

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.

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

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.