposal. Please submit five (5) paper copies and one (1) electronic copy of the proposal in PDF format.

4.2 Proposal

All proposals should address how the Respondent proposes to provide each element of the Scope of Services.

Respondents must provide an explanation of how they propose to accomplish the project outcome within the stated timeframe.

The proposal must include estimated costs broken down for each item listed within the Scope of Services above.

4.3 RFP DEADLINE - TIMEFRAME

In order to allow for an appropriate response time for questions and comments prior to the Proposal due date, all questions and comments must be submitted by 2:00 p.m. on June 22, 2022. Answers to the questions and comments, as well as any changes made to this RFP, will be posted online at www.carrollcountynh.net by June 29, 2022.

All proposals must be received at the Carroll County Complex, c/o Carroll County Communications District Planning Committee, 95 Water Village Road, Ossipee, NH 03864 no later than 4:00 p.m. local time on July 6, 2022.

It is anticipated that the choice of consultant/firm will not be determined until mid-July 2022, and any proposed contract subsequently requires approval by a vote of the Planning Committee and the authorizing signature of the Planning Committee Chairperson.

The final phase of the project is to be completed by June 30, 2023.

5.0 SELECTION PROCESS

The Planning Committee may ask top ranked firms/respondents to attend a presentation interview as part of the evaluation process.

Consultant Firms/respondents may be invited to be interviewed and should be prepared to have general discussions on non-binding estimates of cost to provide requested services.

The Planning Committee reserves the right to accept or reject any or all proposals the Committee deems to be in its best interest.

5.1 SELECTION CRITERIA

The respondents will be evaluated on the following criteria.

- Submission of a complete and concise proposal with the responding consultant's approach to the project, which contains all information, services and requirements of this RFP.
- Demonstration of a strong understanding of the Project and the Planning Committee objectives.
- Thoroughness of services the responding consultant proposes to provide.
- The responding consultant's stated ability to perform and complete all work as indicated in the Scope of Services and in a timely manner through the 2023 Annual Town Meetings.
- Recent public sector experience and performance with municipal/regional/multi government internet, communication or cable initiatives; experience with establishing business corporate structure; specific information on all internet planning projects in New Hampshire or surrounding states should be provided; provide information on results achieved from all internet planning projects in New Hampshire or surrounding states. Please reference specific projects.
- Staff expertise and relevant experience of the proposed team; project lead is to be clearly identified and must be present for any interviews for the consultant selection process.
- Demonstrated experience developing legal, technical, financial and business models for Communications District initiatives.
- Demonstrated ability to work collaboratively with the Planning Committee.
- Consultant's willingness and ability to expand the scope of services to include the possibility of the remaining Towns in Carroll County wish to participate. (Currently 14 of the 19 Towns have voted to be represented on this Planning Committee.

- Comparative costs of the proposal will be considered but will not be the only basis for selection.
- Acceptability of terms of the proposed contract. The Planning Committee will notify the respondents with a final decision or request for additional information within four weeks of the submission deadline.

6.0 SUBMITTAL

All proposals are due at the Carroll County Complex, Administration Building, c/o Carroll County Communications District Planning Committee, 95 Water Village Road, Ossipee, NH 03864, no later than 4:00 p.m. local time on July 6, 2022. If hand delivered, please report to the Business Office within the Administration Building.

Five (5) hard copies and one (1) complete electronic version in PDF format are required. Vendors assume the risk of the methods of dispatch or delivery chosen. Office hours for receipt of mailed or expressed proposals are: Monday through Friday, 9:30am - 4:00 pm (EDT).

7.0 DISCLAIMERS

- The Carroll County Communications District Planning Committee, reserves the right to accept or reject any or all submittals received, cancel or modify the RFP in part or in its entirety, or change the RFP guidelines when it believes it is in the Carroll County Communications District Planning Committee's best interest to do so.
- The Carroll County Communications District Planning Committee will not be responsible for any costs incurred by the respondent in the preparation of a response to the Request for Proposal.
- The Carroll County Communications District Planning Committee, reserves the right to delay or discontinue this selection process at any time during the process.
- Carroll County Communications District Planning Committee, reserves the right to request clarification and/or additional information from the Respondent during the evaluation process.
- Carroll County Communications District Planning Committee, reserves the right to waive any informalities in submitted proposals.
- All proposals submitted in response to this RFP become the property of the Carroll County Communications District Planning Committee. The Planning Committee has the right to disclose information contained in the proposals after the award has been made. All submitted reports, documents, and materials, including the mapping software files, shall be considered public information and shall be the property of the Carroll County Communications District Planning Committee.

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CONTACT INFO

Question and comments regarding this Request for Proposal shall be directed to:

Carroll County Communications District Planning Committee Contacts:

Chuck Fuller (Vice Chair) Email address: chuck.fuller@effinghamnh.net
Cell Phone: 609-658-2769

Rick Hiland Email address: r.hiland@myfairpoint.net
Phone: 603-447-4833

Attachments:

Attachment A: Carroll County Broadband Feasibility Study, March 2022

Attachment B: RSA 53-G Communications Districts

Attachment C: RSA 91-A - Access to Government Records and Meetings - Right to Know

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Carroll County, NH Fiber Broadband Feasibility Study

November 2021



PREPARED BY
RURAL INNOVATION STRATEGIES, INC AND
VALLEYNET

CARROLL COUNTY, NH

FIBER BROADBAND FEASIBILITY STUDY

Created for the Carroll County Broadband Committee and the North Country Council by Rural Innovation Strategies Inc. (RISI) and ValleyNet with support from a grant from the USDA.

November 2021

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Executive Summary

This feasibility study performed for the Carroll County Broadband Committee, describes multiple viable paths that a Communication District or other municipal entity consisting of Carroll County towns can pursue to ensure every currently unserved premise in the county is served by fiber broadband infrastructure.

Throughout the document, Communication District (CD) is used as an example, however it is understood that the decision to move forward with a Communications District has not been made. However, the assumption is that the Towns of Carroll County are working together to provide universal broadband access to all premises, whether in a District model or some other multi-town municipal model, such as the County itself.

To complete this study, Rural Innovation Strategies, Inc (RISI) and ValleyNet completed the following work:

- 1) Survey of current service, with over 1,000 responses from the county
- 2) GIS work to combine RFI responses, survey, FCC data to create an understanding of current gaps in service
- 3) Technical feasibility assessment
- 4) Network models and financial models that look at multiple strategies for funding and building

This work was done in the context of the NH regulatory environment as well as the rules that developed during this work around Communication Districts, the RFI process, and the NH grant program. In addition, the broadband market in general has been incredibly dynamic during this work. The FCC Rural Development Opportunity Fund (RDOF) auction, and importantly, rising costs due to materials and labor shortages spurred by increased investments in broadband across the country.

Feasibility studies are used to gain a high level understanding of what is possible and what isn't in a jurisdiction, as well as to provide some guidance on how to compare multiple pathways if multiple pathways exist. The financial models created for this project will not describe exactly how the network deployment will play out -- among other things, construction costs are not fully known until they are put out to bid, and the fees the CD may need to pay a provider are also not known. However, this document should be used for the CD to discuss the pros and cons of different approaches, and align on the exact path they wish to pursue via a detailed business plan.

Today, there are substantial resources available to build new broadband, which are making rural projects feasible that would not have been viable before. The proposed NH Broadband Grants as well as the ability to issue General Obligation bonds to build infrastructure are two such

developments. Both of these resources are restricted to use in areas that are currently unserved (less than 25 Mbps Download/ 3 Mbps Upload).

In the case of Carroll County, the viable paths involve using one or more of these funding sources to first build to the unserved areas (as that funding dictates). Once that is complete and the CD has established that cashflow is sufficient and predictable, the CD may elect to use revenue generated by the network using Revenue Bonds to finance construction into areas already served by cable.

If the CD elects to use a General Obligation bond (GO bond) to match against the NH Grant Program, this will allow the CD to build the fastest and most efficiently, as the interest rates on GO bonds is quite low. Under this scenario, the speed at which the CD can build may only be limited by the construction season and electric utility's ability to do make-ready work.

If the CD does not wish to use a GO bond, the CD may be able to use the NH grant program in conjunction with private debt; however, the private debt will need to be unsecured and so will carry a higher interest rate (assume 8%). This private debt should be replaced by revenue bonds as the network matures to allow the CD to build to all of the areas they wish to serve. Because of the more expensive funding and the need to replace private debt with revenue bonds, the CUD will likely not be able to build as quickly under this scenario, and the rate of construction may need to be slowed to accommodate the need to minimize the unsecured debt required.

The substantial resources available for broadband are resulting in a difficult environment to plan. As the CD pursues a business plan and then implementation, they will need to continually assess the market conditions, their competitors' behavior, materials and labor costs, and more. Another unknown is the amount of resources the CD will be able to secure from known programs (e.g., the NH Broadband Grant program) and other sources, e.g., the funding in the infrastructure bill. One cannot model every possible scenario given the permutations and variability present. However, we have modeled two scenarios that represent the extremes of the funding landscape; one that assumes the CD can obtain substantial grant money (half of their construction costs) and match that against low-cost GO bonds, and another that assumes the CD can only obtain a modest amount of grant money, which is matched against higher-cost unsecured debt. Given that both of these scenarios show a viable path, we are confident that the project is likely viable and that the CD should move ahead with a business plan and execution.

Introduction & Background

Rural Innovation Strategies Inc. (RISI), and ValleyNet received an RDCI grant from the USDA to work with several communities, including Carroll County, New Hampshire. The purpose of this work is to create a feasibility study for a fiber network in Carroll County, incorporating construction cost estimates and a timeline, high level pro forma financial models, potential

funding sources, and potential operational/partnership options and models. This document reflects the work completed.

The ultimate goal of this project is to understand the viability of, and optimal course for, providing universal broadband access. The FCC defines an area served with broadband as having access to speeds of at least 25 Megabits per second (Mbps) download, and at least 3 Megabits per second (Mbps) upload (known as 25/3Mbps); otherwise the area is considered unserved. This standard was set in 2015, and it is generally believed these speeds will be inadequate in the near future.

Fiber as the solution

Fiber technology is considered the optimum choice for broadband connectivity and thus is the focus of this feasibility study. Fiber is the “future-proof” choice, as it can provide symmetrical high speeds (ex. 100mbps download / 100 Mbps upload) and adapt as society becomes increasingly reliant on the Internet of Things, where faster and consistent upload speeds will be required to handle the amount of data these devices will generate.

In addition to symmetrical high speeds, fiber infrastructure has a useful life of 40 to 50 years or more, requiring maintenance on the electronics but largely not on the fiber itself (except in the case of fallen trees and storms). Bandwidth and capacity can be increased on fiber networks by replacing the electronics on either end of the line, meaning the network can meet the needs of business and residences for decades with relatively simple electronics upgrades. Fiber is not affected by the line of sight issues or reliability issues of wireless networks, and lastly, it provides the greatest impact on housing values and economic development potential in communities where it is deployed.

The study area

In 2020, New Hampshire passed legislation allowing the formation of Communication Districts (CDs), NH RSA 53-G. CDs allow towns to band together to provide broadband services; they function similarly to water and sewer districts or solid waste districts. RSA 53-G includes a provision stating that municipalities (including CDs) can issue general obligation bonds to fund broadband infrastructure projects in unserved locations.¹ NH RSA 53-G also states that CDs can enter public-private partnerships to provide broadband.

Carroll County has created a Communications District Planning Committee that currently includes 13 of the county’s 19 towns. The study area for this feasibility study includes all 19 towns in Carroll County.

¹ Before a municipality can issue bonds, the municipality must issue a request for information to existing providers to determine which locations are served; the providers have two months to respond to the request for information. If a provider does not respond, locations covered by that provider are considered “unserved”.

Determining Need

A foundational part of broadband feasibility studies is determining need by understanding where existing broadband infrastructure capable of meeting the needs of constituents is and is not. Typically in hilly and wooded areas, only other fiber infrastructure or cable infrastructure is viewed as sufficient to constituents.

National data on broadband availability, collected via the FCC's Form 477 reporting process, is widely considered too misleading and inaccurate to use for planning purposes. If no better data is immediately available, it is considered best practices to augment or calibrate this data with other data sources. This section outlines how the Form 477 data was improved. Note: while the granularity of data compiled for this study is sufficient for the purposes of understanding feasibility, the CD will ultimately need much more detailed pole-level data prior to construction, which will be collected via a pole survey.

To determine need, the study reviewed data from:

- FCC form 477 from the most recent data set available (June 30, 2020);
- Street-level availability data generated through an RFI process for the towns of Albany, Effingham, Madison, and Tuftonboro; and
- Responses from a resident survey to assess internet availability.

Using these three sources, we created GIS maps of the RFI responses and plotted the survey responses in an overlay with the FCC data. We then manually adjusted and edited the FCC data to reflect the on the ground experiences of the survey respondents and the presence of infrastructure indicated in the RFI responses. The output of this exercise was a more complete indication of broadband availability in the region.

Our findings from this analysis are outlined in the table below. While data from the FCC indicates just 3.3% of premises in the county are unserved by service of over 25/3Mbps, a review of this data by overlaying survey data and provider street-level data indicates that *at least* 12.8% of premises in the county are actually unserved - a total of 5,323 premises. Our estimates of unserved households by town are as follows:

Unserved Premises by Town, Carroll County, NH

Town	Population	Premises	% Unserved Premises	# Unserved Premises
Albany	741	592	25.9%	153
Bartlett	2,794	4,225	0.1%	6
Brookfield	718	351	36.2%	127
Chatham	343	278	90.3%	251
Conway	10,102	7,161	0.7%	49
Eaton	399	315	38.4%	121
Effingham	1,528	1,023	14.8%	151
Freedom	1,568	1,675	1.6%	26
Hale's	119	101	0.0%	0
Hart's Location	41	55	81.8%	45
Jackson	804	1,051	1.2%	13
Madison	2,561	2,001	8.3%	167
Moultonborough	4,135	5,158	6.8%	349
Ossipee	4,462	3,247	19.8%	643
Sandwich	1,386	1,153	98.7%	1,138
Tamworth	2,913	2,093	26.0%	545
Tuftonboro	2,437	2,551	27.1%	692
Wakefield	5,175	3,990	1.2%	48
Wolfeboro	6,684	4,644	17.2%	798
TOTAL	48,910	41,664	12.8%	5,323

Source: RISI, FCC Form 477, ACS

Please see Appendix A: Survey and RFI results, for more detail on those pieces of data.

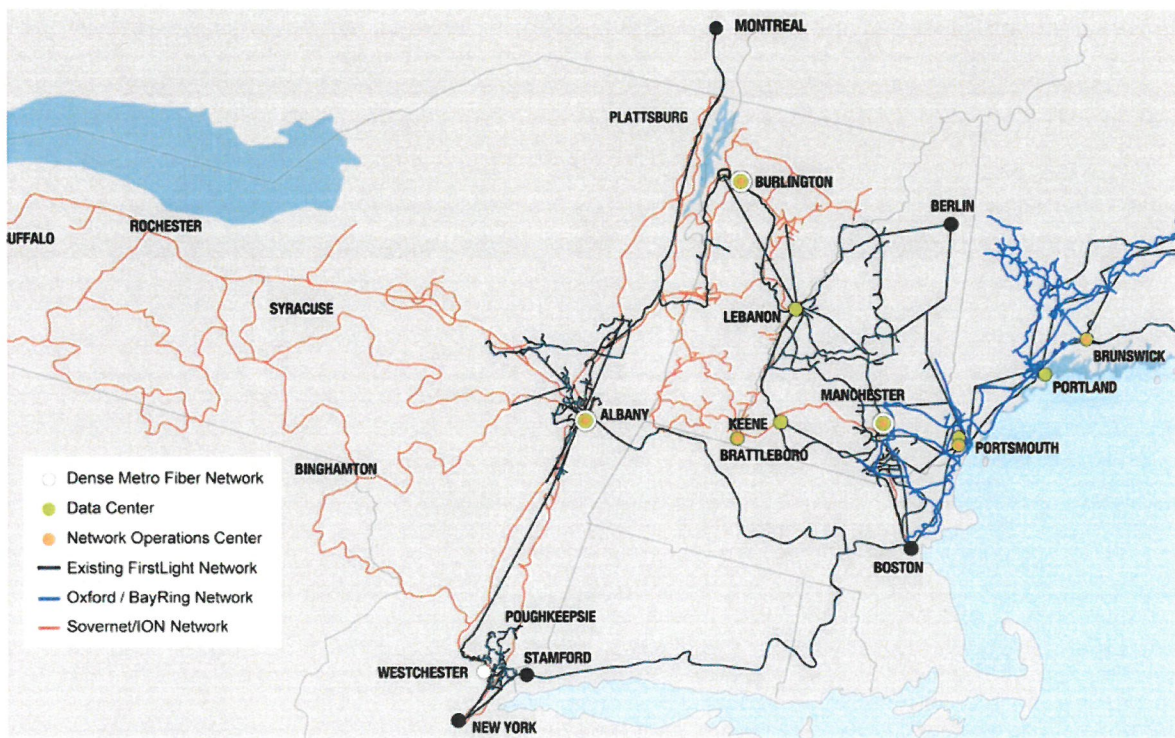
Technical Feasibility

In sum, Carroll County does not pose any specific technical threats that would hinder a multi-town FTTP system. The existing infrastructure in the region will not present any barriers to creating a viable and detailed engineering plan for the region at a later stage in the process.

Backhaul Availability

Backhaul is needed to support networks created and expanded throughout the county. Backhaul is the fiber infrastructure needed to carry information between a regional network's router location to the "carrier hotel" where it connects to the greater global Internet network.

Several providers have backhaul in Carroll County, such as FirstLight Fiber, Consolidated Communications, and Lumen (Level 3). For example, the following is a high level map of FirstLight's backhaul. (Backhaul providers typically do not provide detailed maps of their infrastructure without the signing of an NDA.)



As part of the detailed design and implementation process, the CD will have to secure quotes from backhaul providers and obtain information about ideal backhaul access points. Suffice it to say, however, that in general the CD has options for procuring backhaul from providers with networks that terminate in colocation centers within New England, New York, and Montreal,

offering geographic route diversity. As a result, the technical viability of a new fiber network in the region is not a concern.

Additional existing fiber assets

Middle Mile Resources

In December 2013 a major middle-mile project was completed across all 10 counties in New Hampshire funded by the Broadband Technology Opportunities Program (BTOP) and managed by the National Telecommunications Information Administration (NTIA). 865 miles of Fiber Optic Network, owned and managed by New Hampshire Optical Systems was created, opening up the potential to connect to un- and underserved areas.² This network is now owned by FirstLight.

New Hampshire Electric Cooperative (NHEC) & Other Electric Utilities

The three electrical service providers in Carroll County are Eversource, New Hampshire Electric Cooperative (NHEC), and Wolfeboro Electrical Department (a municipal division). While Eversource, as of this writing, is not intending on expanding to broadband service in its territory, NHEC is working toward a goal of providing broadband service to its territory. NHEC, under the subsidiary NH Broadband, is currently working to get broadband service to Carroll County residents in Sandwich and connect customers by early 2022.³ As such, they are also a potential partner for serving the rest of the CD, and we recommend engaging in discussions with them to assess the likelihood of partnership in the remaining Carroll County towns. Lastly, the Town of Wolfeboro has recently expanded broadband access to some of its residents via CARES Act funding with service provided by Atlantic Broadband.⁴

The following map outlines who across the county is serviced by what utility.

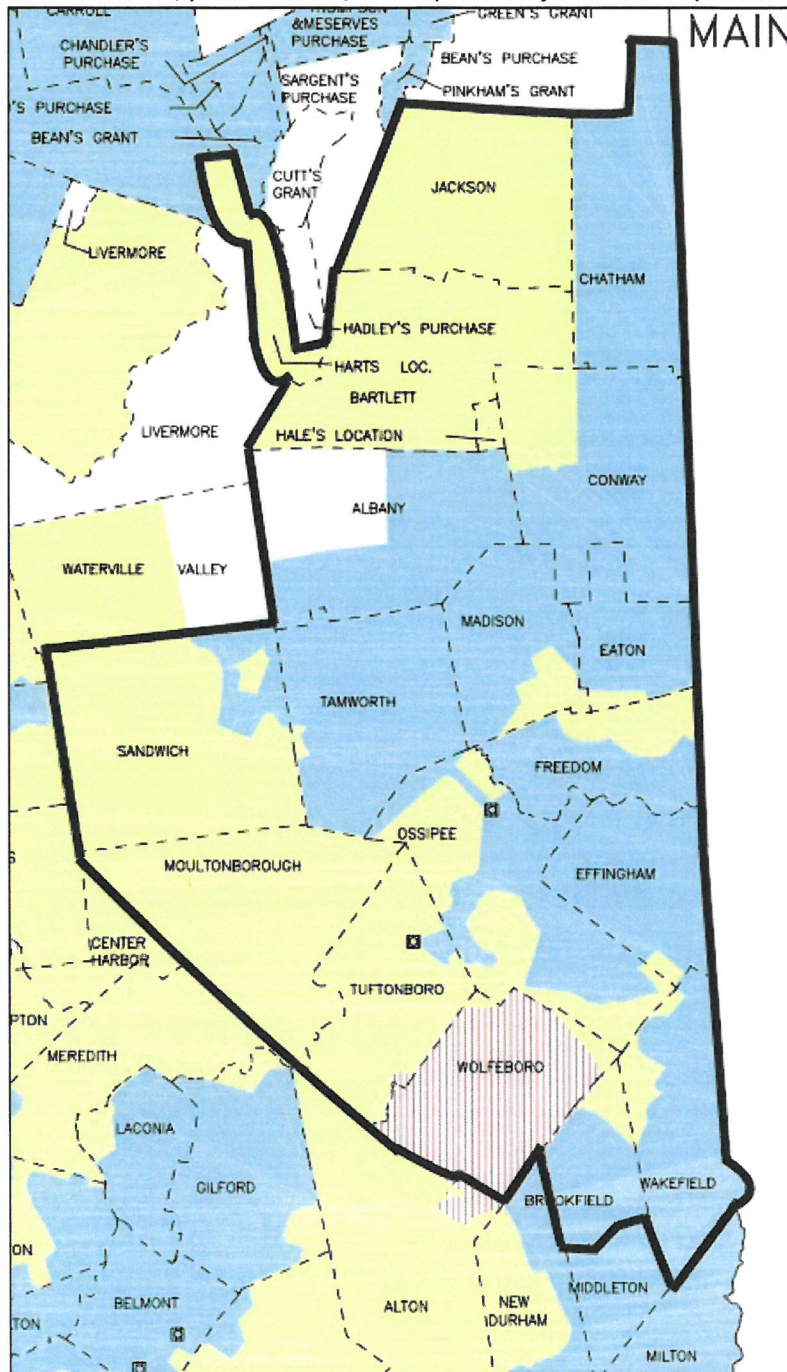
² Network New Hampshire Now Connect Newsletter, http://unh.edu/networknhnow/CONNECT_Final.pdf

³ NH Broadband Sandwich – Acworth Expansion July 2021 Frequently Asked Questions, <https://www.nhec.com/wp-content/uploads/2021/07/Sandwich-Acworth-FAQs-7-22.pdf>

⁴ In Progress: CARES Act Broadband Expansion in Wolfeboro, November 5, 2020 <https://www.wolfeboronh.us/home/news/progress-cares-act-broadband-expansion-wolfeboro>

Electric Utility Map, Carroll County

(Blue = Eversource; yellow = NHEC; red striped = Wolfeboro Municipal Electric)



Source: State of New Hampshire Public Utilities Commission

Utility Poles

Our study is focused on the deployment of Fiber-to-the-Premise (FTTP) and not wireless solutions or other mechanisms for providing broadband; therefore, the only important vertical

infrastructure are utility poles. The deployment will be 90% or greater aerial deployment on poles versus buried underground.

Eversource New Hampshire owns or maintains poles in about three-quarters of the state, about 450,000 poles.⁵ Their territory in Carroll County extends to Chatham and Tamworth; the majority of Albany, Conway, Madison, Eaton, and Freedom; about half of Ossipee; and the majority of Wakefield and Brookfield.⁶ The New Hampshire Electric Cooperative (NHEC) maintains or owns poles in its service territory, which in Carroll County constitute all towns except Albany and parts of Brookfield and Wakefield.⁷ However, it is important to note that even in the footprints of those two utility entities, there are additional poles with shared ownership between the electric utility and Consolidated Communications, Inc. (CCI), and there are some poles owned exclusively by CCI. The exact poles that will be used for deployment will be based on the partner selected and pole data collection work done in the field.

The average cost to make space on the pole for a new fiber attachment in a New Hampshire rural area where there are few attachments on the pole is between \$100 and \$200 per pole, or on average \$5,000 per mile (assuming roughly 30 poles per mile). Extremely old poles, typically under 30 feet, and poles that have two or more attachées in the communications space will more often need to be fully replaced to be used for fiber attachment, increasing the cost of deployment.

Underground Construction

A small percentage of utility infrastructure in each town will likely be underground, typically in a Town right-of-way (ROW). Underground construction is several times more costly than aerial construction and can be very difficult in New Hampshire's rocky terrain. Without a detailed design, it is impossible to predict exactly what percentage of the network construction is underground, but it averages between 5 and 10% of total mileage and has not significantly impacted build costs in New Hampshire. Documenting the ROW process by applicable Town will be useful when ready to install underground utilities.

Network Design

An optical fiber Gigabit Passive Optical Network (GPON) with distributed splitting in the field is recommended. GPON networks have become the standard for municipal broadband and for Fiber-to-the-Premise projects in the US. The infrastructure is scalable and is limited only by the equipment on both ends of the fiber. The fiber network is future-proof; as increased bandwidth and capacity are necessary, the electronic equipment can be upgraded without needing to rebuild the base fiber architecture. The initial network will consist of a hub location in each town connected to each other with 10 Gb fiber transport, eventually creating interconnecting,

⁵ "There are 500,000 utility poles in New Hampshire, yet we hardly notice them" Brooks, David. 12/24/2016 <https://www.concordmonitor.com/electricity-utility-poles-4469151>

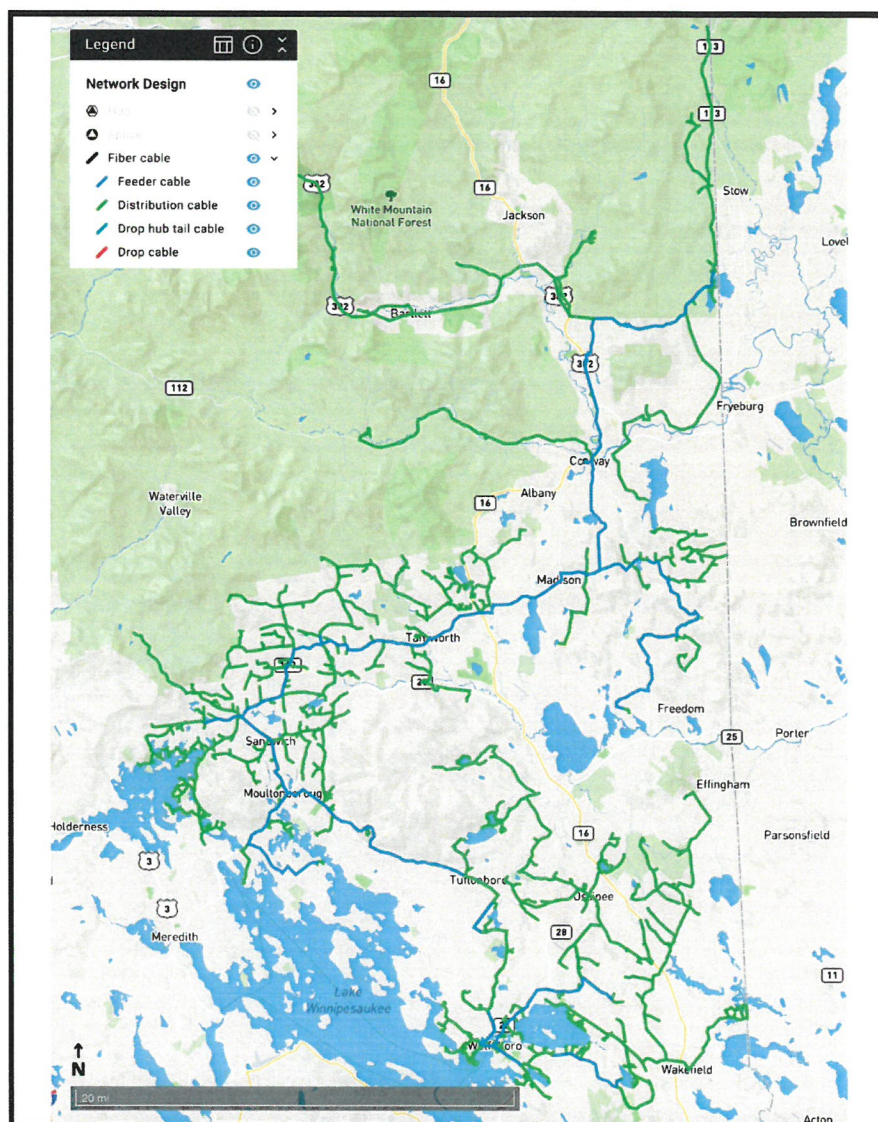
⁶ Eversource Territory Map, https://www.eversource.com/content/docs/default-source/nh---pdfs/service-territory-nh.pdf?sfvrsn=3730ea62_16

⁷ NHEC Territory Map, <https://www.nhec.com/your-coop/>

redundant rings. The initial design will include two central hub locations that will also house the routing equipment to access the Internet. These two locations will provide redundancy, in the case of a failure, for each other. Home equipment (e.g, Internet routers) will also be gigabit compatible.⁸

High Level Route Map

The following is a route map designed using fiber planning software to be the most efficient way to serve all of the unserved areas in the Carroll County Communications District.



⁸ An alternative fiber network option is an Active Ethernet Optical Network (AON). This network would dedicate a strand of fiber from the hub location to each premise. This type of network is not recommended because more fiber would need to be deployed throughout the network, increasing construction and operation costs for very little additional customer benefit.

It should be noted that even though this route is designed to reach unserved areas, substantial construction will need to happen through already served areas to reach those areas. Building through these areas will not only bring competition to those cabled areas, but will give the CD valuable data about customer demand for service in those areas. That data should then inform the CD's decisions in later years about where to build and how aggressively to build in areas with existing service.

The following table summarizes the route miles and passings by town, in the build sequence used in the feasibility study. Note, the build sequence here may not be the ultimate build sequence used: it is sufficient for planning purposes. The ultimate build sequence should be determined in the business plan with input from the high level engineering.

Town	Cabled Passings	Uncabled Passings	Cabled Miles to build	Uncabled Miles to build
Sandwich	31	1,178	1	111
Wolfeboro	3,427	879	49	25
Ossipee	752	647	24	39
Tamworth	562	556	14	47
Moultonboro	1,773	340	27	23
Chatham	27	256	1	25
Brookfield	136	162	8	14
Eaton	179	125	13	19
Hart's Loca	11	73	2	9
Conway	4,668	59	42	3
Albany	144	51	10	3
Wakefield	518	46	9	2
Effingham	118	28	5	4
Freedom	415	23	6	4
Madison	540	23	15	5
Jackson	8	18	-	1
Tuftonboro	351	15	19	2
Bartlett	2,803	4	23	-
Hale's	-	-	-	-
Total:	16,463	4,483	268	336

Lastly, it is strongly recommended that the CD design their network with the assumption that they will build entire towns. The incremental cost of including enough fiber capacity to serve a full town is negligible compared to the cost of adding more fiber capacity layer.

Financial Feasibility Inputs and Assumptions

The preliminary financial feasibility analysis for universal coverage of Carroll County has been developed with a range of inputs informed by historical data from regional comparable projects and deployments, GIS work, standard industry assumptions, and assumptions that reflect the project team’s current understanding of changing market conditions. It is important to note the purpose of this work is to produce a high-level determination of the project’s feasibility. The following outline our assumptions:

Revenue

The financial model depends on several assumptions to determine revenue: 1) served and unserved premises, 2) penetration rates for served and unserved areas, and 3) Average Revenue Per User (ARPU).

Served and Unserved Premises | Data inputs were derived via RFI responses from cable providers when provided. Where not available, they were derived via FCC data calibrated by local survey results about served premises, a manual review of census polygons designated as served by the FCC, and a final adjustment of served/unserved road miles to ensure that densities were within a typical industry range (e.g., it is unlikely that the unserved areas of a town would have a density of 30 premises/mile).

Penetration Rates | The project team has elected to use historical data from East Central Vermont Telecommunications District’s (ECFiber’s) network to calculate penetration rates (also called take-rates) by year in our model. We have adjusted the penetration rates to reflect increased subscriptions due to COVID-19. COVID-19 has created a significant increase in subscriptions and service tier upgrades. Penetration rate assumptions are as follows:

Take Rate Assumptions		
Penetration by Year		
Year	Cabled	Uncabled
1	11%	22%
2	19%	38%
3	25%	50%
4	30%	60%

Source: RISI, ValleyNet

After year 4, the models project that customers increase at 1% each year.

For instances where the route passes through areas determined to have cable already, penetration rates are half of what they would be in an unserved/uncabled area. A premise was

considered served by cable If GIS work determined that a premise was within 400 feet of cable infrastructure.

Average Revenue Per User (ARPU) | Feasibility modeling considers the average revenue for a network based on service tiers and service prices. The assumptions used in the model are as follows:

Average Revenue Per User (ARPU)	cost per mo	subscription mix	blended ARPU
base offering	\$65.00	50%	\$32.50
tier 1	\$95.00	35%	\$33.25
tier 2	\$125.00	15%	\$18.75
phone service	\$25.00	50%	\$12.50
		ARPU	\$97.00

As indicated in the chart, the ARPU also includes the assumption that the CD will offer Voice Over IP phone service as part of their package at \$25/mo. This is important to offer because it increases the ARPU overall, and can increase penetration rates from people who want to leave their DSL but wish to keep their phone service.

The modeling also assumes an installation fee of \$100.

In general ARPU can be adjusted if the feasibility outlook changes. The prices assumed here are reasonable and generally in the middle of what other entities charge. Increasing the costs to the end customer is possible if need be; for example, ECFiber in Vermont did not have access to grants in their startup years; as such, their prices are higher to reflect their need to pay debt service. A network in Carroll County could likely sustain an ARPU of \$105/month if need be.

Capital Expenditures

These assumptions are based on data from the recent build of LymeFiber in Lyme, NH. Due to high demand, long wait times, and tariffs on foreign goods, materials costs have recently increased. Construction labor prices have also gone up, due to increased demand for skilled labor. The feasibility study incorporates these increased costs, however, the CD will need to continually assess construction costs as even more resources are put towards broadband expansion across the country in the coming year. The following table outlines the cost assumptions for capital expenditures.

Expense	Cost
Pole Data Collection/FTTH Design & Engineering	\$2,500 per mile
Make-Ready, unserved/uncabled areas	\$5,000 per mile
Make-Ready, served/cabled areas	\$15,000 per mile
Distribution Hubs	\$40,000 each
Central Hubs	\$150,000 each
Aerial Construction Materials + Labor	\$27,300/mile
Underground Construction (Materials + Labor)	\$70,000/mile
Drop & Installation	\$1,400/customer
Capex Contingency	10%

Source: RISI, ValleyNet

Operating Expenses

The CD does not yet know who their likeliest operating partner is, and/or how that arrangement will be set up. The model assumes a common arrangement as a placeholder; that the operator is charged on a per-customer basis, as in, the CD pays their operator a per-customer, per month fee to be the internet service provider, operate, and maintain the network.

Expense	Amount
Per Customer Operations Fee for Operations + Maintenance	\$40.35/customer/mo
Communications District overhead (admin/audit/legal/other)	\$150,000/year
Network insurance	\$30/mi
Pole rental	\$10/pole/year
Average poles per mile	30
Bad debt/ACH/credit card fees	3%
Hub electricity/rental/upgrades	\$2,500/year/hub
Marketing	\$100/new customer
Revenue reserve fund (for unexpected costs)	2.00% of revenues

Financing

For the purpose of this feasibility study, several sources of financing were considered:

NH Matching Broadband Grant | While the details of the program have yet to be released, the general program will be a 1:1 matching grant with \$50M in grants available. Given Carroll County's disproportionate need compared to southern regions of the state, and their relative head start in planning compared to other North Country counties where there is also significant need, it is possible that they could receive a disproportionate amount of funding from the first year of this program.⁹

General Obligation Bonds | In 2018 New Hampshire Towns gained the right to use general obligation bonds for broadband projects and since then, 18 towns have done so.¹⁰ In our financial model we assume these bonds can be accessed at a 3% interest rate. Interest rates now are slightly lower, but may rise in the coming years.

Unsecured or Subordinated Debt | This debt raised from private investors has a high interest rate — accrued, not cash pay (8% assumed) -- due to the likelihood the debt would need to be unsecured and/or subordinated to other funding. This is a conservative estimate for private capital given that there may be more favorable sources available to the CD once they go to raise money, from sources like Community Foundations, impact investors, CDFIs, or other entities.

Revenue Bonds | Revenue bonds will be available to the CD once the network reaches a maturity so that the revenue is predictable and the EBITDA (Earnings before interest, taxes, depreciation, and amortization) stays above a 1.25 ratio to the debt service. These bonds typically carry an interest rate of 5-6%.

Additional Funding Sources | The following sources are potentially viable for the CD, but were not modeled directly. The most viable pathways were modeled based on the funding sources most available to the CD, however, depending on the timing of grant cycles and/or new programs, the following funding sources should be monitored as the CD matures.

- 1) **USDA Reconnect program** - The current Reconnect program closes in February 2022; it will likely open up again in fall 2022.
- 2) **US Infrastructure Investment and Jobs Act** - At the time of writing, the federal infrastructure bill had not passed, but does have significant funding for broadband. Even

⁹ New Hampshire Creates New Broadband Matching Grants, July 15, 2021
Kevin Landrigan, <https://www.govtech.com/network/new-hampshire-creates-new-broadband-matching-grants>

¹⁰ New Hampshire prepares for federal funding to boost broadband access, April 29, 2021, Amanda Gokee
<https://www.nhbr.com/nh-prepares-for-federal-funding-to-boost-broadband-access/>

if it passes, the timing and parameters around that funding won't be known for some time.

Financial Feasibility Findings

The following is a summary of two viable paths the CD could take. These paths illustrate two ends of the funding spectrum - one in which the funding is assumed to be highly favorable to the CUD in terms of cost and ease, and another in which the funding is assumed to be much costlier. In all likelihood, the path for the CD may lie between these two extremes.

Model 1: Significant grant funding and low-cost bonds.

The assumptions in this model is that the CD or municipal entity is able to access a disproportionate amount of grant funding from the NH grant program, and match that against low-interest General Obligation bonds.

Key summary indicators from this scenario are as follows:

- Grant = \$18.5M
- General Obligation bond = \$18.5M
- Time to build to all unserved premises: 3 years
- 25 year IRR = 7.52%
- Cash-flow positive by year 4
- Strong ability to begin overbuilding cabled areas starting in year 3 or 4 using revenue bonds

Please see Appendix B for 10 year summary financial projections.

Model 2: Some grant funding and higher cost unsecured debt.

The assumptions in this model are that the CD can access some grant funding, but needs to match that against high-cost unsecured debt. The CD then replaces the high cost debt with revenue bonds (not backed by taxpayers but by future revenues of the network) as soon as the network is mature enough to access revenue bonds. The threshold for accessing revenue bonds is that the EBITDA (Earnings before Interest, Taxes, Depreciation, and Amortization) needs to be at least 1.25% of the debt service of the bonds.

Key takeaways from this scenario are:

- Grant = \$7.5M
- Unsecured debt = \$9.5M at 8%
- Revenue bonds = \$39M total over years 3, 4, 5 and 6
- Time to build to all unserved premises = 5 years

- 25 year IRR = 6.43%
- Lowest EBITDA ratios = 1.35 in year 4 and 1.37 in years 4 and 5 respectively
- Potential ability to begin overbuilding cable in year 6

Please see Appendix C for 10 year summary financial projections for this scenario.

Recommendations & Next Steps

Carroll County Broadband should be encouraged by the results of this feasibility study, which not only indicate multiple paths to constructing a network. In addition, the projections indicate the Committee has multiple avenues of recourse if construction costs continue to rise, finding an operator costs more money than anticipated, financing sources do not come with as favorable rates as anticipated. The two biggest levers the Committee can pull in these situations are to slow down the build time frame, or to raise customer rates. The models indicate that both of these interventions are available to the Committee if needed.

Creation of a Business Plan

Carroll County Broadband should move forward with the creation of a business plan. The business plan should clearly outlines the plan that the CD or municipal entity will take, and contain, at minimum, the following:

- Clear service area delineation
- Pro forma financial projections
- Summary of ISP/operator partner(s) and partnership model
- Roles and responsibilities of partners and entities involved
- Clearly defined of funding sources and funding stack objectives
- Plan for executing pre-construction and construction
- Marketing plan and marketing strategies
- Risks and risk mitigation strategies

In addition, it is common practice to request a high level design as part of the business planning phase. This can add an additional \$50-70K on the cost, however, the high level design will provide another level of detail to the cost estimates to make the business plan and financial stack more fine tuned.

The business plan should allow the entity to raise the money they need to move into the pre-construction phase and then construction phase. (The pre-construction phase primarily entails finding a vendor to do pole-collection, create a detailed design, and then to ultimately request make-ready work from the utilities to prepare the poles for a new attachment. The construction phase can begin in select towns after the pre-construction phase is complete. ValleyNet and RISI are happy to provide Carroll County Broadband Committee leadership more details on the pre-construction and construction process.)

Given the aforementioned list, there are a number of questions the CD Planning Committee will need to resolve in the coming months to be able to procure a detailed business plan. These questions can be worked through with the help of a consultant. Questions include:

- Does the Communications District Model work for Carroll County? Is it possible to use the County itself as the public partner instead? Is Carroll County open to this possibility? Key considerations for this decision include:
 - Are there sources of funding that are available to one entity but not the other? Are those sources of funding essential?
 - What is the anticipated administrative burden and which entity would be best suited to handle the administrative work?
 - Could one entity move faster or more nimbly than the other?
 - Are there scenarios where the focus area expands to include towns outside the county, or some towns *within* the county do not want to participate, and does this impact the viability of using the county as the vehicle?
- Given the lack of RFI response from Spectrum for most jurisdictions, does the CD Planning Committee (and the towns in the District, if this is the route chosen) have an appetite for bonding to build infrastructure to the entirety of towns, to the extent allowed under NH law? If an existing carrier does not respond adequately to the RFI, those areas can be considered unserved, if not covered by a second provider, for the sake of Bonding). Bond funds can be used as match funds for the NH broadband Infrastructure grants.
- What - if any - amount of overbuilding will be allowed under the terms of the NH grant program? Will the terms be so strict that the region will need to find another source of financing to build the infrastructure needed to *reach* the unserved areas?
- Do individual towns have ARPA funding they want to contribute to the project?
- What are NHEC's plans and how should the region coordinate with NHEC so as to prevent significant overbuilding?
- What types of match will be required against the state grant program? It is not yet known if in a Public/Private partnership, the Private funding can count to the 50% match.

Finding an operator

In addition, the CD or municipal entity will need to find an entity to operate and maintain the network. It is recommended that the CD or municipal entity has informal conversations with the likely operators before issuing a formal RFP. Potential operators and partners include but are not limited to:

- **The NH Electric Coop** - NHEC is currently deciding whether or not they will operate a network in their electric footprint, or perhaps partner with someone to do so. Given the amount of overlap between Carroll County and NHEC's region, it could be a very efficient partnership to partner with the same entity as NHEC to serve the entire network.

- **Great Works Internet (GWI)** - Based in Maine, GWI is a B corporation that has been forming partnerships in the New England area to operate and maintain publicly owned broadband networks. GWI brings extensive experience to construction management, network operations and internet service provider operations. They also have relationships with equity investors, loan investors and subordinated debt which could act as match funds to the State grant. These funds would not be restricted to the unserved areas.
- **Google Fiber** - Google Fiber has expressed an interest in partnering in smaller New England jurisdictions, including Communications Union Districts in Vermont. Although their terms for the partnership vary, they have offered to build the entire footprint, overbuilding cable with their own funds.
- **Consolidated Communications, Inc (CCI)** - CCI has formed many successful partnerships with individual NH towns, and with new leadership in their fiber services division, has expressed interest in partnerships with multi-town districts. Generally speaking, Consolidated has requested the municipality bond or draw down State infrastructure funds to fund the unserved areas. Where CCI has a Rural Development Opportunity Fund obligations in unserved areas, they would also fund those areas.
- **National Rural Telecommunication Cooperative (NRTC)**- NRTC has recently been chosen to partner with two Communication Union Districts in VT. They will do the construction design and management and work with a small telecommunication company in VT to do network management and be the internet service provider. Such an arrangement in NH would also work for Districts or multiple town municipalities, like the County.

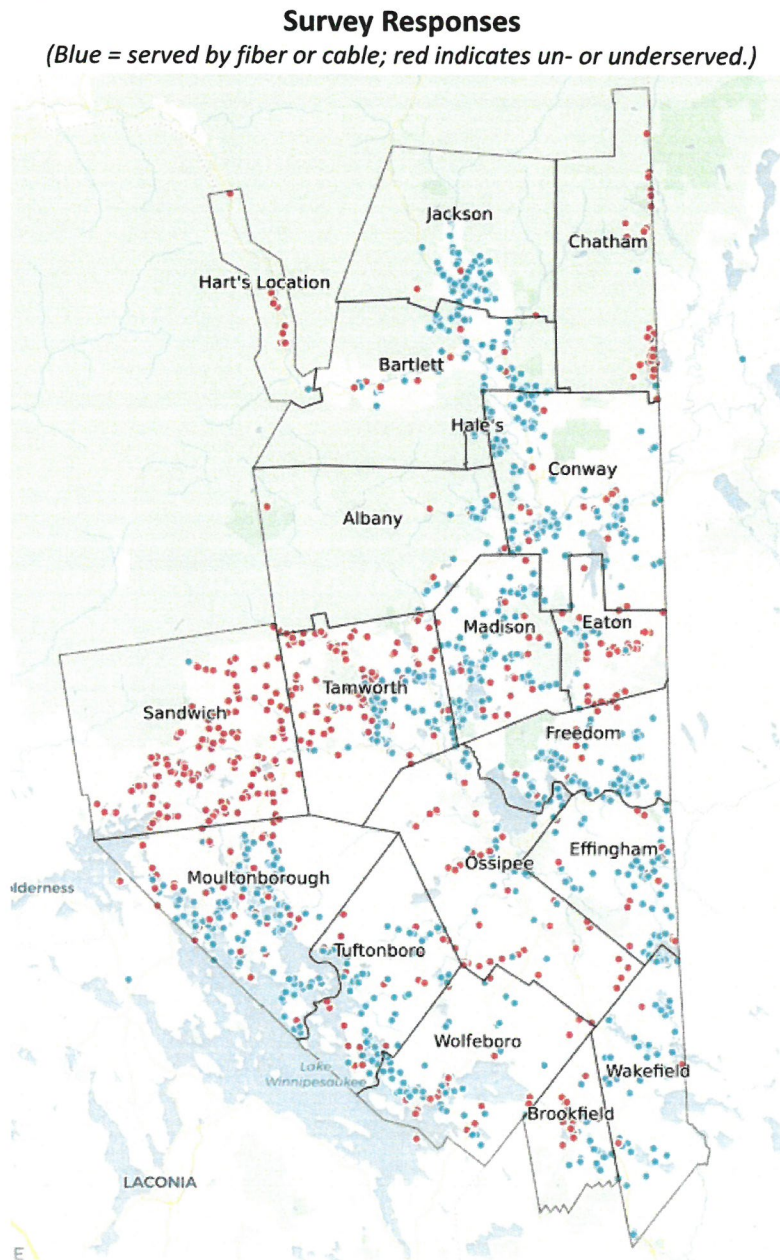
Thank you

Lastly, ValleyNet and RISI would like to thank the Carroll County broadband committee and North Country Council for their work and collaboration until this point. Though the performance period for the USDA RCDI grant that funded this feasibility work will end mid-year next year, we are happy to continue to provide assistance and consultation as the CD navigates the decisions it has to make.

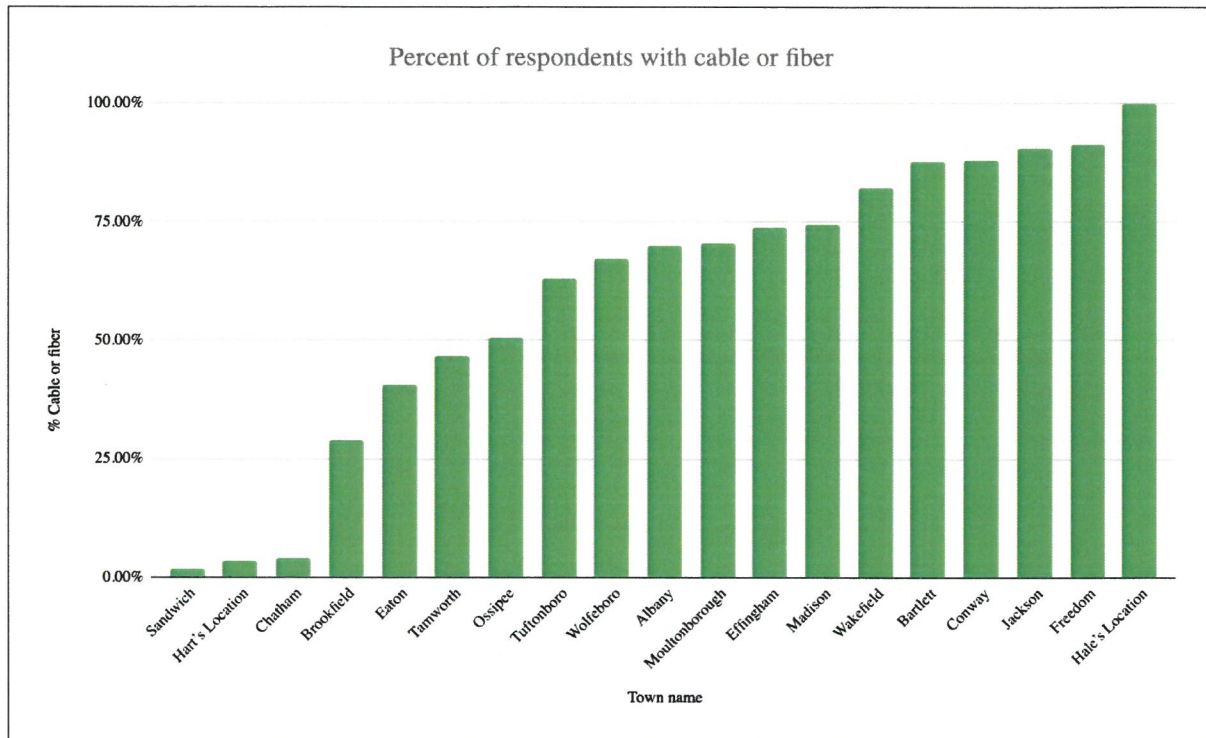
Appendix A: Survey Results and RFI Results

Survey Results

In June 2020 a resident survey was distributed to Carroll County residents via a variety of online and physical announcements directed by representatives from across the county. 1,961 responses were received; 5.8% of the population. The map below illustrates responses by type of internet available.



The survey found that the percentage of respondents with cable or fiber varied considerably across the county with a low of 1.8% in the Town of Sandwich and a high of 100% in Hale's Location.



Source: RISI

To understand the potential demand for fiber in the county, we asked the question, *"If fiber internet that was competitively priced to your current service came to our community, how likely would you be to subscribe?"* The following outlines the answers for both those with cable internet and those with another or no service:

If fiber internet that was competitively priced to your current service came to our community, how likely would you be to subscribe?

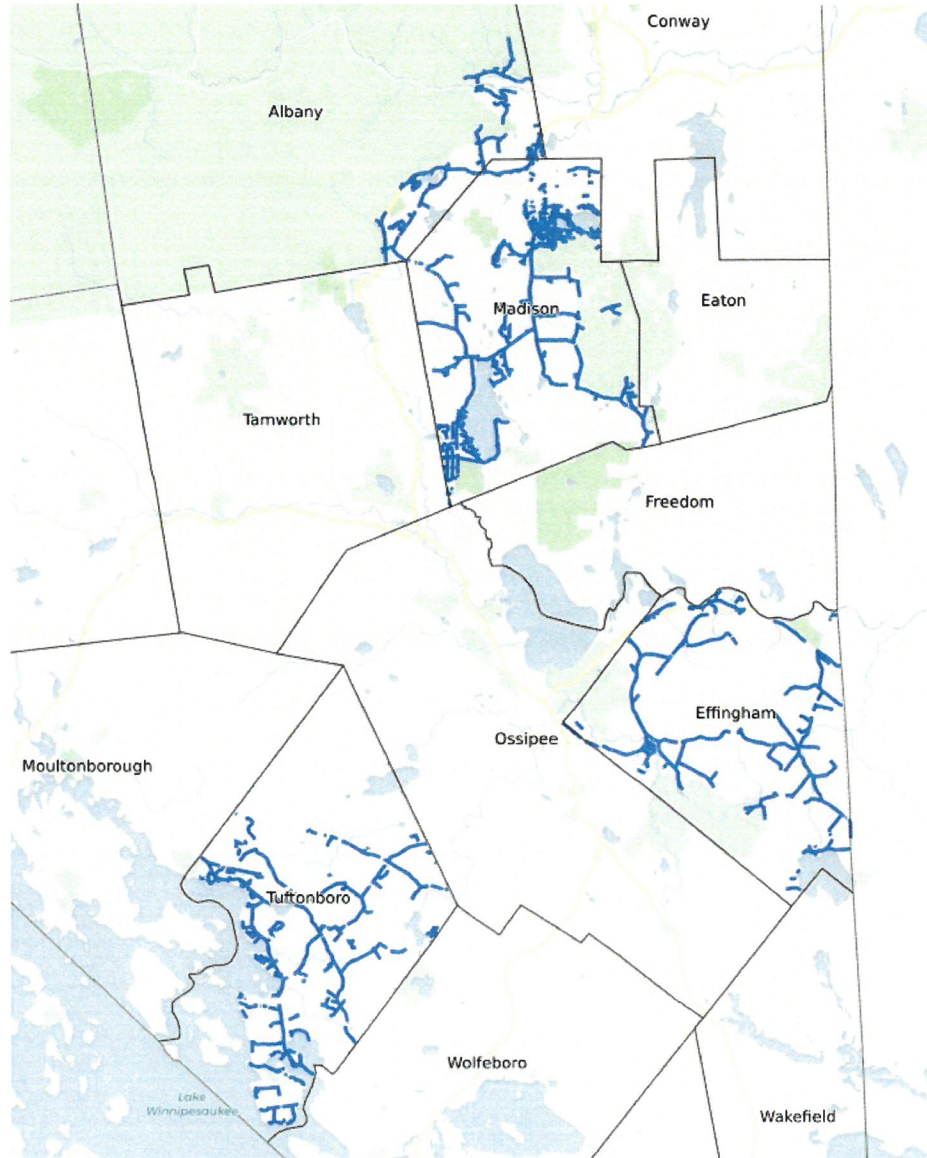
	With Cable Service	With Another or No Service
Definitely Would	45.9%	56.1%
Probably Would	39.4%	32.7%
Unsure	13.3%	9.8%
Probably Would Not	1.2%	1.1%
Definitely Would Not	0.2%	0.3%
TOTAL	100.0%	100.0%

Source: RISI

RFI Response Data

The CD acquired four PDF maps showing the availability of cable infrastructure: Albany, Madison, Effingham, and Tuftonboro. RISI took these PDFs and transformed the data into a geospatial format. This data is displayed on the map below:

Served Roads in Albany, Madison, Effingham, and Tuftonboro
(Blue indicates a served road.)



Source: RISI

Appendix B: Significant grant funding and low-cost GO bonds

FORECAST	1	2	3	4	5	6	7	8	9	10
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033

METRIC	248	538	604	604	604	604	604	604	604	604
Cumulative: All Miles	6,914	17,184	20,946	20,946	20,946	20,946	20,946	20,946	20,946	20,946
Cumulative: All Passings	1,058	3,146	5,103	6,609	7,466	7,723	7,800	7,878	7,957	8,036
Avg: Customer throughout year (Yr_t - Yr_t-1)/2	264	2,102	4,125	5,856	7,038	7,595	7,761	7,839	7,917	7,996
Customers per mile	4.3	5.8	8.4	10.9	12.4	12.8	12.9	13.0	13.2	13.3
Penetration	15%	18%	24%	32%	36%	37%	37%	38%	38%	38%
ARPU (\$97 per month to start)	\$ 1.17	\$ 1.16	\$ 1.16	\$ 1.15	\$ 1.15	\$ 1.14	\$ 1.13	\$ 1.13	\$ 1.12	\$ 1.12
Cumulative cost per customer	\$ 13,775	\$ 8,835	\$ 6,430	\$ 5,307	\$ 4,879	\$ 4,783	\$ 4,769	\$ 4,756	\$ 4,742	\$ 4,728

REVENUE	77	2,447	4,776	6,746	8,065	8,658	8,801	8,842	8,883	8,924
Revenue - recurring	106	209	196	151	86	26	8	8	8	8
Revenue - installation	183	2,656	4,972	6,897	8,151	8,683	8,809	8,850	8,891	8,932

EXPENSES	(482)	(1,706)	(2,815)	(3,708)	(4,282)	(4,522)	(4,595)	(4,638)	(4,682)	(4,727)
Total Expenses (1000s)	(150)	(153)	(156)	(159)	(162)	(166)	(169)	(172)	(176)	(179)
admin/audit/legal/overhead/misc	(7)	(17)	(19)	(20)	(20)	(20)	(21)	(21)	(22)	(22)
network insurance	(74)	(162)	(181)	(181)	(181)	(181)	(181)	(181)	(181)	(181)
pole rental	(5)	(80)	(149)	(207)	(245)	(261)	(264)	(266)	(267)	(268)
bad debt/ACH/cc fees	(8)	(15)	(18)	(18)	(18)	(18)	(18)	(18)	(18)	(18)
hub electricity/rental	(128)	(1,018)	(1,997)	(2,835)	(3,408)	(3,677)	(3,758)	(3,796)	(3,834)	(3,872)
per customer operator fee	(106)	(209)	(196)	(151)	(86)	(26)	(8)	(8)	(8)	(8)
marketing	(4)	(53)	(99)	(138)	(163)	(174)	(176)	(177)	(178)	(179)
revenue reserve fund	(299)	950	2,156	3,188	3,869	4,161	4,214	4,212	4,209	4,205
EBITDA	N/A	1.76	3.99	5.89	7.28	8.25	8.99	9.71	10.63	11.74
EBITDA COVERAGE RATIO (EBITDA/Debt Service)										

CAPEX - TOTAL (not cumulative)	(16,024)	(14,532)	(5,498)	(2,473)	(1,475)	(549)	(273)	(274)	(275)	(277)
CAPEX - Construction + capex reserve	(15,961)	(14,395)	(5,344)	(2,319)	(1,321)	(395)	(119)	(120)	(121)	(123)
CAPEX - Maintenance	(64)	(137)	(154)	(154)	(154)	(154)	(154)	(154)	(154)	(154)

Free Cash Flow	(16,323)	(13,582)	(3,342)	715	2,394	3,613	3,941	3,938	3,933	3,929
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25 YEAR IRR 7.52%

assumes grant = half of the build capex (capex for 3 years), matched 1:1 against

GRANTS	\$ 18,027									
SUBORDINATED DEBT principal	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sub Debt Repayment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Interest	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

GENERAL OBLIGATION BOND ISSUANCE	\$ -	\$ 16,765	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bond repayment	\$ -	\$ -	\$ -	\$ -	\$ (321)	\$ (901)	\$ (1,172)	\$ (1,172)	\$ (1,262)	\$ (1,262)
Interest	\$ -	\$ (541)	\$ (541)	\$ (541)	\$ (531)	\$ (504)	\$ (469)	\$ (434)	\$ (396)	\$ (358)

Cash Flow	1,704	2,643	(3,883)	174	1,541	2,207	2,301	2,332	2,276	2,309
Cash Balance	1,704	4,346	464	637	2,179	4,386	6,687	9,019	11,294	13,603

Appendix C: Some grant funding and higher cost unsecured debt

FORECAST											
	1	2	3	4	5	6	7	8	9	10	
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	

METRIC	111	248	385	529	604	604	604	604	604	604	604
Cumulative: All Miles	1,209	6,914	10,428	16,746	20,946	20,946	20,946	20,946	20,946	20,946	20,946
Cumulative: All Passings	263	1,249	2,484	4,165	5,834	6,851	7,494	7,772	7,850	7,928	7,928
Cumulative: All Customers	66	756	1,866	3,325	5,000	6,342	7,172	7,633	7,811	7,889	7,889
Avg: Customer throughout year (Yr t - Yr t-1)/2	2.4	5.0	6.5	7.9	9.7	11.3	12.4	12.9	13.0	13.1	13.1
Customers per mile	22%	18%	24%	25%	28%	33%	36%	37%	37%	38%	38%
Penetration											
ARPU (\$97 per month to start)	\$ 1.17	\$ 1.16	\$ 1.16	\$ 1.15	\$ 1.15	\$ 1.14	\$ 1.13	\$ 1.13	\$ 1.12	\$ 1.12	\$ 1.12
Cumulative cost per customer	\$ 26,040	\$ 11,300	\$ 8,979	\$ 7,334	\$ 6,080	\$ 5,408	\$ 5,084	\$ 4,972	\$ 4,956	\$ 4,941	\$ 4,941

REVENUE	2024	
Revenue - recurring	19	880
Revenue - installation	26	99
Total Revenue	45	978

EXPENSES	(250)	(756)	(1,438)	(2,328)	(3,264)	(3,924)	(4,336)	(4,548)	(4,625)	(4,669)
admin/audit/legal/overhead/misc	(150)	(153)	(156)	(159)	(162)	(166)	(169)	(172)	(176)	(179)
network insurance	(3)	(8)	(12)	(17)	(20)	(20)	(21)	(21)	(22)	(22)
pole rental	(33.43)	(74)	(115)	(159)	(181)	(181)	(181)	(181)	(181)	(181)
bad debt/ACH/cc fees	(1.36)	(29)	(69)	(120)	(177)	(220)	(246)	(259)	(263)	(264)
hub electricity/rental	(2.50)	(8)	(13)	(15)	(18)	(18)	(18)	(18)	(18)	(18)
per customer operator Fee	(31.78)	(366)	(904)	(1,610)	(2,421)	(3,071)	(3,473)	(3,696)	(3,782)	(3,820)
marketing	(26)	(99)	(123)	(168)	(167)	(102)	(64)	(28)	(8)	(8)
revenue reserve fund	(1)	(20)	(46)	(80)	(118)	(102)	(164)	(173)	(175)	(176)
EBITDA	(204)	222	847	1,670	2,633	3,408	3,862	4,090	4,147	4,144
EBITDA COVERAGE RATIO (EBITDA/Debt Service)	N/A	N/A	1.54	1.35	1.37	1.60	1.84	2.03	2.19	2.36

CAPEX - TOTAL (not cumulative)	(7,518)	(7,996)	(8,998)	(9,058)	(5,397)	(1,720)	(1,145)	(583)	(274)	(275)
CAPEX - Construction + capex reserve	(7,491)	(7,933)	(8,899)	(8,923)	(5,243)	(1,566)	(991)	(429)	(120)	(121)
CAPEX - Maintenance	(28)	(64)	(99)	(134)	(154)	(154)	(154)	(154)	(154)	(154)

Free Cash Flow	(7,722)	(7,774)	(8,151)	(7,387)	(2,764)	1,688	2,717	3,507	3,873	3,869
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Source: NH Grant program. Assumes it

is matched against unsecured/subordinated debt

GRANTS	\$ 7,500									
SUBORDINATED DEBT principal	\$ 970	\$ 8,245	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sub Debt Repayment	\$ -	\$ -	\$ -	\$ (2,000)	\$ (6,500)	\$ (3,681)	\$ -	\$ -	\$ -	\$ -
Interest	\$ (80)	\$ (766)	\$ (828)	\$ (734)	\$ (273)	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

GENERAL OBLIGATION BOND ISSUANCE	\$ -	\$ -	\$ 9,300	\$ 11,625	\$ 11,625	\$ 3,720	\$ -	\$ -	\$ -	\$ -
Bond repayment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 178	\$ 723	\$ 1,498	\$ 2,159	\$ 2,525
Interest	\$ -	\$ -	\$ (550)	\$ (1,238)	\$ (1,925)	\$ (2,135)	\$ (2,095)	\$ (2,013)	\$ (1,894)	\$ (1,755)

Cash Flow	668	(296)	(229)	266	163	(230)	1,345	2,992	4,138	4,638
Cash Balance	668	372	143	409	573	343	1,688	4,680	8,818	13,456

CARROLL COUNTY COMMUNICATON DISTRICT
(The "District" or "CCCD")
GOVERNING BOARD BYLAWS

SECTION 1. PURPOSE Whereas, in accordance with Title III, Towns, Cities, Village Districts, and Unincorporated Places, Chapter 53-G COMMUNICATION DISTRICTS of the 2020 Session of the New Hampshire State Legislature ("Enabling Legislation"), the Carroll County Communication District has ("CCCD") satisfied the requirements of said RSA to qualify as a Communications District. The CCCD Governing Board (the "Board") shall exist for the purpose of carrying out the roles and responsibilities described in said RSA or any subsequent amendments.

SECTION 2. ORGANIZATION As used herein, the term Town shall be understood to mean any member Town or City, and the Town Select Board shall similarly imply either a Select Board or City Council, as appropriate. The CCCD Governing Board consists of the delegates as appointed by the Select Boards of the District's member Towns. The Select Board of each member Town shall appoint two delegates. Each such duly appointed delegate becomes a member of the Governing Board by presenting a letter of appointment from his or her Town's Select Board effective upon notification of the appointment being received by the Secretary.

SECTION 3. REGULAR MEETINGS The Governing Board shall hold its annual meeting on the second (insert day) of (insert month). In addition, the Board will establish a schedule of regular meetings of the Board.

SECTION 4. SPECIAL MEETINGS special Meetings of the Board may be called at any time by the Chair or Vice-Chair, or shall be called by the Secretary upon written request of members of the Board representing a majority of the member Towns. Except in case of emergency, each member of the Board shall be given at least 24-hours' notice of any special meeting in accordance with the Right to Know Law, RSA 91: A. Access to Governmental Records and Meetings.

SECTION 5. QUORUM For the purpose of transacting business, the presence of delegates representing more than 50 percent plus 1 of the Town votes then eligible to be cast, shall constitute a quorum. One delegate per Town need be present.

SECTION 6. RULES OF PROCEDURE Except as otherwise provided by law, or as may be agreed upon by the Board, Robert's Rules of Order shall govern at all meetings.

SECTION 7. VOTING Each member Town shall be entitled to cast one vote by a delegate present. Every Town represented at a meeting shall identify its Voting Delegate during the attendance portion of the Board meeting so there is no ambiguity about which delegate from a Town is entitled to vote. Except as otherwise provided herein, or in the Enabling Legislation, a majority of the votes cast shall be required to approve any action.

SECTION 8. TERMS OF OFFICE Governing Board: The member Town delegates who make up the Board shall each be appointed by their Select Boards to serve for one year, from one annual meeting to the next, or until his or her successor is duly appointed. Executive Committee: The Chair and Vice-Chair shall be elected for 1-year terms and are eligible to be reelected to successive terms without limit.

Non-officer members of the Executive Committee are eligible to be reelected to successive terms without limit.

SECTION 9. ELECTION OF OFFICERS The Board annually shall elect from among its members a Chair, Vice-Chair, Secretary, Treasurer and, as needed, at-large members of the Executive Committee. The Board may also elect other Executive Committee members, as it deems appropriate, for the conduct of its business.

SECTION 10. CHAIR The Chair shall preside at all meetings of the Board. The Chair shall also perform the entire duties incident to the position and office.

SECTION 11. VICE CHAIR During the temporary absence or inability of the Chair to perform his or her duties, the Vice Chair shall perform such duties. If the vacancy becomes permanent due to death, disability, resignation or removal, the Vice Chair shall serve as acting Chair until the vacancy is filled.

SECTION 12. SECRETARY The Secretary shall be elected annually by the Governing Board and shall be an ex officio, non-voting member of the Executive Committee. The Secretary may, or may not, be a member of the Governing Board. If appointed by the Town as a delegate, they will be a voting member of the Governing Board. The Secretary shall be Clerk of the District and shall execute all duties assigned to the Clerk by the Enabling Legislation. He or she shall have custody of the public records of the District and shall record all votes and proceedings of the District, including meetings of the District and meetings of the Governing Board. The Secretary shall also prepare and warn all meetings of the Governing Board in accordance with Vermont law and shall cause the annual report approved by the Governing Board to be distributed to the legislative bodies of the member municipalities. The Secretary shall also perform all the duties and functions incident to the office of a Secretary or clerk of a body corporate.

SECTION 13. TREASURER The Treasurer shall be appointed annually by the Executive Committee and shall be an ex officio, non-voting member of the Executive Committee. The Treasurer may not be a member of the Governing Board. If appointed by the Town as a delegate, they will be a voting member of the Governing Board. The Treasurer shall have the custody of the funds of the District and shall be the disbursing officer of the District. When authorized by the Governing Board, the Treasurer shall sign, make or endorse in the name of the District all checks and orders for the payment of monies as may be required to carry out the provisions of the District and the Operating Agreement, as well as any and all valid contracts to which the District is a party, and pay out and disburse the same.

SECTION 14. EXECUTIVE COMMITTEE: The Governing Board shall elect from its membership an Executive Committee consisting of a total of seven members: Chair, Vice-Chair, plus five non-officer at large members. In addition, the Treasurer and Secretary are ex officio, non-voting members. If appointed by the Town as a delegate, they will be a voting member of the Executive Committee. The Governing Board shall, at its annual meeting, elect two members of the Executive Committee to a two-year term and two to a three-year term. The Executive Committee performs duties as assigned or delegated by the Governing Board. The Executive Committee shall be representative of the diverse interests of the member Towns while also taking into consideration expertise available and needed. No Town shall have more than one voting member on the Executive Committee. This does not prevent any single Town from being represented by a voting member and the Secretary.

SECTION 15. VACANCY If the absence or inability of any of the Executive Committee members to perform his or her duties or exercise his or her powers becomes permanent due to death, disability, resignation or removal, the Board shall elect replacement(s) from among its membership. Executive Committee vacancies shall be filled as soon as practical after proper notice, by election at the next regular or special meeting of the Governing Board.

SECTION 16. RECORDS The conduct of all meetings and public access thereto, and the maintaining of all records, books and accounts of the District shall be governed by the laws of this State relating to open meetings and

accessibility of public records. Governing Board members, having an absolute right to access to any District record, shall not be subject to any fee that might otherwise be levied under open meeting regulations. Similarly, any materials deemed to be non-public, with the exception of personnel records, shall be made available to any Governing Board member upon request at no charge. Right to Know Law, RSA 91: A -- Access to Governmental Records and Meetings.

SECTION 17. AUDIT The Governing Board shall cause an audit of all CCCD accounts to be performed annually by an independent professional accounting firm or a certified public accountant.

SECTION 18. OTHER COMMITTEES As provided in the Enabling Legislation, the Governing Board may choose to establish other committees at its discretion for the purpose of advising the Governing Board such as a Finance Committee and an Audit Committee. Membership in such committees is not limited to Board members.

SECTION 19. REIMBURSEMENT OF OFFICERS Any Officer or Member of the Executive Committee shall be reimbursed for such expenses incurred in the discharge of their duties hereunder, as may be authorized or approved by the Governing Board.

SECTION 20. Removal of Officers Any member of the Executive Committee may be removed by a two-thirds vote of the Governing Board whenever, in its judgment, the best interest of CCCD will be served thereby.

SECTION 21. CONDUCT OF MEETINGS To the fullest extent permitted by law, the Governing Board and all committees shall be allowed to meet, transact business, provide notice and communicate by electronic and telephonic means.

SECTION 22. ADMISSION OF ADDITIONAL DISTRICT MEMBERS. – The Board may authorize the inclusion of additional district members in the multi-town communications district upon such terms and conditions as it in its sole discretion shall deem to be fair, reasonable, and in the best interests of the district. The legislative body of any nonmember municipality which desires to be admitted to the district shall make application for admission to the Board. The Board shall determine the financial and operational effects that are likely to occur if such municipality is admitted and thereafter either grant or deny authority for admission of the petitioning municipality. If the Board grants such authority, it shall also specify any terms and conditions, including financial obligations, upon which such admission is predicated. Upon resolution of the Board, such applicant municipality shall become a district member.

SECTION 23. MEMBER WITHDRAWAL. – A District member may vote to withdraw in the same manner as the vote for admission to the District. If a majority of the voters of a District member present and voting at a meeting duly warned for such purpose votes to withdraw from the District, the vote shall be certified by the clerk of that municipality and presented to the Board. Thereafter, the Board shall give notice to the remaining District members of the vote to withdraw and shall hold a meeting to determine if it is in the best interest of the District to continue to exist. Representatives of the District members shall be given an opportunity to be heard at such meeting together with any other interested persons. After such a meeting, the Board may declare the District dissolved or it may declare that the district shall continue to exist despite the withdrawal of such member. The membership of the withdrawing municipality shall terminate after the vote to withdraw.

SECTION 24. INSURANCE AND INDEMNIFICATION To the fullest extent afforded by law, including procuring and maintaining insurance through commercial carriers or municipal risk retention groups with limits in such amounts as the Governing Board shall deem sufficient to cover foreseeable risk, the District shall indemnify and defend its Governing Board and its officers from claims allegedly arising out of actions and omissions arising in such capacity.

SECTION 26. AMENDMENT Amendments to these by-laws must be proposed and warned by written notice to all members before or at a regularly scheduled meeting of the Board, and to become effective, must then be adopted by two-thirds of members present and eligible to vote at the next regularly scheduled Board meeting no less than three weeks later.

DATE ADOPTED: Adopted on (date).

Add	APPENDIX 1	insert RSA CHAPTER 53-G
Add	APPENDIX 2	insert RSA CHAPTER 91: A

Conflict of Interest Disclosure Form

Note: A potential or actual conflict of interest exists when commitments and obligations are likely to be compromised by the nominator(s)' other material interests, or relationships (especially economic), particularly if those interests or commitments are not disclosed.

This Conflict of Interest Form should indicate whether the nominator(s) has an economic interest in, or acts as an officer or a director of, any outside entity whose financial interests would reasonably appear to be affected by the addition of the nominated condition to the newborn screening panel. The nominator(s) should also disclose any personal, business, or volunteer affiliations that may give rise to a real or apparent conflict of interest. Relevant Federally and organizationally established regulations and guidelines in financial conflicts must be abided by. Individuals with a conflict of interest should refrain from nominating a condition for screening.

Date:

Name:

Position:

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest:

☐

I have no conflict of interest to report.

☐

I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own:

1. _____

2. _____

3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge.

Signature: _____

Date: _____

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 33

MUNICIPAL FINANCE ACT

Section 33:3-g

33:3-g Broadband Infrastructure Bonds. –

- I. A municipality or communications district formed under RSA 53-G may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in any locations within a municipality unserved by broadband as defined in RSA 38:38, I(c). 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 any location within a municipality unserved by broadband as defined in RSA 38:38, I(c) unless a request for information has been issued, at a minimum, to all providers serving the issuing community and such providers have been given 2 months to respond to the request. The request for information may include, but is not limited to, information identifying locations within a municipality served by broadband as defined in RSA 38:38, I(c). After completing, issuing, and receiving responses to such request for information, a municipality may issue a request for proposals for the purpose of engaging in a public-private partnership pursuant to RSA 33:3 or RSA 33-B for the deployment of broadband infrastructure, as defined in RSA 38:38, I(e), and the provision of broadband service as defined in RSA 38:38, I(f). A municipality may select a proposal based on criteria including, but not limited to, provider ability to deploy, manage, and maintain a broadband network. A municipality may determine that no provider has met the criteria included in the request for proposals and may issue bonds for purposes pursuant to RSA 33:3 and RSA 33-B, including but not limited to, open networks. If a broadband provider does not respond to a request for information pursuant to this paragraph, the locations served by that broadband provider shall be considered unserved, unless those locations are served by a broadband provider who responded to that municipality's request for information.
- IV. Any request for information issued pursuant to this section after December 31, 2020 shall conform with a model request for information issued by the New Hampshire department of business and economic affairs.

33:3-g Broadband Infrastructure Bonds. –

- I. A municipality or communications district formed under RSA 53-G may issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in any locations within a municipality unserved by broadband as defined in RSA 38:38, I(c). 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, county, or communications district shall not issue bonds for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in any location within a municipality, county, or communications district unserved by broadband as defined in RSA 38:38, I(c) unless a request for information has been issued, at a minimum, to all providers serving the issuing community in accordance with RSA 33:3-g, IV and such providers have been given 30 days to respond to the request. The request for information shall include, but is not limited to, information identifying addresses within a municipality, county, or communications district, served by broadband as defined in RSA 38:38, I(c). A response shall meet the requirements of this paragraph if it includes, in either map or spreadsheet form, street level information identifying the first and last serviceable address. After completing, issuing, and receiving responses to such request for information, a municipality, county, or communications district may issue a request for proposals for the purpose of engaging in a public-private partnership pursuant to RSA 33:3 or RSA 33-B for the deployment of broadband infrastructure, as defined in RSA 38:38, I(e), and the provision of broadband service as defined in RSA 38:38, I(f). A municipality, county, or communications district may select a proposal based on criteria including, but not limited to, provider ability to deploy, manage, and maintain a broadband network. Requests for proposals shall include, in either map or spreadsheet form, street level information identifying the first and last serviceable address. A municipality, county, or communications district may determine that no provider has met the criteria included in the request for proposals and may issue bonds for purposes pursuant to RSA 33:3 and RSA 33-B, including but not limited to, open networks. If a broadband provider does not respond to a request for information pursuant to this paragraph, the locations served by that broadband provider shall be considered unserved, unless those locations are served by a broadband provider who responded to that municipality's request for information.

IV. The office of planning and development shall maintain a list by town of all providers interested in receiving requests for information. The list shall include physical and electronic address information for interested providers and shall be updated as needed, but at least annually. For purposes of issuing requests for information pursuant to paragraph III, a municipality, county, or communications district shall reference the interested provider list maintained by the office of planning and development and shall issue requests for information to all interested providers in that municipality, county, or communications district, both electronically and by United States mail.

Source. 2006, 225:3, eff. July 31, 2006. 2018, 118:4, eff. July 29, 2018. 2020, 28:1, 2, eff. Sept. 20, 2020; 28:6, eff. July 22, 2020. 2021, 198:2, Pt. III, Sec. 1, eff. Oct. 9, 2021.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

Chapter 33-B

MUNICIPAL REVENUE BONDS

Section 33-B:1

33-B:1 Definitions. –

This chapter may be referred to as the "Municipal Revenue Bond Act". For purposes of this chapter, unless a different meaning clearly appears from the context, the following words shall have the following meanings:

I. "Authorized officers" means the treasurer of a municipality or regional water district and the mayor or city manager of a city, the selectmen of a town, and the commissioners or comparable officers of a village district, and the directors, commissioners, or other officers of a regional water district.

II. "Bonds" means any bonds, notes or other evidences of indebtedness issued under this chapter.

III. "Construction" means acquisition, construction, reconstruction, equipping, enlargement or other capital improvement.

III-a. "Governing body" means the board of selectmen in a town, the board of aldermen or council in a city or town with a council, the village commissioners in a village district, or the directors of a regional water district.

IV. "Legislative body" means the city council of a city, and the voters present and voting at an annual or special meeting of a town or village district, or the directors of a regional water district.

V. "Municipality" means a city, town, village district, or communications district formed under RSA 53-G.

V-a. "Regional water district" means an entity formed by agreement between government units pursuant to RSA 53-A, for the purpose of providing and assuring the provision of an adequate and sustainable supply of clean water.

VI. "Revenue-producing facilities" means water works, broadband infrastructure as defined in RSA 38:38, I(e), purchased or constructed to serve any location within a municipality unserved by broadband as defined in RSA 38:38, I(c), 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, 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, and qualifying energy conservation and clean energy improvements for which a municipality provides financing pursuant to RSA 53-F.

VII. "Revenues" means any rates, rents, fees, charges and other receipts and moneys held or to be received by or on behalf of a municipality or regional water district from or with respect to the construction, financing, operation and disposition of a revenue-producing facility and all rights to receive the same including, without limitation, rates, rents, fees, charges and other moneys received for the use or occupancy of the facility or any part thereof or any service provided thereby, repayments of loans made in respect of the cost of the facility, grants, loans and other contributions from any governmental unit or any other person for or in respect of proceeds of the lease, sale or other disposition of the facility or any interest therein; revenues shall not include any ad valorem taxes on the real estate and personal property comprising any revenue-producing facility.

Source. 1988, 90:1. 1989, 124:7. 1990, 70:4, eff. Jan. 30, 1991. 1997, 206:2, eff. July 1, 1997. 2003, 281:1-5, eff. July 18, 2003. 2006, 225:5, eff. July 31, 2006. 2011, 68:1, eff. July 15, 2011. 2018, 118:5, eff. July 29, 2018. 2020, 28:5, eff. July 22, 2020.

Section 33-B:2

33-B:2 Issuance of Revenue Bonds. – A municipality or regional water district may issue bonds or notes under this chapter for construction of revenue-producing facilities. Bonds issued by a municipality or regional water district under this chapter shall not be deemed to be a pledge of the faith and credit of the state or of the municipality or municipalities that are members of a regional water district. Except as otherwise provided in this chapter, the principal of, premium, if any, and interest on all bonds shall be payable solely from the particular funds provided therefor under this chapter. Bonds issued by a municipality shall be issued in such amounts as the legislative body may authorize by a vote as required under RSA 33:8 or 9, as applicable. Bonds issued by regional water districts shall be issued in such amounts as the governing body may authorize pursuant to the regional water district's charter. Bonds of each issue shall be dated, shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be determined by the authorized officers, and shall mature at such time or times as may be determined by the authorized officers, except that no bond shall mature more than 40 years from the date of its issue or beyond the expiration of the expected useful life of the facilities being financed by the bonds as determined by the authorized officers. Bonds may be made redeemable before maturity at the option of the municipality or regional water district at such price or prices and under such terms and conditions as may be fixed by the authorized officers prior to the issue of bonds. The authorized officers shall determine the form and details and the manner of execution of bonds. The municipality or regional water district may sell its bonds in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest, as the authorized officers may determine. The provisions of RSA 33:11-a, 14 and 15 shall apply to bonds issued under this chapter.

Source. 1988, 90:1, eff. June 17, 1988. 2003, 281:6, eff. July 18, 2003.

Section 33-B:3

33-B:3 Project Costs. – In addition to other lawful items, the costs to be financed by the issuance of bonds under this chapter may include interest during construction and for up to one year after completion of the revenue-producing facilities being financed as estimated by the authorized officers, the cost of architectural, engineering, financial and legal services, plans, specifications, studies, expenses as may be necessary or incident to determining the feasibility or practicability of constructing the revenue-producing facilities, the funding of reserves for debt service or other expenses, and such other expenses as may be necessary or incident to the construction of the revenue-producing facilities, the financing of such construction and the placing of the facilities in operation.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:4

33-B:4 Trust or Security Agreement or Resolution. – Any bonds issued under this chapter may be secured by a resolution or by a trust or security agreement between the municipality and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or by a trust or security agreement directly between the municipality and the purchasers of the bonds, and such resolution or trust or security agreement shall be in such form and executed in such manner as may be determined by the authorized officers. Such trust or security agreement or resolution may pledge or assign, in whole or in part, the revenues held or to be received by the municipality from or on account of the revenue-producing facilities, and any contract or other rights to receive the same, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the municipality, and the proceeds thereof. Such trust or security agreement or resolution may contain such provisions for protecting and enforcing the rights, security and remedies of the bondholders as may, in the discretion of the authorized officers, be reasonable and proper and

not in violation of law. Without limiting the generality of the foregoing, such agreement or resolution may include provisions defining defaults and providing for remedies in the event of default, which may include the acceleration of maturities, and covenants setting forth the duties of, and limitations on, the municipality in relation to the custody, safeguarding, investment and application of moneys, the issue of additional or refunding bonds, the fixing, revision and collection of fees, charges and other revenues, the use of any surplus bond proceeds, the establishment of reserves, the construction and operation of the revenue-producing facilities, and the making and amending of contracts relating to the bonds. It shall be lawful for any bank or trust company described in RSA 41:29 or RSA 48:16 to act as a depository or trustee of the proceeds of bonds, revenues or other moneys under a trust or security agreement or resolution and to furnish such indemnification or to pledge such securities and issue such letters or lines of credit or other credit facilities as may be required by a municipality acting under this chapter. Any such trust or security agreement or resolution may set forth the rights and remedies of bondholders and of the trustee and may restrict the individual right of action by bondholders.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:5

33-B:5 Credit Facilities and Insurance. – Any bonds issued under authority of this chapter may be issued by a municipality pursuant to lines of credit or other banking arrangements under such terms and conditions not inconsistent with this chapter, and under such agreements as the authorized officers may determine to be in the best interests of the municipality. In addition to other security provided herein or otherwise by law, bonds issued by a municipality under this chapter may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the municipality by any bank, trust company or other financial institution, within or without the state, and the municipality may pledge or assign any of the revenues from its revenue-producing facilities as security for the reimbursement by the municipality to the issuers of such letters or lines of credit, insurance or credit facilities of any payments made thereunder.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:6

33-B:6 Pledge of Revenues or Other Property. – Any pledge of revenues, contract or other rights to receive revenues, or the proceeds thereof made by a municipality under this chapter shall be valid and binding and shall be deemed continuously perfected for the purposes of the Uniform Commercial Code and other laws from the time when the pledge is made; the revenues, moneys, rights and proceeds so pledged and then held or thereafter acquired or received by the municipality shall immediately be subject to the lien of such pledge without any physical delivery or segregation thereof or further act; and the lien of such pledge shall be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the municipality, irrespective of whether such parties have notice thereof. Neither the resolution, any trust or security agreement nor any other agreement by which a pledge is created need be filed or recorded except in the records of the municipality and no filing need be made under the Uniform Commercial Code.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:7

33-B:7 Enforcement of Rights. – Any owner of a bond issued by a municipality under the provisions of this chapter and any trustee under a trust or security agreement or resolution securing the same, except to the extent the rights herein given may be restricted by such agreement or resolution, may bring suit upon the bonds and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief,

protect and enforce any and all rights under the laws of the state or granted hereunder or under such trust or security agreement or resolution and may enforce and compel the performance of all duties required by this chapter or by such agreement or resolution to be performed by the municipality or by any officer of a municipality.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:8

33-B:8 Refunding Bonds. – A municipality, when authorized by its legislative body, may issue refunding bonds for the purpose of paying any of its bonds issued pursuant to this chapter at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such times prior to the maturity or redemption of the refunding bonds as the authorized officers may determine. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium on the bonds, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other expenses from the proceeds of such refunding bonds as may be required by a trust or security agreement or resolution securing the bonds. The authorization and issue of refunding bonds, the maturities and other details of such bonds, the security for the bonds, the rights of the holders of the bonds, and the rights, duties and obligations of the municipality in respect to the same shall be governed by the provisions of this chapter relating to the issue of the bonds other than refunding bonds insofar as the same may be applicable.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:9

33-B:9 Governmental Consents. –

I. Bonds may be issued under this chapter without obtaining the consent of any department, division, commission, board, or agency of the state except as provided in paragraph II, and without any other proceedings or the happening of any condition or things other than those proceedings, conditions or things which are specifically required therefor by this chapter, and the validity of and security for any bonds issued by a municipality pursuant to this chapter shall not be affected by the existence or nonexistence of any such consent or other proceedings, condition or things.

II. If in the opinion of either the authorized officers or the state treasurer more than 1/2 of the revenues derived or expected to be derived from a revenue-producing facility will be in the form of rents, fees, grants or other moneys paid by the state, no bonds may be issued for the revenue-producing facility in excess of an amount approved for the purpose by the governor and council.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:10

33-B:10 Investment Securities. – Notwithstanding any of the provisions of this chapter or any recitals in any bonds issued under this chapter, all such bonds shall be deemed to be investment securities under the Uniform Commercial Code.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:11

33-B:11 Separate Funds. – Any debt service fund, construction fund, debt service reserve fund, depreciation reserve fund or other fund established in connection with the issuance of bonds under this chapter shall be kept separate from other moneys of the municipality. The moneys deposited in any such funds, together with income derived from any investments held as part of such funds, shall be expended without further authorization or appropriation as provided for in the trust or security agreement or resolution establishing such funds.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:12

33-B:12 Trust Funds. – All moneys received pursuant to the provisions of this chapter, whether as proceeds from the issue of bonds, as revenues, or otherwise, shall be deemed to be trust funds to be held and applied solely as provided in this chapter.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:13

33-B:13 Tax Exemption. – Bonds issued under this chapter, their transfer and income from them, including any profit made on their sale, shall at all times be exempt from taxation within the state.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:14

33-B:14 Eligible Investments. – Bonds issued under this chapter are hereby made securities in which all public officers, agencies and authorities of the state and of its political subdivisions, insurance companies, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency, authority or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state or of any political subdivision is now or may hereafter be authorized by law.

Source. 1988, 90:1, eff. June 17, 1988.

Section 33-B:15

33-B:15 Construction and Effect of Other Laws. –

I. The provisions of this chapter shall be deemed to provide an additional and alternative method for the effectuation of the purposes of this chapter and shall be construed to be supplemental to, and not in derogation of, powers otherwise conferred by law on municipalities, provided, however, that insofar as the provisions of this chapter are inconsistent with the provisions of any general or special law, administrative order or rule or any limitation imposed by a municipality's charter, the provisions of this chapter shall be controlling.

II. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

III. This chapter shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this chapter, all steps shall be taken which are necessary to meet constitutional requirements.

IV. This chapter shall be interpreted liberally to effect the purposes set forth in this chapter.

Source. 1988, 90:1, eff. June 17, 1988.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

Chapter 53-G

COMMUNICATIONS DISTRICTS

Section 53-G:1

53-G:1 Definitions. –

In this chapter:

- I. "Board" means the governing board of the district.
- II. "District" means a communications district of 2 or more municipalities established under this chapter.
- III. "Equipment and infrastructure" means any and all parts of any communications system, owned, leased, or otherwise contracted by the district, whether using wires, cables, fiber optics, wireless, other technologies, or a combination thereof, and used for the purpose of transporting or storing information, in whatever forms, directions, and media, together with any improvements thereto constructed or acquired after the effective date of this chapter, and all other facilities, equipment, and appurtenances necessary or appropriate to such system. "Equipment and infrastructure" shall not apply to communications facilities, or portions of any communications facilities, intended for use by, and solely used by, a district member and its own officers and employees in the operation of municipal departments or systems of which such communications are merely an ancillary component.
- IV. "Governing body" means "governing body" as defined in RSA 21:48.
- V. "Legislative body" means "legislative body" as defined in RSA 21:47.
- VI. "Long-term contract" means a contract for communications services, or an equipment or infrastructure lease for 5 years or more.
- VII. "Member" means any city, town, unincorporated town, or unorganized place that elects to form or join a communications district under this chapter.
- VIII. "Municipality" means any city, town, unincorporated town, or unorganized place.
- IX. "Person" means any individual, partnership, company, corporation, firm, governmental unit or agency, or any other legal entity.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:2

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

- I. The governing bodies of 2 or more municipalities may at their discretion, and shall upon a vote of their respective legislative bodies, create a special unpaid committee to be known as a communications district planning committee, consisting of at least 2 persons from each municipality appointed by the respective governing bodies. The committee shall elect a chairperson, clerk, and treasurer. Members may be reimbursed by the committee for costs of performing duties directly related to the committee.
- II. The committee may accept funds from any public or private source and may expend money for planning purposes which may include, but not be limited to, engaging legal counsel, accountants, engineers, contractors, consultants, and other advisors, paying for member expenses, or organizational and secretarial assistance. The committee shall report in a timely fashion to each governing body the sources and amounts of such funds. Each municipality represented on the committee may appropriate funds to the committee.

III. The committee shall study the advisability of establishing a communications district by examining the types of equipment and infrastructure that would be needed; the methods of organizing, operating, and financing such a district; and the potential benefits and disadvantages to member municipalities. The committee may consider specific sites inside or outside the proposed district for equipment location or which municipalities may have equipment or infrastructure, or both, located within them.

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

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

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

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

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III. The committee shall study the advisability of establishing a communications district by examining the types of equipment and infrastructure that would be needed; the methods of organizing, operating, and financing such a district; and the potential benefits and disadvantages to member municipalities. The committee may consider specific sites inside or outside the proposed district for equipment location or which municipalities may have equipment or infrastructure, or both, located within them.

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Source. 2020, 28:7, eff. July 22, 2020. 2021, 198:2, Pt. I, Sec. 1, eff. Oct. 9, 2021.

Section 53-G:3

53-G:3 Communications District Agreements. –

The business affairs and actions of a district shall be conducted and governed pursuant to the terms, conditions, and provisions of its district agreement. The agreement shall include but not be limited to the following:

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

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

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

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

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

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

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

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

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

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

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

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:4

53-G:4 Vote on Establishing District. –

I. The governing bodies shall cause the question of accepting any proposed agreement to be presented for determination by vote of the respective legislative bodies. In municipalities that hold town meetings, the proposed agreement shall be voted on at the next annual town meeting or at a special town meeting called for such purpose. In all other municipalities, the legislative bodies shall vote on the proposed agreement within 60 days of the governing bodies' receipt of the proposed agreement, as approved by the attorney general under RSA 53-G:2, V. The question to be voted on shall be: "Shall the (insert name of municipality) accept the provisions of RSA 53-G:1-RSA 53-G:11 providing for the establishment of a communications district, together

with the municipalities of _____ in accordance with the provisions of the proposed agreement filed with the (insert appropriate office for governing body)?"

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

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

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:5

53-G:5 Corporate Body; Powers. –

A communications district established under this chapter shall be a body politic and corporate and a political subdivision and public instrumentality of the state carrying out a public purpose and an essential governmental function with the following powers, which are subject to the provisions and limitations of the district agreement:

- I. To adopt a name and a corporate seal. The engraved or printed facsimile of the seal appearing on a bond or note of the district shall have the same legal effect as if it were impressed thereon.
- II. To receive federal or state grants and loans, revenue from subscribers, access fees from subscribers, access to broadband infrastructure bonds, revenue bonds, pledge revenues, and accept member contributions or private investment.
- III. To adopt a budget in accordance with 53-G:9.
- IV. To establish and adjust fees.
- V. To establish public/private partnerships and enter into broadband agreements with Internet service providers as necessary to build and operate the network.
- VI. To provide or contract for communications infrastructure and services for its district members, including the residential and business locations located therein and provide for communications infrastructure and services for such other residential and business locations as its equipment, infrastructure, and obligations may allow, provided such other locations are in a municipality that is contiguous with the town limits of a district member.
- VII. To cause to be operated, or contract for the construction, ownership, management, financing, and operation of a communications plant for the delivery of communications services.
- VIII. To sue and be sued, but only to the same extent and upon the same conditions that a municipality may be sued.
- IX. To hold, deal with, mortgage, pledge, encumber, purchase, acquire, lease, sell, convey, and otherwise dispose of real and personal property of all kinds in furtherance of the purposes of the district, subject to any and all operating agreements.
- X. Each communications district shall have the power, by vote of the members, to borrow money and issue its notes or bonds in accordance with RSA 33, subject to the following:
 - (a) In the case of broadband infrastructure bonds, under RSA 33:3-g.
 - (b) In the case of revenue bonds, under RSA 33-B, when the board, at a regular or special meeting called for such purpose, determines by resolution passed by a vote of a majority of members present and voting that the public interest or necessity demands communications plant improvements, or a long-term contract, and that the cost of the same will be too great to be paid out of the ordinary annual income and revenue of the district, the board may pledge communications plant net revenues and enter into long-term contracts to provide for such improvements. In this chapter, a "long term contract" means an agreement in which the district incurs direct or conditional obligations for which the costs are too great to be paid out of the ordinary annual income and revenues of the district, in the judgment of the board. In this chapter, the term "communications plant improvements" includes improvements that may be used for the benefit of the public, whether or not publicly owned or operated. The pledge of communications plant net revenues and other obligations allowed by law may

be authorized for any purpose permitted by this chapter, or any other applicable statutes.

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

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

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

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

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

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

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

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

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:6

53-G:6 Governing Board. –

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

II. The board shall choose a chairperson by ballot from its membership. It shall appoint a secretary and a treasurer, who may be the same person, but who need not be members of the committee, and such other officers as may be provided for in the district agreement. The treasurer shall receive and take charge of all money belonging to the district and shall pay any debt of the district which has been approved by the committee. The treasurer may, by vote of the committee, be compensated for his or her services. Proceedings of the committee shall be held in accordance with RSA 91-A.

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

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:7

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

financial obligations, upon which such admission is predicated. Upon resolution of the board, such applicant municipality shall become a district member.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:8

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

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:9

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

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:10

53-G:10 Audits. – The governing board shall hire a certified public accountant or a public accountant licensed by the state under RSA 309-B:5 to conduct a financial audit, in accordance with generally accepted governmental auditing standards as adopted by the United States General Accounting Office and applicable state statutes, to be completed within 6 months after the close of each fiscal year. Upon completion of an audit, the governing board shall review and vote on acceptance of the audit and send a copy of the audited financial statements, the auditor's opinion on those statements, a report on internal control, a report on compliance, and any other auditor reports to the governing body of each of the member municipalities and to the department of revenue administration. At least every 2 years, the governing board shall vote on whether to contract for a performance audit of the district in accordance with the generally accepted governmental auditing standards. Upon completion of a performance audit, the committee shall review and vote on acceptance of the audit and send a copy of the resulting materials to the governing body of each of the member municipalities and to the department of revenue administration.

Source. 2020, 28:7, eff. July 22, 2020.

Section 53-G:11

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

Source. 2020, 28:7, eff. July 22, 2020.

TITLE VI

PUBLIC OFFICERS AND EMPLOYEES

Chapter 91-A

ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:1

91-A:1 Preamble. – Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.

Source. 1967, 251:1. 1971, 327:1. 1977, 540:1, eff. Sept. 13, 1977.

Section 91-A:1-a

91-A:1-a Definitions. –

In this chapter:

I. "Advisory committee" means any committee, council, commission, or other like body whose primary purpose is to consider an issue or issues designated by the appointing authority so as to provide such authority with advice or recommendations concerning the formulation of any public policy or legislation that may be promoted, modified, or opposed by such authority.

II. "Governmental proceedings" means the transaction of any functions affecting any or all citizens of the state by a public body.

III. "Governmental records" means any information created, accepted, or obtained by, or on behalf of, any public body, or a quorum or majority thereof, or any public agency in furtherance of its official function. Without limiting the foregoing, the term "governmental records" includes any written communication or other information, whether in paper, electronic, or other physical form, received by a quorum or majority of a public body in furtherance of its official function, whether at a meeting or outside a meeting of the body. The term "governmental records" shall also include the term "public records."

IV. "Information" means knowledge, opinions, facts, or data of any kind and in whatever physical form kept or maintained, including, but not limited to, written, aural, visual, electronic, or other physical form.

V. "Public agency" means any agency, authority, department, or office of the state or of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision.

VI. "Public body" means any of the following:

(a) The general court including executive sessions of committees; and including any advisory committee established by the general court.

(b) The executive council and the governor with the executive council; including any advisory committee established by the governor by executive order or by the executive council.

(c) Any board or commission of any state agency or authority, including the board of trustees of the university system of New Hampshire and any committee, advisory or otherwise, established by such entities.

(d) Any legislative body, governing body, board, commission, committee, agency, or authority of any county, town, municipal corporation, school district, school administrative unit, chartered public school, or other political subdivision, or any committee, subcommittee, or subordinate body thereof, or advisory committee thereto.

(e) Any corporation that has as its sole member the state of New Hampshire, any county, town, municipal corporation, school district, school administrative unit, village district, or other political subdivision, and that is

determined by the Internal Revenue Service to be a tax exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code.

Source. 1977, 540:2. 1986, 83:2. 1989, 274:1. 1995, 260:4. 2001, 223:1. 2008, 278:3, eff. July 1, 2008 at 12:01 a.m.; 303:3, eff. July 1, 2008; 303:8, eff. Sept. 5, 2008 at 12:01 a.m.; 354:1, eff. Sept. 5, 2008.

Section 91-A:2

See 2020, 8:3, effective July 10, 2020; Executive Order 2020-04 (NH LEGIS E.O. 2020-04 (2020) [1001]) as extended by Executive Orders 2020-05 (NH LEGIS E.O. 2020-05 (2020, 1005:1.)); 2020-08 (NH LEGIS E.O. 2020-08 (2020, 1008:1.)); 2020-09 (NH LEGIS E.O. 2020-09 (2020, 1009:1.)); 2020-010 (NH LEGIS E.O. 2020-010 (2020, 1010:1.)); 2020-014 (NH LEGIS E.O. 2020-014 (2020, 1014:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); 2020-016 (NH LEGIS E.O. 2020-016 (2020, 1016:1.)); 2020-017 (NH LEGIS E.O. 2020-017 (2020, 1017:1.)); 2020-018 (NH LEGIS E.O. 2020-018 (2020, 1018:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); and Emergency Order #12 (NH LEGIS E.O. 2020-12-Emerg. (2020, 2012:1.)), related to the COVID-19 State of Emergency, for potential impact on the terms of this section.

91-A:2 Meetings Open to Public. –

I. For the purpose of this chapter, a "meeting" means the convening of a quorum of the membership of a public body, as defined in RSA 91-A:1-a, VI, or the majority of the members of such public body if the rules of that body define "quorum" as more than a majority of its members, whether in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously, subject to the provisions set forth in RSA 91-A:2, III, for the purpose of discussing or acting upon a matter or matters over which the public body has supervision, control, jurisdiction, or advisory power. A chance, social, or other encounter not convened for the purpose of discussing or acting upon such matters shall not constitute a meeting if no decisions are made regarding such matters. "Meeting" shall also not include:

- (a) Strategy or negotiations with respect to collective bargaining;
- (b) Consultation with legal counsel;
- (c) A caucus consisting of elected members of a public body of the same political party who were elected on a partisan basis at a state general election or elected on a partisan basis by a town or city which has adopted a partisan ballot system pursuant to RSA 669:12 or RSA 44:2; or
- (d) Circulation of draft documents which, when finalized, are intended only to formalize decisions previously made in a meeting; provided, that nothing in this subparagraph shall be construed to alter or affect the application of any other section of RSA 91-A to such documents or related communications.

II. Subject to the provisions of RSA 91-A:3, all meetings, whether held in person, by means of telephone or electronic communication, or in any other manner, shall be open to the public. Except for town meetings, school district meetings, and elections, no vote while in open session may be taken by secret ballot. Any person shall be permitted to use recording devices, including, but not limited to, tape recorders, cameras, and videotape equipment, at such meetings. Minutes of all such meetings, including nonpublic sessions, shall include the names of members, persons appearing before the public bodies, and a brief description of the subject matter discussed and final decisions. The names of the members who made or seconded each motion shall be recorded in the minutes. Subject to the provisions of RSA 91-A:3, minutes shall be promptly recorded and open to public inspection not more than 5 business days after the meeting, except as provided in RSA 91-A:6, and shall be treated as permanent records of any public body, or any subordinate body thereof, without exception. Except in an emergency or when there is a meeting of a legislative committee, a notice of the time and place of each such meeting, including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings. An emergency shall mean a situation where immediate undelayed action is deemed to be imperative by the chairman or presiding officer of the public body, who shall post a notice of the time and place of such meeting as soon as practicable, and shall employ whatever further means are reasonably available to inform the public that a meeting is to be held.

The minutes of the meeting shall clearly spell out the need for the emergency meeting. When a meeting of a legislative committee is held, publication made pursuant to the rules of the house of representatives or the senate, whichever rules are appropriate, shall be sufficient notice. If the charter of any city or town or guidelines or rules of order of any public body require a broader public access to official meetings and records than herein described, such charter provisions or guidelines or rules of order shall take precedence over the requirements of this chapter. For the purposes of this paragraph, a business day means the hours of 8 a.m. to 5 p.m. on Monday through Friday, excluding national and state holidays.

II-a. If a member of the public body believes that any discussion in a meeting of the body, including in a nonpublic session, violates this chapter, the member may object to the discussion. If the public body continues the discussion despite the objection, the objecting member may request that his or her objection be recorded in the minutes and may then continue to participate in the discussion without being subject to the penalties of RSA 91-A:8, IV or V. Upon such a request, the public body shall record the member's objection in its minutes of the meeting. If the objection is to a discussion in nonpublic session, the objection shall also be recorded in the public minutes, but the notation in the public minutes shall include only the member's name, a statement that he or she objected to the discussion in nonpublic session, and a reference to the provision of RSA 91-A:3, II, that was the basis for the discussion.

II-b. (a) If a public body maintains an Internet website or contracts with a third party to maintain an Internet website on its behalf, it shall either post its approved minutes in a consistent and reasonably accessible location on the website or post and maintain a notice on the website stating where the minutes may be reviewed and copies requested.

(b) If a public body chooses to post meeting notices on the body's Internet website, it shall do so in a consistent and reasonably accessible location on the website. If it does not post notices on the website, it shall post and maintain a notice on the website stating where meeting notices are posted.

III. A public body may, but is not required to, allow one or more members of the body to participate in a meeting by electronic or other means of communication for the benefit of the public and the governing body, subject to the provisions of this paragraph.

(a) A member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical. Any reason that such attendance is not reasonably practical shall be stated in the minutes of the meeting.

(b) Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting. For purposes of this subparagraph, an "emergency" means that immediate action is imperative and the physical presence of a quorum is not reasonably practical within the period of time requiring action. The determination that an emergency exists shall be made by the chairman or presiding officer of the public body, and the facts upon which that determination is based shall be included in the minutes of the meeting.

(c) Each part of a meeting required to be open to the public shall be audible or otherwise discernable to the public at the location specified in the meeting notice as the location of the meeting. Each member participating electronically or otherwise must be able to simultaneously hear each other and speak to each other during the meeting, and shall be audible or otherwise discernable to the public in attendance at the meeting's location. Any member participating in such fashion shall identify the persons present in the location from which the member is participating. No meeting shall be conducted by electronic mail or any other form of communication that does not permit the public to hear, read, or otherwise discern meeting discussion contemporaneously at the meeting location specified in the meeting notice.

(d) Any meeting held pursuant to the terms of this paragraph shall comply with all of the requirements of this chapter relating to public meetings, and shall not circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

(e) A member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.

Source. 1967, 251:1. 1969, 482:1. 1971, 327:2. 1975, 383:1. 1977, 540:3. 1983, 279:1. 1986, 83:3. 1991, 217:2. 2003, 287:7. 2007, 59:2. 2008, 278:2, eff. July 1, 2008 at 12:01 a.m.; 303:4, eff. July 1, 2008. 2016, 29:1, eff. Jan. 1, 2017. 2017, 165:1, eff. Jan. 1, 2018; 234:1, eff. Jan. 1, 2018. 2018, 244:1, eff. Jan. 1, 2019.

Section 91-A:2-a

91-A:2-a Communications Outside Meetings. –

- I. Unless exempted from the definition of "meeting" under RSA 91-A:2, I, public bodies shall deliberate on matters over which they have supervision, control, jurisdiction, or advisory power only in meetings held pursuant to and in compliance with the provisions of RSA 91-A:2, II or III.
- II. Communications outside a meeting, including, but not limited to, sequential communications among members of a public body, shall not be used to circumvent the spirit and purpose of this chapter as expressed in RSA 91-A:1.

Source. 2008, 303:4, eff. July 1, 2008.

Section 91-A:2-b

91-A:2-b Repealed by 2012, 232:14, eff. Dec. 1, 2012. –

Section 91-A:3

91-A:3 Nonpublic Sessions. –

- I. (a) Public bodies shall not meet in nonpublic session, except for one of the purposes set out in paragraph II. No session at which evidence, information, or testimony in any form is received shall be closed to the public, except as provided in paragraph II. No public body may enter nonpublic session, except pursuant to a motion properly made and seconded.
- (b) Any motion to enter nonpublic session shall state on its face the specific exemption under paragraph II which is relied upon as foundation for the nonpublic session. The vote on any such motion shall be by roll call, and shall require the affirmative vote of the majority of members present.
- (c) All discussions held and decisions made during nonpublic session shall be confined to the matters set out in the motion.
- II. Only the following matters shall be considered or acted upon in nonpublic session:
- (a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, unless the employee affected (1) has a right to a meeting and (2) requests that the meeting be open, in which case the request shall be granted.
- (b) The hiring of any person as a public employee.
- (c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting. This exemption shall extend to any application for assistance or tax abatement or waiver of a fee, fine, or other levy, if based on inability to pay or poverty of the applicant.
- (d) Consideration of the acquisition, sale, or lease of real or personal property which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.
- (e) Consideration or negotiation of pending claims or litigation which has been threatened in writing or filed by or against the public body or any subdivision thereof, or by or against any member thereof because of his or her membership in such public body, until the claim or litigation has been fully adjudicated or otherwise settled. Any application filed for tax abatement, pursuant to law, with any body or board shall not constitute a threatened or filed litigation against any public body for the purposes of this subparagraph.
- (f) [Repealed.]
- (g) Consideration of security-related issues bearing on the immediate safety of security personnel or inmates at the county or state correctional facilities by county correctional superintendents or the commissioner of the department of corrections, or their designees.
- (h) Consideration of applications by the business finance authority under RSA 162-A:7-10 and 162-A:13, where consideration of an application in public session would cause harm to the applicant or would inhibit full discussion of the application.

- (i) Consideration of matters relating to the preparation for and the carrying out of emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.
- (j) Consideration of confidential, commercial, or financial information that is exempt from public disclosure under RSA 91-A:5, IV in an adjudicative proceeding pursuant to RSA 541 or RSA 541-A.
- (k) Consideration by a school board of entering into a student or pupil tuition contract authorized by RSA 194 or RSA 195-A, which, if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general public or the school district that is considering a contract, including any meeting between the school boards, or committees thereof, involved in the negotiations. A contract negotiated by a school board shall be made public prior to its consideration for approval by a school district, together with minutes of all meetings held in nonpublic session, any proposals or records related to the contract, and any proposal or records involving a school district that did not become a party to the contract, shall be made public. Approval of a contract by a school district shall occur only at a meeting open to the public at which, or after which, the public has had an opportunity to participate.
- (l) Consideration of legal advice provided by legal counsel, either in writing or orally, to one or more members of the public body, even where legal counsel is not present.

[Paragraph II(m) effective January 1, 2022.]

(m) Consideration of whether to disclose minutes of a nonpublic session due to a change in circumstances under paragraph III. However, any vote on whether to disclose minutes shall take place in public session.

[Paragraph III effective until January 1, 2022; see also paragraph III set out below.]

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present taken in public session, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply.

[Paragraph III effective January 1, 2022; see also paragraph III set out above.]

III. Minutes of meetings in nonpublic session shall be kept and the record of all actions shall be promptly made available for public inspection, except as provided in this section. Minutes of such sessions shall record all actions in such a manner that the vote of each member is ascertained and recorded. Minutes and decisions reached in nonpublic session shall be publicly disclosed within 72 hours of the meeting, unless, by recorded vote of 2/3 of the members present taken in public session, it is determined that divulgence of the information likely would affect adversely the reputation of any person other than a member of the public body itself, or render the proposed action ineffective, or pertain to terrorism, more specifically, to matters relating to the preparation for and the carrying out of all emergency functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to

property or widespread injury or loss of life. This shall include training to carry out such functions. In the event of such circumstances, information may be withheld until, in the opinion of a majority of members, the aforesaid circumstances no longer apply. For all meetings held in nonpublic session, where the minutes or decisions were determined to not be subject to full public disclosure, a list of such minutes or decisions shall be kept and this list shall be made available as soon as practicable for public disclosure. This list shall identify the public body and include the date and time of the meeting in nonpublic session, the specific exemption under paragraph II on its face which is relied upon as foundation for the nonpublic session, the date of the decision to withhold the minutes or decisions from public disclosure, and the date of any subsequent decision, if any, to make the minutes or decisions available for public disclosure. Minutes related to a discussion held in nonpublic session under subparagraph II(d) shall be made available to the public as soon as practicable after the transaction has closed or the public body has decided not to proceed with the transaction.

Source. 1967, 251:1. 1969, 482:2. 1971, 327:3. 1977, 540:4. 1983, 184:1. 1986, 83:4. 1991, 217:3. 1992, 34:1, 2. 1993, 46:1; 335:16. 2002, 222:2, 3. 2004, 42:1. 2008, 303:4. 2010, 206:1, eff. June 22, 2010. 2015, 19:1; 49:1; 105:1, eff. Jan. 1, 2016; 270:2, eff. Sept. 1, 2015. 2016, 30:1, eff. Jan. 1, 2017; 280:1, eff. June 21, 2016. 2021, 48:7(I), eff. May 25, 2021; 163:1, eff. Jan. 1, 2022; 172:1, eff. Jan. 1, 2022.

Section 91-A:4

See 2020, 8:4, effective July 10, 2020 and Emergency Order #23 (NH LEGIS E.O. 2020-23-Emerg. (2020, 2023:1.)), issued pursuant to Executive Order 2020-04 (NH LEGIS E.O. 2020-04 (2020, 1004:1.)) as extended by Executive Orders 2020-05 (NH LEGIS E.O. 2020-05 (2020, 1005:1.)); 2020-08 (NH LEGIS E.O. 2020-08 (2020, 1008:1.)); 2020-09 (NH LEGIS E.O. 2020-09 (2020, 1009:1.)); 2020-010 (NH LEGIS E.O. 2020-010 (2020, 1010:1.)); 2020-014 (NH LEGIS E.O. 2020-014 (2020, 1014:1.)); 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)); 2020-016 (NH LEGIS E.O. 2020-016 (2020, 1016:1.)); 2020-017 (NH LEGIS E.O. 2020-017 (2020, 1017:1.)); 2020-018 (NH LEGIS E.O. 2020-018 (2020, 1018:1.)), 2020-015 (NH LEGIS E.O. 2020-015 (2020, 1015:1.)), related to the COVID-19 State of Emergency, for potential impact on the terms of this section.

91-A:4 Minutes and Records Available for Public Inspection. –

I. Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5. In this section, "to copy" means the reproduction of original records by whatever method, including but not limited to photography, photostatic copy, printing, or electronic or tape recording.

I-a. Records of any payment made to an employee of any public body or agency listed in RSA 91-A:1-a, VI(a)-(d), or to the employee's agent or designee, upon the resignation, discharge, or retirement of the employee, paid in addition to regular salary and accrued vacation, sick, or other leave, shall immediately be made available without alteration for public inspection. All records of payments shall be available for public inspection notwithstanding that the matter may have been considered or acted upon in nonpublic session pursuant to RSA 91-A:3.

II. After the completion of a meeting of a public body, every citizen, during the regular or business hours of such public body, and on the regular business premises of such public body, has the right to inspect all notes, materials, tapes, or other sources used for compiling the minutes of such meetings, and to make memoranda or abstracts or to copy such notes, materials, tapes, or sources inspected, except as otherwise prohibited by statute or RSA 91-A:5.

III. Each public body or agency shall keep and maintain all governmental records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the governmental records pertaining to such public body or agency shall be kept in an office of the political subdivision in which such public body or agency is located or, in the case of a state agency, in an office designated by the secretary of state.

III-a. Governmental records created or maintained in electronic form shall be kept and maintained for the same

retention or archival periods as their paper counterparts. Governmental records in electronic form kept and maintained beyond the applicable retention or archival period shall remain accessible and available in accordance with RSA 91-A:4, III. Methods that may be used to keep and maintain governmental records in electronic form may include, but are not limited to, copying to microfilm or paper or to durable electronic media using standard or common file formats.

III-b. A governmental record in electronic form shall no longer be subject to disclosure pursuant to this section after it has been initially and legally deleted. For purposes of this paragraph, a record in electronic form shall be considered to have been deleted only if it is no longer readily accessible to the public body or agency itself. The mere transfer of an electronic record to a readily accessible "deleted items" folder or similar location on a computer shall not constitute deletion of the record.

IV. (a) Each public body or agency shall, upon request for any governmental record reasonably described, make available for inspection and copying any such governmental record within its files when such records are immediately available for such release.

(b) If a public body or agency is unable to make a governmental record available for immediate inspection and copying the public body or agency shall, within 5 business days of a request:

(1) Make such record available;

(2) Deny the request; or

(3) Provide a written statement of the time reasonably necessary to determine whether the request shall be granted or denied and the reason for the delay.

(c) A public body or agency denying, in whole or part, inspection or copying of any record shall provide a written statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(d) If a computer, photocopying machine, or other device maintained for use by a public body or agency is used by the public body or agency to copy the governmental record requested, the person requesting the copy may be charged the actual cost of providing the copy, which cost may be collected by the public body or agency. No cost or fee shall be charged for the inspection or delivery, without copying, of governmental records, whether in paper, electronic, or other form. Nothing in this section shall exempt any person from paying fees otherwise established by law for obtaining copies of governmental records or documents, but if such fee is established for the copy, no additional costs or fees shall be charged.

V. In the same manner as set forth in RSA 91-A:4, IV, any public body or agency which maintains governmental records in electronic format may, in lieu of providing original records, copy governmental records requested to electronic media using standard or common file formats in a manner that does not reveal information which is confidential under this chapter or any other law. If copying to electronic media is not reasonably practicable, or if the person or entity requesting access requests a different method, the public body or agency may provide a printout of governmental records requested, or may use any other means reasonably calculated to comply with the request in light of the purpose of this chapter as expressed in RSA 91-A:1. Access to work papers, personnel data, and other confidential information under RSA 91-A:5, IV shall not be provided.

VI. Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement.

VII. Nothing in this chapter shall be construed to require a public body or agency to compile, cross-reference, or assemble information into a form in which it is not already kept or reported by that body or agency.

Source. 1967, 251:1. 1983, 279:2. 1986, 83:5. 1997, 90:2. 2001, 223:2. 2004, 246:2. 2008, 303:4. 2009, 299:1, eff. Sept. 29, 2009. 2016, 283:1, eff. June 21, 2016. 2019, 107:1, eff. Jan. 1, 2020; 163:2, eff. Jan. 1, 2020 at 12:01 a.m.

Section 91-A:5

91-A:5 Exemptions. –

The following governmental records are exempted from the provisions of this chapter:

I. Records of grand and petit juries.

I-a. The master jury list as defined in RSA 500-A:1, IV.

II. Records of parole and pardon boards.

III. Personal school records of pupils, including the name of the parent or legal guardian and any specific reasons disclosed to school officials for the objection to the assessment under RSA 193-C:6.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:

(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

XI. Records pertaining to information technology systems, including cyber security plans, vulnerability testing and assessments materials, detailed network diagrams, or other materials, the release of which would make public security details that would aid an attempted security breach or circumvention of law as to the items assessed.

XII. Records protected under the attorney-client privilege or the attorney work product doctrine.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017. 2018, 91:2, eff. July 24, 2018. 2019, 54:1, eff. Aug. 4, 2019. 2021, 163:2, eff. July 30, 2021.

Section 91-A:5-a

91-A:5-a Limited Purpose Release. – Records from non-public sessions under RSA 91-A:3, II(i) or that are exempt under RSA 91-A:5, VI may be released to local or state safety officials. Records released under this section shall be marked "limited purpose release" and shall not be redisclosed by the recipient.

Source. 2002, 222:5, eff. Jan. 1, 2003.

Section 91-A:6

91-A:6 Employment Security. – This chapter shall apply to RSA 282-A, relative to employment security; however, in addition to the exemptions under RSA 91-A:5, the provisions of RSA 282-A:117-123 shall also apply; this provision shall be administered and construed in the spirit of that section, and the exemptions from the provisions of this chapter shall include anything exempt from public inspection under RSA 282-A:117-123 together with all records and data developed from RSA 282-A:117-123.

Source. 1967, 251:1. 1981, 576:5, eff. July 1, 1981.

Section 91-A:7

91-A:7 Violation. – Any person aggrieved by a violation of this chapter may petition the superior court for injunctive relief. In order to satisfy the purposes of this chapter, the courts shall give proceedings under this chapter high priority on the court calendar. Such a petitioner may appear with or without counsel. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter, and may be filed by the petitioner or his or her counsel with the clerk of court or any justice thereof. Thereupon the clerk of court or any justice shall order service by copy of the petition on the person or persons charged. Subject to objection by either party, all documents filed with the petition and any response thereto shall be considered as evidence by the court. All documents submitted shall be provided to the opposing party prior to a hearing on the merits. When any justice shall find that time probably is of the essence, he or she may order notice by any reasonable means, and he or she shall have authority to issue an order ex parte when he or she shall reasonably deem such an order necessary to insure compliance with the provisions of this chapter.

Source. 1967, 251:1. 1977, 540:5. 2008, 303:5, eff. July 1, 2008. 2018, 289:1, eff. Jan. 1, 2019.

Section 91-A:8

91-A:8 Remedies. –

- I. If any public body or public agency or officer, employee, or other official thereof, violates any provisions of this chapter, such public body or public agency shall be liable for reasonable attorney's fees and costs incurred in a lawsuit under this chapter, provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of this chapter or to address a purposeful violation of this chapter. Fees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this chapter or if the parties, by agreement, provide that no such fees shall be paid.
- II. The court may award attorney's fees to a public body or public agency or employee or member thereof, for having to defend against a lawsuit under the provisions of this chapter, when the court finds that the lawsuit is in bad faith, frivolous, unjust, vexatious, wanton, or oppressive.
- III. The court may invalidate an action of a public body or public agency taken at a meeting held in violation of the provisions of this chapter, if the circumstances justify such invalidation.
- IV. If the court finds that an officer, employee, or other official of a public body or public agency has violated any provision of this chapter in bad faith, the court shall impose against such person a civil penalty of not less than \$250 and not more than \$2,000. Upon such finding, such person or persons may also be required to reimburse the public body or public agency for any attorney's fees or costs it paid pursuant to paragraph I. If the person is an officer, employee, or official of the state or of an agency or body of the state, the penalty shall be deposited in the general fund. If the person is an officer, employee, or official of a political subdivision of the state or of an agency or body of a political subdivision of the state, the penalty shall be payable to the political subdivision.
- V. The court may also enjoin future violations of this chapter, and may require any officer, employee, or other official of a public body or public agency found to have violated the provisions of this chapter to undergo appropriate remedial training, at such person or person's expense.

Source. 1973, 113:1. 1977, 540:6. 1986, 83:7. 2001, 289:3. 2008, 303:6. 2012, 206:1, eff. Jan. 1, 2013.

Section 91-A:8-a

91-A:8-a Repealed by 2017, 126:2, eff. November 1, 2017. –

Section 91-A:9

91-A:9 Destruction of Certain Information Prohibited. – A person is guilty of a misdemeanor who knowingly destroys any information with the purpose to prevent such information from being inspected or disclosed in response to a request under this chapter. If a request for inspection is denied on the grounds that the information is exempt under this chapter, the requested material shall be preserved for 90 days or while any lawsuit pursuant to RSA 91-A:7-8 is pending.

Source. 2002, 175:1, eff. Jan. 1, 2003.

Procedure for Release of Personal Information for Research Purposes

Section 91-A:10

91-A:10 Release of Statistical Tables and Limited Data Sets for Research. –

I. In this subdivision:

- (a) "Agency" means each state board, commission, department, institution, officer or other state official or group.
- (b) "Agency head" means the head of any governmental agency which is responsible for the collection and use of any data on persons or summary data.
- (c) "Cell size" means the count of individuals that share a set of characteristics contained in a statistical table.
- (d) "Data set" means a collection of personal information on one or more individuals, whether in electronic or manual files.
- (e) "Direct identifiers" means:
 - (1) Names.
 - (2) Postal address information other than town or city, state, and zip code.
 - (3) Telephone and fax numbers.
 - (4) Electronic mail addresses.
 - (5) Social security numbers.
 - (6) Certificate and license numbers.
 - (7) Vehicle identifiers and serial numbers, including license plate numbers.
 - (8) Personal Internet IP addresses and URLs.
 - (9) Biometric identifiers, including finger and voice prints.
 - (10) Personal photographic images.
- (f) "Individual" means a human being, alive or dead, who is the subject of personal information and includes the individual's legal or other authorized representative.
- (g) "Limited data set" means a data set from which all direct identifiers have been removed or blanked.
- (h) "Personal information" means information relating to an individual that is reported to the state or is derived from any interaction between the state and an individual and which:
 - (1) Contains direct identifiers.
 - (2) Is under the control of the state.
- (i) "Provided by law" means use and disclosure as permitted or required by New Hampshire state law governing programs or activities undertaken by the state or its agencies, or required by federal law.
- (j) "Public record" means records available to any person without restriction.
- (k) "State" means the state of New Hampshire, its agencies or instrumentalities.

(l) "Statistical table" means single or multi-variate counts based on the personal information contained in a data set and which does not include any direct identifiers.

II. Except as otherwise provided by law, upon request an agency shall release limited data sets and statistical tables with any cell size more than 0 and less than 5 contained in agency files to requestors for the purposes of research under the following conditions:

(a) The requestor submits a written application that contains:

(1) The following information about the principal investigator in charge of the research:

(A) name, address, and phone number;

(B) organizational affiliation;

(C) professional qualification; and

(D) name and phone number of principal investigator's contact person, if any.

(2) The names and qualifications of additional research staff, if any, who will have access to the data.

(3) A research protocol which shall contain:

(A) a summary of background, purposes, and origin of the research;

(B) a statement of the general problem or issue to be addressed by the research;

(C) the research design and methodology including either the topics of exploratory research or the specific research hypotheses to be tested;

(D) the procedures that will be followed to maintain the confidentiality of any data or copies of records provided to the investigator; and

(E) the intended research completion date.

(4) The following information about the data or statistical tables being requested:

(A) general types of information;

(B) time period of the data or statistical tables;

(C) specific data items or fields of information required, if applicable;

(D) medium in which the data or statistical tables are to be supplied; and

(E) any special format or layout of data requested by the principal investigator.

(b) The requestor signs a "Data Use Agreement" signed by the principal investigator that contains the following:

(1) Agreement not to use or further disclose the information to any person or organization other than as described in the application and as permitted by the Data Use Agreement without the written consent of the agency.

(2) Agreement not to use or further disclose the information as otherwise required by law.

(3) Agreement not to seek to ascertain the identity of individuals revealed in the limited data set and/or statistical tables.

(4) Agreement not to publish or make public the content of cells in statistical tables in which the cell size is more than 0 and less than 5 unless:

(A) otherwise provided by law; or

(B) the information is a public record.

(5) Agreement to report to the agency any use or disclosure of the information contrary to the agreement of which the principal investigator becomes aware.

(6) A date on which the data set and/or statistical tables will be returned to the agency and/or all copies in the possession of the requestor will be destroyed.

III. The agency head shall release limited data sets and statistical tables and sign the Data Use Agreement on behalf of the state when:

(a) The application submitted is complete.

(b) Adequate measures to ensure the confidentiality of any person are documented.

(c) The investigator and research staff are qualified as indicated by:

(1) Documentation of training and previous research, including prior publications; and

(2) Affiliation with a university, private research organization, medical center, state agency, or other institution which will provide sufficient research resources.

(d) There is no other state law, federal law, or federal regulation prohibiting release of the requested information.

IV. Within 10 days of a receipt of written application, the agency head, or designee, shall respond to the request.

Whenever the agency head denies release of requested information, the agency head shall send the requestor a letter identifying the specific criteria which are the basis of the denial. Should release be denied due to other law, the letter shall identify the specific state law, federal law, or federal regulation prohibiting the release. Otherwise the agency head shall provide the requested data or set a date on which the data shall be provided.

V. Any person violating any provision of a signed Data Use Agreement shall be guilty of a violation.

VI. Nothing in this section shall exempt any requestor from paying fees otherwise established by law for obtaining copies of limited data sets or statistical tables. Such fees shall be based on the cost of providing the copy in the format requested. The agency head shall provide the requestor with a written description of the basis for the fee.

Source. 2003, 292:2, eff. July 18, 2003.

Right-to-Know Oversight Commission

Section 91-A:11 to 91-A:15

91-A:11 to 91-A:15 Repealed by 2005, 3:2, eff. Nov. 1, 2010. –