

Section 1 Header

2020 SESSION

20-2811.0  
06/05

SENATE BILL        *[bill number]*

AN ACT            establishing communications districts.

SPONSORS:        [sponsors]

COMMITTEE:      [committee]

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ANALYSIS

This bill provides for the establishment of communications districts.

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Explanation:      Matter added to current law appears in ***bold italics.***  
                         Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT                    establishing communications districts.

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

1 Amend the definition of “municipality” in RSA 33-B:1 as follows: V. "Municipality" means a city,  
2 town, ~~or~~ village district, **or communications district formed under RSA 53-G.**  
3

4 **Amend 33-B:2 Issuance of Revenue Bonds.** – A municipality, regional water district or  
5 communications district may issue bonds or notes under this chapter for construction of revenue-  
6 producing facilities. Bonds issued by a municipality, regional water or communications district  
7 under this chapter shall not be deemed to be a pledge of the faith and credit of the state or of the  
8 municipality or municipalities that are members of a regional water or communications district.  
9 Except as otherwise provided in this chapter, the principal of, premium, if any, and interest on all  
10 bonds shall be payable solely from the particular funds provided therefor under this chapter.  
11 Bonds issued by a municipality shall be issued in such amounts as the legislative body may  
12 authorize by a vote as required under RSA 33:8 or 9, as applicable. Bonds issued by regional  
13 water or communications districts shall be issued in such amounts as the governing body may  
14 authorize pursuant to the regional water district's charter. Bonds of each issue shall be dated,  
15 shall bear interest at such rate or rates, including rates variable from time to time as determined  
16 by such index, banker's loan rate or other method as may be determined by the authorized  
17 officers, and shall mature at such time or times as may be determined by the authorized officers,  
18 except that no bond shall mature more than 40 years from the date of its issue or beyond the  
19 expiration of the expected useful life of the facilities being financed by the bonds as determined  
20 by the authorized officers. Bonds may be made redeemable before maturity at the option of the  
21 municipality, regional water district or communications district at such price or prices and under  
22 such terms and conditions as may be fixed by the authorized officers prior to the issue of bonds.  
23 The authorized officers shall determine the form and details and the manner of execution of  
24 bonds. The municipality, regional water district or communications district may sell its bonds in  
25 such manner, either at public or private sale, for such price, at such rate or rates of interest, or at  
26 such discount in lieu of interest, as the authorized officers may determine. The provisions of  
27 RSA 33:11-a, 14 and 15 shall apply to bonds issued under this chapter.  
28

29        1 Communications Districts; Purpose. The general court recognizes that towns require  
30 communications infrastructure and service to retain and attract residents and businesses and many  
31 rural towns, individually, lack the resources and population to attract infrastructure suppliers and  
32 service providers. Communications districts are a means by which municipalities may join together  
33 by formal agreement to create a separate authority for communications. A district may be  
34 established for the purposes of contracting and bonding the creation or maintenance of

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1 communications infrastructure and for contracting with service providers. Communications districts  
2 shall be by financed by grants, loans, bonds and user fees, not taxation.

3 2 New Chapter; Communications Districts. Amend RSA by inserting after chapter 53-F the  
4 following new chapter:

5 CHAPTER 53-G  
6 COMMUNICATIONS DISTRICTS

7 **Section 53-G:1**

8 **53-G:1 Definitions. –**

9 In this chapter:

10 I. "District" means a communications district established under this chapter.

11 II. "Governing body" means "governing body" as defined in RSA 21:48.

12 III. "Legislative body" means "legislative body" as defined in RSA 21:47.

13 IV. "Long-term contract" means a contract for communications services, equipment and/or  
14 infrastructure lease for 5 years or more

15 V. "Municipality" means any city, town, unincorporated town or unorganized place.

16 VI. "Person" means any individual, partnership, company, corporation, firm, governmental unit  
17 or agency, or any other legal entity.

18 VII. "Equipment and infrastructure" means any and all parts of any communications system,  
19 owned, leased or otherwise contracted by the district, whether using wires, cables, fiber optics,  
20 wireless, other technologies, or a combination thereof, and used for the purpose of transporting  
21 or storing information, in whatever forms, directions, and media, together with any  
22 improvements thereto hereafter constructed or acquired, and all other facilities, equipment and  
23 appurtenances necessary or appropriate to such system, However, "equipment and infrastructure"  
24 shall not apply to facilities or portions of any communications facilities intended for use by, and  
25 solely used by, a district member and its own officers and employees in the operation of  
26 municipal departments or systems of which such communications are merely an ancillary  
27 component.

28 VIII. "Multi-town Communications District" or "district" means a communications district  
29 formed under this chapter.

30 IX. "Member" means a town or city that elects to form or join a multi-town communications  
31 district under this chapter.

32 X. "Board" means the governing board of the district.

33  
34 **53-G:2 Communications District Planning Committee; Formation and Responsibilities.**

35 I. The governing bodies of 2 or more municipalities may at their discretion, and shall upon a  
36 vote of their respective legislative bodies, create a special unpaid committee to be known as a  
37 communications district planning committee, consisting of at least 2 persons from each municipality  
38 appointed by the respective governing body. The committee shall elect a chairperson, clerk, and  
39 treasurer. Members may be reimbursed by the committee for costs of performing duties directly  
40 related to the committee. The legislative power and authority of a district and the administration  
41 and the general supervision of all fiscal, prudential, and governmental affairs shall be vested in a

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1 legislative body known as the governing board, except as specifically provided otherwise in this  
2 chapter.

3         II. The committee may accept funds from any public or private source and may expend  
4 money for planning purposes which may include, but not be limited to, engaging legal counsel,  
5 accountants, engineers, contractors, consultants, and other advisors, paying for member expenses, or  
6 organizational and secretarial assistance. The committee shall report in a timely fashion to each  
7 governing body the sources and amounts of such funds. Each municipality represented on the  
8 committee may appropriate funds to the committee.

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

15         IV. If the committee determines that the formation of a district is desirable, it shall prepare  
16 a proposed district agreement and hold a public information session and hearing in at least one of  
17 the participating municipalities. A public information session and hearing shall be held in each  
18 municipality which is named in the district agreement as a site. Copies of the proposed agreement  
19 and of RSA 53-G shall be made available at and prior to any hearing. Notice of any hearing shall be  
20 published in one or more newspapers of general circulation in the proposed district area and sent to  
21 the governing bodies of participating municipalities.

22         V. After the public hearing and information session, the committee may amend the contents  
23 of the proposed agreement and shall send it for review to the attorney general and the public utilities  
24 commission. The attorney general shall approve any proposed agreement unless it is in improper  
25 form or is incompatible with the requirements of this chapter and the laws of this state. The  
26 attorney general shall inform the governing bodies and the planning committee in writing of any  
27 specific respects in which the proposed agreement fails to meet the requirements of law. Approval by  
28 the attorney general shall be required for any district agreement to be legally valid. Failure by the  
29 attorney general to disapprove an agreement within 30 days of its submission shall constitute  
30 approval. The public utilities commission shall provide comment, including recommendations for  
31 improvement, to the committee and governing bodies within 30 days of the proposed agreement's  
32 submission relative to its compatibility with communications statutes and rules. The comments of  
33 the public utilities commission shall not affect the legal validity of any district agreement.

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

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

3 **53-G:3 Vote on Establishing District.**

4 I. The governing bodies shall cause the question of accepting any proposed agreement to be  
5 presented for determination by vote of the respective legislative bodies. In municipalities that hold  
6 town meetings, the proposed agreement shall be voted on, in accordance with proper notice and  
7 procedure requirements, at the next annual town meeting or at a special town meeting called for this  
8 purpose. Voting at a town meeting shall be by official ballot. In all other municipalities, the  
9 legislative bodies shall vote on the proposed agreement within 60 days of the governing bodies'  
10 receipt of the proposed agreement. The question to be voted on shall be: "Shall the (insert name of  
11 municipality) accept the provisions of RSA 53-G:1-RSA 53-G:13 providing for the establishment of a  
12 communications district, together with the municipalities of \_\_\_\_\_ in accordance with the  
13 provisions of the proposed agreement filed with the (insert appropriate office for governing body)?"  
14 Approval by a legislative body shall be by simple majority. If all of the legislative bodies vote in the  
15 affirmative, the proposed communications district shall thereby be established in accordance with  
16 the terms of the proposed agreement. Otherwise, the district shall not be established, except as  
17 specified in paragraph II.

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

23 **Section 53-G:4**

24 **53-G:4 Communications District Agreements. –**

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

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

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

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

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

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

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

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

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

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

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

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

13 XIV. The procedure, if any, for establishing the district when not all of the legislative bodies  
14 vote to approve the district agreement, as provided in RSA 53-G:x, yy.  
15

16 53-G:5 Admission of Additional District Members. The board may authorize the inclusion of  
17 additional district members in the multi-town communications district upon such terms and  
18 conditions as it in its sole discretion shall deem to be fair, reasonable, and in the best interests of the  
19 district. The legislative body of any nonmember municipality which desires to be admitted to the  
20 district shall make application for admission to the board. The board shall determine the financial  
21 and operational effects that are likely to occur if such municipality is admitted and thereafter either  
22 grant or deny authority for admission of the petitioning municipality. If the board grants such  
23 authority, it shall also specify any terms and conditions, including financial obligations, upon which  
24 such admission is predicated. Upon resolution of the board, such applicant municipality shall  
25 become and thereafter be a district member.

26 53-G:6 Corporate Body; Powers. A communications district established under this chapter shall  
27 be a body politic and corporate and a political subdivision and public instrumentality of the state  
28 carrying out a public purpose and an essential governmental function with the following powers,  
29 which are subject to the provisions and limitations of the district agreement:

30 I. To adopt a name and a corporate seal. The engraved or printed facsimile of the seal  
31 appearing on a bond or note of the district shall have the same legal effect as if it  
32 were impressed thereon.

33 II. To receive federal or state grants and loans, revenue from subscribers,  
34 access fees from subscribers, access to revenue bonds, be able to pledge  
35 revenues, and accept private investment.

36 III. To adopt a budget

37 IV. To establish and adjust fees

38 V. To establish public/private partnership with ISP(s) as necessary to  
39 operate the network.

40 VI. To provide communications services for its district members, including the residential  
41 and business locations located therein and provide communications services for such other  
42 residential and business locations as its equipment, infrastructure and obligations may allow,

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1 provided such other locations are in a municipality that is contiguous with the town limits of a  
2 district member.

3 VII. To cause to be operated, or contract for the construction, ownership, management,  
4 financing, and operation of a communications plant for the delivery of communications services.

5 VIII. To sue and be sued, but only to the same extent and upon the same conditions that a  
6 municipality may be sued.

7 IX. To hold, deal with, mortgage, pledge, encumber, purchase, acquire, lease, sell, convey,  
8 and otherwise dispose of real and personal property of all kinds in furtherance of the purposes of the  
9 district.

10 X. To incur debt for the purposes of acquiring land and for planning, constructing,  
11 equipping, purchasing, or otherwise acquiring the use of communications infrastructure.

12 (a) The governing body of each member municipality shall be given written notice of the  
13 amount of the debt and the general purposes for which it was authorized within 7 days after the  
14 authorization.

15 (b) When the board, at a regular or special meeting called for such purpose, determines  
16 by resolution passed by a vote of a majority of members present and voting that the public interest or  
17 necessity demands communications plant improvements, or a long-term contract, and that the cost of  
18 the same will be too great to be paid out of the ordinary annual income and revenue of the district,  
19 the board may pledge communications plant net revenues and enter into long-term contracts to  
20 provide for such improvements. In this chapter, a "long term contract" means an agreement in  
21 which the district incurs direct or conditional obligations for which the costs are too great to be paid  
22 out of the ordinary annual income and revenues of the district, in the judgment of the board. In this  
23 chapter, the term "communications plant improvements" includes improvements that may be used  
24 for the benefit of the public, whether or not publicly owned or operated. The pledge of  
25 communications plant net revenues and other obligations allowed by law may be authorized for any  
26 purpose permitted by this chapter, or any other applicable statutes.

- 27 • XI. The district has authority to acquire revenue bonds under [RSA Chapter 33-B](#).

28 XII. To receive and disburse funds for any district purpose.

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

30 XIV. To receive any grants or gifts for the purposes of the district.

31 XV. To engage legal counsel, accountants, engineers, contractors, consultants, agents, and  
32 other advisors.

33 XVI. To enter into contracts as necessary to construct and operate the district.  
34  
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1           XVII. To enter into contracts with any person consistent with the authority that a district  
2 has under this chapter.

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

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

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

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

17           53-G:7 Project Financing.

18           I. Bonds or notes issued pursuant to this chapter may be secured by any assets or revenues,  
19 or both, of the district. The district may mortgage infrastructure and grant security interests in such  
20 other assets or rights to receive money as the governing board may determine.

21           II. A district may use the proceeds of bonds or notes to acquire land and to plan, construct,  
22 equip, or purchase or otherwise acquire the use of additional equipment and/or infrastructure and to  
23 create such reserve funds and to pay such costs of financing and capitalized interest as the governing  
24 board deems appropriate, or it may loan such proceeds to any person for such purposes in connection  
25 with infrastructure which by contract it has the right to use or which by contract will provide  
26 services to the district for a period at least equal to the period of the bonds or notes.

27           III.(a) Notwithstanding any grant of authority in this chapter to the contrary, a district shall  
28 not accept funds generated by a member's taxing or assessment power.

29           (b) Notwithstanding any grant of authority in this chapter to the contrary, a district  
30 shall not have the power to levy, assess, apportion, or collect any tax upon property within the  
31 district, nor upon any of its members.

32           (c) Notwithstanding any grant of authority in this chapter to the contrary, every issue of  
33 a district's notes and bonds shall be payable only out of any revenues or moneys of the district.

34           53-G:8 Member Withdrawal. A district member may vote to withdraw in the same manner as  
35 the vote for admission to the district. If a majority of the voters of a district member present and  
36 voting at a meeting duly warned for such purpose votes to withdraw from the district, the vote shall  
37 be certified by the clerk of that municipality and presented to the board. Thereafter, the board shall  
38 give notice to the remaining district members of the vote to withdraw and shall hold a meeting to



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1 determine if it is in the best interest of the district to continue to exist. Representatives of the  
2 district members shall be given an opportunity to be heard at such meeting together with any other  
3 interested persons. After such a meeting, the board may declare the district dissolved or it may  
4 declare that the district shall continue to exist despite the withdrawal of such member. The  
5 membership of the withdrawing municipality shall terminate after the vote to withdraw.

6 **53-G:9 Governing Board.**

7 I. The powers, duties, and liabilities of a district shall be vested in and exercised by a  
8 governing board organized in accordance with the district agreement. The governing board shall  
9 authorize and govern all actions of a district, and the governing board's actions which are consistent  
10 with the district agreement and this chapter are binding on member municipalities without any  
11 additional action by the governing or legislative bodies of those municipalities. A majority of  
12 governing board representatives shall constitute a quorum, unless the district agreement provides  
13 for weighted voting, in which case a quorum shall consist of representatives holding more than 50  
14 percent of the voting power. A simple majority of the voting authority present shall be sufficient to  
15 approve an action by the committee except as otherwise provided in the district agreement and with  
16 the following exceptions. An affirmative 2/3 vote of the total votes of the governing board shall be  
17 required to authorize the incurrence of long-term debt or the dissolution of the district.

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

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

28  
29 **53-G:10 Adoption of Budget.** Annually, the governing board shall determine the amounts  
30 necessary to be raised to maintain and operate the district during the next calendar year, and the  
31 amounts required for payment of debt and interest incurred by the district that will be due in the  
32 next year. The committee shall prepare a budget no later than December 31. The committee shall  
33 give at least 7 days' notice of the budget hearing by publication of the budget in a newspaper of  
34 general circulation within the district, and by posting a copy of the budget in a public place in each  
35 municipality in the district. After the hearing the committee shall adopt a budget.

36 **53-G:11 Audits.** The governing board shall hire a certified public accountant or a public  
37 accountant licensed by the state under RSA 309-B:5 to conduct a financial audit, in accordance with  
38 generally accepted governmental auditing standards as adopted by the U.S. General Accounting

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1 Office and applicable state statutes, to be completed within 6 months after the close of each fiscal  
2 year. Upon completion of an audit, the governing board shall review and vote on acceptance of the  
3 audit and send a copy of the audited financial statements, the auditor's opinion on those statements,  
4 a report on internal control, a report on compliance, and any other auditor reports to the governing  
5 body of each of the member municipalities and to the department of revenue administration. At  
6 least every 2 years, the governing board shall vote on whether to contract for a performance audit of  
7 the district in accordance with the generally accepted governmental auditing standards. Upon  
8 completion of a performance audit, the committee shall review and vote on acceptance of the audit  
9 and send a copy of the resulting materials to the governing body of each of the member  
10 municipalities and to the department of revenue administration.

11 53-G:12 Tax Exemption. All bonds and notes, and the interest thereon, issued by a district  
12 formed under the provisions of this chapter or of any general or special act, shall be exempt from  
13 taxation in the state of New Hampshire.

14 53-G:13 Severability. If any portion of this chapter or the application thereof to any person or  
15 circumstances is held invalid, such invalidity shall not affect other provisions or applications of the  
16 chapter which can be given effect without the invalid provisions or applications, and to this end the  
17 provisions of this chapter are severable.

18 3 Effective Date. This act shall take effect 60 days after its passage.