

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 53-B

SOLID WASTE MANAGEMENT DISTRICTS

Section 53-B:1

53-B:1 Repealed by 1994, 367:17, I, eff. Aug. 8, 1994. –

Section 53-B:1-a

53-B:1-a Purpose. – A solid waste management district shall be a means by which municipalities may join together by formal agreement under this chapter to create a separate authority for the management of solid waste. A district may be established for the purposes of providing one or more solid waste facilities, closing any existing facilities, or creating a system of solid waste management within the district.

Source. 1994, 367:2, eff. Aug. 8, 1994.

Section 53-B:2

53-B:2 Definitions. –

In this chapter:

- I. "District" means a solid waste management district established under this chapter.
- II. "Facility" means a location, system or physical structure for the collection, separation, storage, transportation, processing, treatment, or disposal of solid waste.
- III. "Governing body" means "governing body" as defined in RSA 21:48.
- IV. "Legislative body" means "legislative body" as defined in RSA 21:47.
- V. "Long-term contract" means a contract for solid waste management services for a term of 5 or more years between a district and an owner or operator of a solid waste management facility, unless the district agreement adopted by member municipalities stipulates a different term.
- VI. "Municipality" means any city, town, unincorporated town or unorganized place.
- VII. "Person" means any individual, partnership, company, corporation, firm, governmental unit or agency, or any other legal entity.
- VIII. "Solid waste" means "solid waste" as defined in RSA 149-M:4, XXIV.
- IX. "Solid waste management" or "management" means an activity or any combination of activities relative to the collection, separation, storage, transportation, processing, treatment, or disposal of solid waste.

Source. 1967, 331:1. 1994, 367:3. 1996, 251:7, eff. Aug. 9, 1996.

Section 53-B:3

53-B:3 Solid Waste Management 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 solid waste management district planning committee, consisting of 3 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 committee responsibilities. Any solid waste management district committee formed pursuant to RSA 149-M:24, in existence as of August 8, 1994, may serve as a planning committee under this chapter.

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 solid waste management district by examining the types of facilities that would be needed; the methods of organizing, operating and financing such a district; the potential benefits and disadvantages to member municipalities; and the closure of any proposed or existing facilities. The committee may consider specific sites inside or outside the proposed district for facility location or, more generally, which municipalities may have facilities located within them.

IV. If the committee determines that the formation of a district is desirable, it shall prepare a proposed district agreement and hold a public informational session and hearing on it in at least one of the participating municipalities. A public informational session and hearing shall be held in each municipality which is named in the district agreement as a site. Copies of the proposed agreement and of RSA 53-B 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 area and sent to the governing bodies of participating municipalities.

V. After the public hearing and informational session the committee may amend the contents of the proposed agreement and shall send it for review to the attorney general and department of environmental services. 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 detail in writing to the governing bodies and the planning committee 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. The department of environmental services shall provide comment, including recommendations for improvement, to the committee and governing bodies within 30 days of the proposed agreement's submission relative to its compatibility with the state solid waste management plan and the solid waste management statutes and rules. The comments of the department shall not affect the legal validity of any district agreement.

VI. The committee may revise the proposed district agreement as it deems necessary and shall resubmit it to the 2 state agencies as provided in paragraph V. 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 municipalities comprising the committee.

Source. 1967, 331:1. 1981, 379:1. 1994, 367:4. 1996, 228:14; 251:8, eff. Aug. 9, 1996.

Section 53-B:4

53-B:4 Repealed by 1994, 367:17, II, eff. Aug. 8, 1994. –

Section 53-B:5

53-B:5 Repealed by 1994, 367:17, III, eff. Aug. 8, 1994. –

Section 53-B:6

53-B:6 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, in accordance with proper notice and procedure requirements, at the next annual town meeting or at a special town meeting called for this purpose. Voting at a town meeting may be by printed ballot or official ballot. In all other municipalities, the legislative bodies shall vote on the proposed agreement within 60 days of the governing bodies' receiving the proposed agreement. The question to be voted on shall be: "Shall the (insert name of municipality) accept the provisions of RSA 53-B:1-RSA 53-B:14 providing for the establishment of a solid waste management 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 unless the agreement waives the 120-day debt rejection period and authority set forth in RSA 53-B:7, VI, in which case approval must be by 2/3 vote. If all of the legislative bodies vote in the affirmative, the proposed solid waste management 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. 1967, 333:1. 1982, 23:1. 1994, 367:5, eff. Aug. 8, 1994. 2013, 117:1, eff. Aug. 24, 2013.

Section 53-B:6-a

53-B:6-a Solid Waste Management 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, maintenance, and closing costs of one or more facilities, if any.

III. The method of selection and method of removal of representatives to the district committee, whether by legislative or governing bodies; the number of representatives and the weight of each representative's vote; the terms of office of the representatives; and, except as provided otherwise by law, the powers, duties and authorities of the district committee officers.

IV. A description of the facilities 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 must be approved by the governing or legislative bodies of member municipalities.

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

VIII. Provisions for varied levels of participation by member municipalities in multiple facilities, 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, and other procedures relative to governing the district's fiscal affairs in accordance with RSA 53-B:9.

X. The remedies and penalties which the district committee may assert against a member which defaults in its obligations to the district, if any.

XI. Any debt incurrences by the district for specified purposes that are exempt from the debt rejection provisions of RSA 53-B:7, VI(a) and (c).

XII. Any long-term contracts entered into by the district for specified purposes that are exempt from the contract rejection provisions under RSA 53-B:7, XX(a) and (c) and the term of contract to be subject to such provision if different from 5 years.

XIII. The powers delegated to the district by member municipalities to enact bylaws and regulations concerning solid waste management, as provided in RSA 53-B:7, XV.

XIV. 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-B:6, II.

Source. 1994, 367:6, eff. Aug. 8, 1994.

Section 53-B:7

53-B:7 Corporate Body; Powers. –

A solid waste management district, established under RSA 53-B:6, 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 powers 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 sue and be sued, but only to the same extent and upon the same conditions that a municipality may be sued.
- III. To plan, construct, equip, maintain and operate one or more facilities, or to close one or more facilities, for the benefit of members of the district, and to take such actions and make such contracts as may be necessary in relation thereto.
- IV. 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.
- V. To take property by eminent domain within the geographic boundaries of the district in furtherance of the purposes of the district.
- VI. To incur debt for the purposes of acquiring land and for planning, constructing, and equipping, or purchasing or otherwise acquiring the use of, one or more facilities, or for closing one or more facilities.
 - (a) No debt may be incurred until 120 days after it was authorized by the district committee to allow for rejection of the debt incurrence by member municipalities under subparagraph (c), unless the rejection period and authority have been waived in the district agreement.
 - (b) The governing body of each member municipality shall be given written notice of the amount of the debt and the general purposes for which it was authorized within 7 days after the authorization.
 - (c) If, before the 120-day period has passed, the legislative body of any member municipality votes to disapprove of the debt, it shall not be incurred. The provisions of RSA 31:5 shall not apply to actions by special town meetings under this paragraph. The provisions of RSA 32 and 33:8-a shall apply to actions by town meetings under this paragraph. A legislative body may disapprove the debt only if, under the terms and conditions of the district agreement, the municipality will incur obligations under RSA 53-B:7-c. After 120 days the district committee may again authorize the incurrence of debt which shall be subject to the rejection conditions of subparagraphs (a) and (c). A municipality which votes to reject 2 successive debt incurrences shall be allowed to withdraw from the district in accordance with the provisions of this chapter and the district agreement. If the municipality has not withdrawn within [120 days of the second debt rejection, the committee is authorized to incur the debt over the member municipality's rejection.
 - (d) In any district which includes 3 or more towns and is a party to a cooperative agreement under the New Hampshire-Vermont Interstate Solid Waste Compact, the following alternative procedure shall apply if it is contained in the agreement. The district committee shall determine the amount and purpose of the debt. The committee shall hold public hearings in at least 2 municipalities in the district. At least 14 days' notice of the hearings shall be published in one or more newspapers circulating in the district and posted in at least one public place in each municipality. Within 30 days after the last hearing, the committee shall set a date for a referendum on the debt. Each municipality shall have at least one polling place. The procedures for the referendum shall be the same as those for a vote by official ballot at town meeting. The debt shall be authorized if 2/3 of those voting on the question vote yes. Expenses of the referendum shall be charged to the district.
- VII. To issue bonds and notes in the name and upon the full faith and credit of the district. The bonds or notes shall be signed by the chairman and treasurer of the district committee, except that the chairman by a writing bearing his written signature and filed in the office of the treasurer, which writing shall be open to public inspection, may authorize the treasurer to cause to be engraved or printed on the bonds or notes a facsimile of the chairman's signature, and such facsimile signature so engraved or printed shall have the same validity and effect as the chairman's written signature. Each issue of bonds or notes shall be a separate loan.
- VIII. To receive and disburse funds for any district purpose.
- IX. To incur temporary debt in anticipation of revenue to be received.
- X. To assess member municipalities for any expenses of the district in accordance with RSA 53-B:9.
- XI. To receive any grants or gifts for the purposes of the district.

- XII. To engage legal counsel, accountants, engineers, contractors, consultants, agents and other advisors.
- XIII. To employ an executive director or manager and such other employees as necessary to operate the district.
- XIV. To enter into contracts with any person consistent with the authority that a district may have under this chapter.
- XV. To utilize powers delegated to the district through the district agreement by member municipalities to enact bylaws and regulations concerning solid waste management.
- XVI. To insure against liability and other risks, and otherwise to obtain all insurance deemed by the district committee 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 a facility is or is to be located. Such contracts, leases, or other agreements may provide for benefits, privileges, payments, or other considerations for said host member municipality which, with respect to that facility, are different from and not otherwise available to the other member municipalities with respect to such facility.
- XIX. To accept at a district facility solid waste generated inside and outside the boundaries of the district.
- XX. To contract with any person who owns or operates any facility for the provision of solid waste management services. Such contract shall be consistent with the hierarchy and goals of solid waste management under RSA 149-M:2 and RSA 149-M:3. A contract for facility use may call for delivery of guaranteed minimum tonnage, provided that said contract is in keeping with the policy set forth in RSA 149-M:2 and RSA 149-M:3. In the event that a district's delivered tonnage falls below the level stipulated in contract, the district may procure tonnage from sources outside the district, in compliance with the public benefit requirements of RSA 149-M:11 and as provided in the contract. A contract may contain such other terms and conditions as the district may determine to be in its best interest.
- (a) No long-term contract shall take effect until 120 days after authorization by the district committee to allow for rejection of the proposed long-term contract by member municipalities under subparagraph (c), unless the rejection period and authority have been waived in the district agreement.
- (b) 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.
- (c) If, before the 120-day period has passed, the legislative body of any member municipality votes to disapprove of the long-term contract, it shall not be entered into. The provisions of RSA 31:5 shall not apply to action by special town meetings under this paragraph. A legislative body may disapprove the contract only if, under the terms and conditions of the district agreement, the municipality will incur obligations under RSA 53-B:7-c. After 120 days the district committee may again authorize the long-term contract which shall be subject to the rejection conditions of subparagraphs (a) and (c). A municipality which votes to reject 2 successive long-term contracts shall be allowed to withdraw from the district in accordance with the provisions of this chapter and the district agreement. If the municipality has not withdrawn within 120 days of the second contract rejection, the committee is authorized to enter into the long-term contract over the member municipality's rejection.

Source. 1967, 331:1. 1981, 379:3. 1994, 319:1; 367:7. 1996, 251:9, eff. Aug. 9, 1996. 2013, 117:2-5, eff. Aug. 24, 2013.

Section 53-B:7-a

53-B:7-a Repealed by 1994, 367:17, IV, eff. Aug. 8, 1994. –

Section 53-B:7-b

53-B:7-b Project Financing. –

I. Bonds or notes issued pursuant to this chapter may be secured by any assets or revenues, or both, of the district. The district may mortgage a facility and grant security interests in such other assets or rights to receive money as the district committee may determine. Such bonds or notes may, but need not be, the full faith and

credit obligation of the district, provided that bonds or notes which are not the full faith and credit obligation of the district shall so state in a conspicuous manner on their face.

II. A district may use the proceeds of bonds or notes to acquire land and to plan, construct and equip, or purchase or otherwise acquire the use of, one or more facilities, or to close one or more facilities, and to create such reserve funds and to pay such costs of financing and capitalized interest as the district committee deems appropriate, or it may loan such proceeds to any person for such purposes in connection with a facility which by contract it has the right to use or which by contract will provide management services to the district for a period at least equal to the period of the bonds or notes.

Source. 1982, 23:2. 1994, 367:8, eff. Aug. 8, 1994.

Section 53-B:7-c

53-B:7-c Member Municipality Obligations. – Any member municipality that withdraws from a district shall be liable for its share of existing debt and contractual obligations, and any existing operating and capital costs its withdrawal would impose on remaining members. All liabilities, obligations, and indebtedness of the district incurred by it through the exercise of its powers and duties shall be full faith and credit obligations of the individual member municipalities except to the extent that the district agreement otherwise provides.

Source. 1994, 367:9, eff. Aug. 8, 1994.

Section 53-B:8

53-B:8 District Committee. –

I. The powers, duties, and liabilities of a district shall be vested in and exercised by a district committee organized in accordance with the district agreement. The district committee shall authorize and govern all actions of a district, and the district committee'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 district committee representatives shall constitute a quorum, unless the district agreement provides for weighted voting, in which case a quorum shall consist of representatives holding more than 50 percent of the voting power. 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 and with the following exceptions. An affirmative 2/3 vote of the total votes of the district committee shall be required to authorize the incurrence of long-term debt or the dissolution of the district.

II. The committee shall choose a chairman 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 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, an annual report on the general activities and affairs of the district, including a detailed financial report.

Source. 1967, 331:1. 1994, 367:10, eff. Aug. 8, 1994.

Section 53-B:8-a

53-B:8-a Capital Reserve Fund. –

I. A district may establish a capital reserve fund for the orderly replacement and closure of any existing facility, including associated buildings and equipment, which has been approved under RSA 53-B:7, VI. The district committee shall invest all monies in said fund in the same manner as capital reserve funds of towns are invested pursuant to the requirements of RSA 35:9. The members of said committee shall serve as the trustees of the capital reserve fund. The trustees of the fund shall post bond in such amount and in such form as the New

Hampshire commissioner of revenue administration shall prescribe.

II. The proposed annual contributions to the capital reserve fund shall be set forth in the budget of the district, and the trustees shall annually within 3 months of the close of the fiscal year of the district file an account with the selectmen of the towns and the city council of the cities comprising the district setting forth the amounts held by the trustees, the manner in which they are invested, and the purposes for which they are held. The trustees may, from time to time, vote to expend any funds held by them for the replacement or closure of any existing facility, including associated buildings and equipment, required by the district without further vote of the municipalities comprising the district.

Source. 1977, 302:1. 1994, 367:11, eff. Aug. 8, 1994.

Section 53-B:9

53-B:9 Adoption of Budget; Apportionment of Expenses. – Annually, the district committee 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 adopt a budget for the upcoming year no later than December 31. The committee shall prepare a budget and make a preliminary apportionment of the amount so determined among the member municipalities in accordance with the terms of the district agreement. Prior to December 31 of each year the district committee shall hold at least one public hearing at some convenient place in the district on the amounts required in the budget and the preliminary apportionment of the amounts listed in the budget. At least 7 days' notice of the meeting shall be given by publication of the budget and apportionment in a newspaper of general circulation within the district, and by posting a copy of the budget and apportionment in a public place in each municipality in the district. After the hearing the committee shall adopt a budget and make a final determination of the apportionment among the member municipalities. After the committee has adopted the budget and determined the apportionment of the expenses, the district treasurer shall certify to the governing body of each member municipality the amount of money assessed each member municipality. The governing body of each member municipality shall seasonably assess the taxes to be raised to pay the apportionments. The municipal treasurer shall pay to the district the amount so apportioned at the times specified in the district agreement.

Source. 1967, 331:1. 1994, 367:12, eff. Aug. 8, 1994.

Section 53-B:10

53-B:10 Audits. – The district committee shall hire a certified public accountant or a public accountant licensed by the state under RSA 309-A:8 to conduct a financial audit, in accordance with generally accepted governmental auditing standards as adopted by the U.S. 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 district committee 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 district committee 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. 1967, 331:1. 1973, 544:10. 1975, 439:23. 1989, 50:3. 1994, 367:13, eff. Aug. 8, 1994.

Section 53-B:11

53-B:11 Repealed by 1994, 367:17, V, eff. Aug. 8, 1994. –

Section 53-B:12

53-B:12 Tax Exemption. – All bonds and notes, and the interest thereon, heretofor or hereafter issued by a district formed under the provisions of RSA 53-B or of any general or special act, heretofor and hereafter enacted, shall be exempt from taxation in the state of New Hampshire.

Source. 1994, 367:14, eff. Aug. 8, 1994.

Section 53-B:13

53-B:13 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. 1994, 367:14, eff. Aug. 8, 1994.

Section 53-B:14

53-B:14 Existing Districts. – Districts formed by municipalities under prior law shall continue to operate under the prior law and existing district agreements. A district may utilize any additional provisions of this chapter by amending its district agreement in accordance with the amendment process contained in its district agreement.

Source. 1994, 367:14, eff. Aug. 8, 1994.