

**CHAPTER 214**  
**SB 11-LOCAL – FINAL VERSION**

02/14/13 0124s  
29May2013... 1728h  
06/12/13 2039EBA

2013 SESSION

13-0298  
06/05

SENATE BILL            ***11-LOCAL***

AN ACT                    relative to water and sewer utility districts and water or sewer utility districts.

SPONSORS:            Sen. Stiles, Dist 24; Sen. Prescott, Dist 23; Rep. Abrami, Rock 19; Rep. Copeland, Rock 19; Rep. Schlachman, Rock 18; Rep. Flockhart, Rock 18; Rep. Lovejoy, Rock 36

COMMITTEE:          Public and Municipal Affairs

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AMENDED ANALYSIS

This bill permits municipalities to establish water and/or sewer utility districts and to enter into intermunicipal agreements for the establishment of such districts.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT                      relative to water and sewer utility districts and water or sewer utility districts.

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

1            214:1 New Subdivision; Water and/or Sewer Utility Districts. Amend RSA 31 by inserting after  
2 section 133 the following new subdivision:

3                                      Water and/or Sewer Utility Districts

4            31:134 Statement of Purpose. The establishment of water and/or sewer utility districts will  
5 enable municipalities to provide property services at a more intensive level than is provided in the  
6 balance of the municipality; provide funds for capital expenditures towards constructing and  
7 maintaining those utilities; provide funds for the operation and maintenance of those utilities; and  
8 authorize the establishment of charges to owners and users of property within such water and/or  
9 sewer utility districts in an amount not to exceed the costs to the municipality of providing such  
10 utility services at levels over and above those provided in the balance of the municipality.

11           31:135 Definition. In this subdivision, “water and/or sewer utility” means an entity established  
12 for the acquisition, operation, and management of water and sewer infrastructure.

13           31:136 Water and/or Sewer Utility Authorized; Intermunicipal Agreement.

14           I. For the purposes of this subdivision, the legislative body of any city or town shall have the  
15 authority by a majority vote to establish one or more water and/or sewer utility districts and  
16 designate a water and/or sewer utility commission to be the governing body to manage the activities  
17 of the district.

18           II. In the case where a utility district encompasses land within more than one municipality,  
19 the district may be authorized by majority vote of the legislative bodies within each affected  
20 jurisdiction in accordance with the terms of an intermunicipal agreement under RSA 53-A:3. Such  
21 agreement shall be contingent upon approval of the legislative bodies of each of the parties to the  
22 agreement, and shall, in addition to the requirements of RSA 53-A:3, II, specify the following:

23                      (a) The source of the water.

24                      (b) The disposition of sewage.

25           III. For a water and/or sewer utility that encompasses more than one municipality, the  
26 intermunicipal agreement shall create the water and/or sewer utility commission and representation  
27 on such commission shall be proportional to the number of the owners or users, or both, of properties

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1 in the water and/or sewer utility district as defined by the intermunicipal agreement.

2 31:137 Commissioners. For the convenient management of any water and/or sewer utility  
3 district, a municipality shall vest the construction, management, control, and direction of such  
4 district in a board of commissioners to consist of 3, 5, or 7 citizens of each municipality, the  
5 commissioners to have such powers and duties as the municipality may prescribe. Their term of  
6 office shall be for 3 years and until their successors are elected and qualified. The first board of  
7 commissioners may be chosen for terms of one, 2, and 3 years, respectively.

8 31:138 Election or Appointment.

9 I. The board of commissioners may be elected by the legal voters of the municipality at  
10 any meeting or election at which the provisions of this subdivision are accepted, or at any special  
11 meeting or election thereafter called for that purpose, and their successors shall be elected at  
12 each annual meeting or election thereafter in the manner or form as the municipality may  
13 determine.

14 II. The board of commissioners may be appointed by the mayor and board of aldermen or  
15 city council or by the selectmen of the town in the manner or form as the municipality may  
16 determine.

17 31:139 Services Provided; Cost.

18 I. The services provided by a water and/or sewer utility district under this subdivision may  
19 include property-related services, including but not limited to providing public drinking water and  
20 water for domestic uses; water for fire suppression; and wastewater management; related  
21 construction, operation, and maintenance of capital facilities needed in the performance of these  
22 services; and other business development services and activities related to the maintenance of an  
23 attractive, useful, and economically viable business environment within the district. These services  
24 and activities may be either those of a routine nature provided for all properties, or may be  
25 particular to those in the water and/or sewer utility district.

26 II. The legislative body of each municipality shall define the water and/or sewer utility  
27 district, select specific services and levels of services to be provided, and, subject to RSA 31:137,  
28 authorize the department, agency, or other party that is to undertake the work.

29 III. The costs of providing services in the water and/or sewer utility district shall be those  
30 accruing to the municipality, which result exclusively from the provision of services in the district,  
31 and which exceed those being provided in the balance of the municipality.

32 31:140 Method of Appropriation. Each municipality shall adopt a budgetary appropriation for  
33 capital and operating expenditures including replacement and upgrades, or services to be performed in a  
34 water and/or sewer utility district as part of its budget process. The expense of constructing and  
35 maintaining the facilities needed to perform the authorized services to the district, or paying off any  
36 capital debt or interest incurred in constructing or maintaining the district on an annual basis shall be

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1 included in the budgetary appropriation. At the end of each fiscal year, a full accounting of expenditures  
2 shall be made.

3 31:141 Assessments and Fees. Upon adoption of the budgetary appropriation, the municipality  
4 may levy assessments or fees, or both, in an amount not greater than the net appropriation to a  
5 water and/or sewer utility district fund. The assessments and fees shall be made against the owners  
6 or users, or both, of properties in the water and/or sewer utility district and shall be based upon a  
7 formula determined by the municipality to be in relative proportion to benefits received by each  
8 property owner or user, or both, in the water and/or sewer utility district. Assessments and fees  
9 shall be billed and collected as specified by ordinance adopted by majority vote of the governing body  
10 of the municipality after a public hearing or in accordance with the terms of the intermunicipal  
11 agreement. Government property and non-profit organizations within the district shall be subject to  
12 the assessment and fees. Interest and other collection procedures shall be made by the tax collector  
13 or other official responsible for property tax collection. Enforcement powers for nonpayment shall be  
14 the same as those provided under RSA 80 relative to property tax collection.

15 31:142 Limit on Liability. The provisions of RSA 507-B relative to bodily injury actions against  
16 governmental units shall apply to all municipal activities performed in connection with a water  
17 and/or sewer utility district.

18 31:143 Authority to Incur Capital Debt. The commission shall have the authority to issue bonds  
19 under RSA 33 or RSA 33-B, as approved by the governing body of the municipality or, if  
20 intermunicipal, in accordance with the terms of the intermunicipal agreement.

21 31:144 Assessment Funds.

22 I. The funds received from the collection of water and/or sewer assessments and fees shall be  
23 kept as separate and distinct funds to be known as the water assessment fund and the sewer  
24 assessment fund respectively. Such funds shall be allowed to accumulate from year to year, shall not  
25 be commingled with municipal tax revenues, and shall not be deemed part of the municipality's  
26 general fund accumulated surplus. Such funds shall be expended only for the purposes of this  
27 subdivision as it relates to public drinking water and domestic supplies or the previous expansion or  
28 replacement of water lines or water treatment facilities; or for wastewater or the previous expansion  
29 or replacement of sewage lines or sewage treatment facilities.

30 II. Except when a capital reserve fund is established pursuant to paragraph III, all  
31 assessment funds shall be held in the custody of the municipal treasurer. Estimates of anticipated  
32 assessments or fees and anticipated expenditures from the assessment funds shall be submitted to  
33 the governing body under RSA 32:6 if applicable, and shall be included as part of the municipal  
34 budget submitted to the legislative body for approval. Notwithstanding RSA 41:29 or RSA 48:16, the  
35 treasurer shall pay out amounts from the assessment funds only upon order of the governing body of  
36 the district. Expenditures shall be within amounts appropriated by the legislative body.

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1           III. At the option of the governing body of the district, all or part of any surplus in the  
2 assessment funds may be placed in one or more capital reserve funds under RSA 35:7 and placed in  
3 the custody of the trustees of trust funds. If such a reserve fund is created, then the governing body  
4 of the district may expend such funds pursuant to RSA 35:15 without prior approval or appropriation  
5 by the local legislative body, but all such expenditures shall be reported to the municipality pursuant  
6 to RSA 31:148. This section shall not be construed to prohibit the establishment of other capital  
7 reserve funds for any lawful purpose relating to municipal water.

8           31:145 District Utility Fund. Notwithstanding RSA 31:144, the local legislative body upon  
9 establishing a utility district may vote to establish a separate and distinct fund to be known as the  
10 district utility fund to serve as a collective operating fund for the district, or to administer funds  
11 common to the district that are not directly attributable to water or wastewater services. Such fund  
12 shall be allowed to accumulate from year to year, shall not be commingled with town or city tax  
13 revenues, and shall not be deemed part of the municipality's general fund accumulated surplus.  
14 Such fund shall function as a collective water and sewer fund and shall be authorized to be managed  
15 in the same ways as water or sewer funds are used under RSA 31:144.

16           31:146 Abatement and Appeal of Assessments and Fees.

17           I. Any person aggrieved by an assessment or fee made under this subdivision may, within 2  
18 months of the notice of assessment, apply in writing to the governing body of the district for an  
19 abatement of such assessment or fee.

20           II. Upon receipt of an application under paragraph I, the governing body of the district shall  
21 review the application and shall, in writing, grant or deny the application in whole or in part to  
22 correct any error in the assessment or fee within 6 months after the notice of assessment or  
23 imposition of the fee.

24           III. If the governing body of the district neglects or refuses to abate the assessment or fee,  
25 any person aggrieved may petition the superior court in the county where the property is located  
26 within 8 months of the notice of assessment or imposition of the fee.

27           IV. For purposes of this section, "notice of assessment" means the date shown on the  
28 assessment bill.

29           V. Each assessment bill or fee shall require a separate request and appeal.

30           VI. For good cause shown, the governing body of the district may abate any such assessment  
31 or fee made by them or by their predecessors.

32           31:147 Liens and Collection of Assessments. In the collection of assessments and fees under  
33 RSA 31:141, municipalities shall have the same liens and use the same collection procedures as  
34 authorized by RSA 38:22. Interest on overdue charges shall be assessed in accordance with RSA 76:13.

35           31:148 Reports. In municipalities adopting this subdivision, the governing body of the district  
36 shall annually, at the time other municipal officers report, make a report to the municipality of the

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1 condition of the plant financially and otherwise, showing the funds of the district, the expenses and  
2 income thereof, and all other material facts. This report shall be published in the annual report of  
3 the municipality.

4 31:149 Local Option. Any city or town may adopt this subdivision and shall thereafter have all  
5 the authority, powers, duties, and responsibilities set forth in this subdivision.

6 I. A city may adopt this subdivision by majority vote of the legislative body of the city after  
7 notice and hearing.

8 II. A town may adopt this subdivision by majority vote of the voters present and voting at  
9 any legal town meeting under a proper article after notice and hearing.

10 214:2 Agreements Between Government Units; Joint Exercise of Powers. Amend the  
11 introductory paragraph of RSA 53-A:3 to read as follows:

12 53-A:3 Joint Exercise of Powers. Any power or powers, privileges or authority exercised or  
13 capable of exercise by a public agency of this state may be exercised jointly with any other public  
14 agency of this state. Such authority shall include, but not be limited to, the power to enter into  
15 agreements to share tax revenues resulting from local economic development efforts and with respect  
16 to cities and towns, the power to form the entities and conduct the activities provided for in RSA 162-  
17 ***G and RSA 31:134 through RSA 31:149.***

18 214:3 Effective Date. This act shall take effect 60 days after its passage.

19  
20 Approved: July 10, 2013

21 Effective Date: September 8, 2013