

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 38

MUNICIPAL ELECTRIC, GAS, OR WATER SYSTEMS

Section 38:1

38:1 Definitions. – In this chapter:

- I. "Commission" means the public utilities commission, unless the context otherwise indicates.
- II. "Utility" means any public utility engaged in the manufacture, generation, distribution, or sale of electricity, gas, or water in the state.
- III. "Municipality" means any city, town, unincorporated town, unorganized place, or village district within the state.
- IV. "Municipal water company" means any water distribution system or water supply utility, owned or operated by a municipality, whether as a municipal department, separate company, or otherwise.
- V. "Regional water district" means any regional water district formed pursuant to RSA 53-A, for the purpose of providing and assuring the provision of an adequate and sustainable supply of clean water.

Source. 1997, 206:1, eff. July 1, 1997. 2003, 281:8, eff. July 18, 2003.

Section 38:2

38:2 Establishment, Acquisition, and Expansion of Plants. – Any municipality may:

- I. Establish, expand, take, purchase, lease, or otherwise acquire and maintain and operate in accordance with the provisions of this chapter, one or more suitable plants for the manufacture and distribution of electricity, gas, or water for municipal use, for the use of its inhabitants and others, and for such other purposes as may be permitted, authorized, or directed by the commission.
- II. For these purposes, take, purchase, and hold in fee simple or otherwise lease or otherwise acquire and maintain any real or personal estate and any rights therein, including water rights.
- III. Do all other things necessary for carrying into effect the purposes of this chapter.
- IV. Excavate and dig conduits and ditches in any highway or other land or place, and erect poles, place wires, and lay pipes for the transmission and distribution of electricity, gas, and water in such places as may be deemed necessary and proper.
- V. Change, enlarge, and extend the same from time to time when the municipality shall deem necessary, and maintain the same, having due regard for the safety and welfare of its citizens and security of the public travel.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:2-a

38:2-a Establishment, Acquisition, and Expansion of Plants; Regional Water Districts. – Any regional water district may:

- I. Establish, expand, purchase, lease, or otherwise acquire and maintain and operate in accordance with the provisions of this chapter, one or more suitable plants for the manufacture and distribution of water for the use of municipalities that are members of the regional water district and for such other purposes as may be permitted, authorized, or directed by the commission.
- II. For these purposes, purchase and hold in fee simple or otherwise lease or otherwise acquire and maintain any real or personal estate and any rights therein, including water rights.
- III. Do all other things necessary for carrying into effect the purposes of this chapter.
- IV. Excavate and dig conduits and ditches in any highway or other land or place, and erect poles, place wires, and lay pipes for the distribution of water in such places as may be deemed necessary and proper.
- V. Change, enlarge, and extend the same from time to time when the regional water district shall deem necessary, and maintain the same, having due regard for the safety and welfare of the citizens of the member municipalities and security of the public travel.
- VI. No regional water district shall have the authority to take property by eminent domain.

Source. 2003, 281:9, eff. July 18, 2003.

Section 38:3

38:3 By Cities. – Any city may initially establish such a plant after 2/3 of the members of the governing body shall have voted, subject to the veto power of the mayor as provided by law, that it is expedient to do so, and after such action by the city council shall have been confirmed by a majority of the qualified voters at a regular election or at a special meeting duly warned in either case. Such confirming vote shall be had within one year from the date of the vote to establish such a plant, and if favorable, shall create a rebuttable presumption that such action is in the public interest. If the vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:3-a

38:3-a By Regional Water Districts. – Any regional water district may initially establish such a plant after 2/3 of the members of the governing body of the district shall have voted affirmatively, and a majority of the constituent municipalities of the district by a majority vote of their legislative bodies have confirmed that vote. Such confirming vote shall create a rebuttable presumption that such action is in the public interest. If the vote is unfavorable, the question shall not be again submitted to the constituent municipalities within 2 years thereafter.

Source. 2003, 281:10, eff. July 18, 2003.

Section 38:4

38:4 By Towns or Village Districts. – Any town or village district may initially establish such a plant after 2/3 of all the voters present and voting at an annual or special meeting, duly warned in either case, have voted by ballot with the use of the checklist that it is expedient to do so. A favorable vote to establish such a plant shall create a rebuttable presumption that such action is in the public interest. If such vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:5

38:5 By Unincorporated Towns and Unorganized Places. – Any unincorporated town or unorganized place may initially establish such a plant after 2/3 of the members of the county convention shall have voted that it is expedient to do so, and, if there are any registered voters in that unincorporated town or unorganized place, after such action by the county convention shall have been confirmed by a majority of the qualified voters in that unincorporated town or unorganized place at a regular election or at a special meeting duly warned in either case. Such confirming vote shall be had within one year from the date of the vote to establish such a plant, and if favorable, shall create a rebuttable presumption that such action is in the public interest. If the vote is unfavorable, the question shall not be again submitted to the voters within 2 years thereafter.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:6

38:6 Notice to Utility. – Within 30 days after the confirming vote provided for in RSA 38:3, 38:4, or 38:5 the governing body shall notify in writing any utility engaged, at the time of the vote, in generating or distributing electricity, gas, or water for sale in the municipality, of the vote. The municipality notifying any utility in such manner may purchase all or such portion of the utility's plant and property located within such municipality that the governing body determines to be necessary for the municipal utility service, and shall purchase that portion, if any, lying without the municipality which the public interest may require, pursuant to RSA 38:11 as determined by the commission. The notice to such utility shall include an inquiry as to whether the utility elects to sell, in the manner hereinafter provided, that portion of its plant and property located within or without the municipality which the municipality has identified as being necessary for the municipal utility service.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:7

38:7 Reply by Utility. – The utility shall reply to the inquiry provided for in RSA 38:6 by delivering its answer in writing to the governing body within 60 days of the receipt of the inquiry. If the reply is in the negative, or if the reply is not made within the 60 days, the utility thereby forfeits any right it may have had to require the purchase of its plant and property by the municipality, and the municipality may proceed to acquire the plant as provided in RSA 38:10. If the reply is in the affirmative, the utility shall submit the price and terms it is willing to accept for all of its plant and property identified by the municipality in its inquiry, together with a detailed schedule of such plant and property with proper evidence of title. All of the plant and property identified by the municipality shall at all reasonable times thereafter be open to the examination of the officers and agents of the municipality and others charged with the duty of determining the fair value of the property.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:8

38:8 By Agreement. – The governing body of a municipality may negotiate and agree with the utility upon the price to be paid for such plant and property; provided, however, that such agreement shall not be binding upon the municipality until ratified pursuant to RSA 38:13.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:9

38:9 Valuation. –

I. If the municipality and the utility fail to agree upon a price, or if it cannot be agreed as to how much, if any, of the plant and property lying within or without the municipality the public interest requires the municipality to purchase, or if the schedules of property submitted in accordance with RSA 38:7 are not satisfactory, either the municipality or the utility may petition the commission for a determination of these questions.

II. The commission, after proper notice and hearing, shall decide the matters in dispute.

III. When required to fix the price to be paid for such plant and property, the commission shall determine the amount of damages, if any, caused

by the severance of the plant and property proposed to be purchased from the other plant and property of the owner. In the case of electric utilities, such amount shall be limited to the value of such plant and property and the cost of direct remedial requirements, such as new through-connections in transmission lines, and shall exclude consequential damages such as stranded investment in generation, storage, or supply arrangements which shall be determined as provided in RSA 38:33.

IV. The expense to the commission for the investigation of the matters covered by the petition, including the amounts expended for experts, accountants, or other assistants, and salaries and expenses of all employees of the commission for the time actually devoted to the investigation, but not including any part of the salaries of the commissioners, shall be paid by the parties involved, in the manner fixed by the commission.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:10

38:10 Construction or Condemnation. – If the utility shall have replied to the inquiry provided for in RSA 38:7 in the negative or if it shall have failed to reply within the time prescribed in RSA 38:7, the municipality, in the event that it shall have passed the vote or votes required in RSA 38:3, 38:4, and 38:5 and after the commission upon proper notice and hearing has determined that it is in the public interest to do so, may construct a municipal plant or may take all or any portion of such private plant and property by condemnation, paying therefor just compensation determined in the manner provided in RSA 38:9.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:11

38:11 Public Interest Determination by Commission. – When making a determination as to whether the purchase or taking of utility plant or property is in the public interest under this chapter, the commission may set conditions and issue orders to satisfy the public interest. The commission need not make any public interest determinations when the municipality and utility agree upon the sale of utility plant and property.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:12

38:12 Expansion of Existing Municipals. – A municipality that has an existing municipal plant may expand such plant or may purchase or take, in the manner prescribed in RSA 38:6-11 and RSA 38:33, all or a portion of such plant owned by a utility which is necessary for expanded municipal utility service. Such action shall not require any further vote under RSA 38:3, 38:4, or 38:5.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:13

38:13 Ratification. – Within 90 days of the final determination of the price to be paid for the plant and property to be acquired under the provisions of RSA 38:8, 38:9 or 38:10 and any consequential damages under RSA 38:33, the municipality shall decide whether or not to acquire the plant and property at such price by a vote to issue bonds and notes pursuant to RSA 33-B as may be necessary and expedient for the purpose of defraying the cost of purchasing or taking the plant, property, or facilities of the utility which the municipality may thus acquire. The municipality is authorized to hold a special meeting, if necessary, to take such vote without having to petition the superior court for permission to do so. An affirmative vote under RSA 33-B shall constitute ratification on the part of the municipality of the final determination of the price to be paid for the plant and property under the provisions of RSA 38:8, 38:9, or 38:10 and any consequential damages under RSA 38:33. If the money is so raised it shall immediately be paid to the utility, which shall thereupon execute a proper conveyance and surrender the plant and property to the municipality. If the ratifying vote provided for in this section shall be in the negative, no other action under this chapter shall be had during the ensuing period of 2 years.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:13-a

38:13-a Aggregate Municipal Revenue Bonds. – If the commission orders divestiture of generation facilities in the implementation of electric utility restructuring under RSA 374-F, any municipality which has voted to acquire a hydro-electric facility as provided in RSA 38 may jointly issue with any other municipality which has also voted to acquire a hydro-electric facility as provided in RSA 38 municipal revenue bonds and notes pursuant to RSA 33-B as may be necessary and expedient for the purpose of defraying the cost of purchasing or taking such hydro-electric generation facilities. Such municipal revenue bonds or notes may be in the aggregate of the total cost of purchasing or taking such generation facilities as set forth in RSA 33-B:3 and may be issued in the joint names of any such municipalities in accordance with their respective interests therein. In all other respects, the provisions of RSA 33-B shall apply to the issuance of such municipal revenue bonds and notes.

Source. 2000, 164:2, eff. May 23, 2000.

Section 38:14

38:14 Operation of Plant. – A municipality, which has so acquired the plant, property, or facilities of a public utility in any other municipality, may operate within such other municipality as a public utility with the same rights and franchises which the owners of such outlying plant, as purchased, would have had such purchase not been made. The operation by a municipality outside its own limits shall be subject to the jurisdiction

of the commission except as provided in RSA 362. If the outlying municipality shall itself vote to establish a municipal plant all the provisions of this chapter shall be binding as to such determination.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:15

38:15 Taking Property. – Any such municipality may enter upon and take by eminent domain any land or any interest in land or water right within its limits, or in the case of a village district within the limits of the town or towns within which it is situated, which may be necessary for the construction, extension, or maintenance of its plant, and shall pay all damages sustained thereby, or by any other thing done under the authority of this chapter.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:16

38:16 Damages. – If the municipality shall not agree with the owner of the property referenced in RSA 38:15 as to damages, either party may apply to the superior court in the county where the town or district is located, or if the municipality is a village district then to the board of selectmen of the town or towns within which the village district is situated, to have the same laid out and the damages determined and proceedings thereon shall be as upon a petition for the laying out of a highway.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:17

38:17 Supply Contracts. – Any such municipality may contract to supply electricity, gas, or water to individuals, corporations, other municipalities, or any person for any of the purposes named or contemplated in this chapter, and make such contracts, and establish such regulations and such reasonable rates for the use thereof, as may from time to time be authorized by the commission.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:18

38:18 Commissioners. – For the more convenient management of any such electric, gas, or water works system, any such municipality may vest the construction, management, control, and direction of the same in a board of commissioners to consist of 3 or more citizens of such municipality, the commissioners to have such powers and duties as the municipality may prescribe. Their term of office shall be for 3 years and until their successors are elected and qualified. The first board of commissioners may be chosen for terms of one, 2, and 3 years, respectively, by the legal voters of the municipality at any legal meeting or election at which the provisions of this chapter are accepted, or at any special meeting or election thereafter called for that purpose, and their successors shall be elected at each annual meeting or election thereafter in the manner or form as the municipality may determine.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:19

38:19 Appointment. – The commissioners may be appointed by the mayor and board of aldermen or city council, by the selectmen of the town, or by the commissioners of the district if the municipality fails to elect or votes to allow appointments.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:20

38:20 Compensation and Organization. – The compensation of the commissioners shall be fixed by the municipality. They shall be sworn to the faithful discharge of their duties. They shall annually organize by choosing one of their number as chairperson of their board. They shall appoint a clerk and a superintendent of the works and such other officers as they may deem necessary, and shall thereupon furnish a certificate of such organization to the clerk of the municipality, who shall record the same in the clerk's records. The commissioners shall fix the compensation of all officers and agents appointed by them, and all officers and agents shall be sworn to the faithful discharge of their duties.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:21

38:21 Reports. – The commissioners shall annually, at the time other city, town, or district officers report, make a report to the municipality of the condition of the plant financially and otherwise, showing the funds of the department, the expenses and income of the department, and all other material facts. This report shall be published in the annual report of the municipality.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:22

38:22 Liens and Collection of Charges. –

I. All charges for services furnished to patrons by a municipally owned electric, gas, or water works shall create a lien upon the real estate where such services are furnished.

II. A municipality may use any of the following collection procedures for charges and the use of one collection procedure for one service shall not preclude the use of a different collection procedure for another service:

(a) A municipality may commit bills for charges to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. The tax collector shall have the same rights and remedies, including a lien on the real estate, and be subject to the same liabilities in relation thereto as in the collection of taxes as provided in RSA 80; provided, however, that the real estate lien shall continue for 18 months from the date of the last unpaid bill.

(b) The official or board responsible for administering the municipal utility may collect charges for services by direct billing on any periodic basis it may choose. All charges which are delinquent may be committed to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. The tax collector shall have the same rights and remedies, including a lien on the real estate, and be subject to the same liabilities in relation thereto as in the collection of taxes as provided in RSA 80; provided, however, that the real estate lien shall continue for 18 months from the date of the last unpaid bill.

(c) If the official or board responsible for administering the municipal utility has not committed the charges to the collector of taxes, the municipality shall have a lien upon the real estate where the services were furnished and the lien shall continue for 18 months from the date of the last unpaid bill, unless the municipality records in the registry of deeds for the county in which the land is situated a notice of lien, in which case the lien shall continue for 6 years from the date of the last unpaid bill. The lien may be enforced in a suit by the municipality against the owner of the real estate. In such a suit, the municipality shall have the right to a judgment for per year charges, interest at the rate of 12 percent from the date of the last unpaid bill to the date of judgment, and costs. The records in the municipal department which furnished the services shall be sufficient notice to maintain suit upon the lien against subsequent purchasers or attaching creditors of the real estate.

(d) When the services were furnished to some person or legal entity other than the owner of the real estate, the liens provided for in this paragraph shall be effective against the owner of the real estate only for charges of which the owner of the real estate was notified by the municipality within 120 days of the date the charges became delinquent; provided, however, that a municipality may meet these notice requirements by mailing to the owner of the real estate copies of the bills for services at the same time bills are furnished to the person or legal entity which received the services.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:23

38:23 Security Deposits From Tenants. – Notwithstanding any other provision of law, any public utility, including any municipal corporation, providing electricity or gas services other than for resale to a customer who is not the owner of the premises serviced by the utility and who has a separate electric or gas meter, for the premises serviced, may obtain a security deposit from the customer only, and shall not obtain a security deposit from the owner of the premises. The owner of the premises shall not be liable for the failure of a tenant to pay the utility bill when such tenant's premises has a separate meter, and the utility shall not have any lien on the property of the landlord under RSA 38:22 for the tenant's failure to pay the utility bill.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:24

38:24 Effect on City Charters. – Nothing contained in this chapter shall affect, alter or change the provisions of any city charter with respect to the management, control, and direction of electric, gas, or water works.

Source. 1997, 206:1, eff. July 1, 1997.

Additional Provisions for Water Systems

Section 38:25

38:25 Water Control. – Any municipality which shall have received an order from the department of environmental services under the provisions of RSA 147, 485 or 485-A shall proceed forthwith, after a majority vote in favor of such action, by the governing body, to acquire whatever easements and lands as are necessary to comply with the order and may enter upon, for the purpose of survey leading to land description, any land within the municipality. In so proceeding, the selectmen of the town, commissioners of the district, county commissioners, or mayor and aldermen of a city shall institute any necessary land taking in accordance with the provisions of RSA 38:15 and RSA 38:16, and anything contained in RSA 231 or in the statutes generally notwithstanding, the decision of the officials authorized by this section to institute proceedings shall not be vacated and any subsequent appeal or other action by the owner or owners shall be based solely on the amount of damages assessed, and the duly authorized agents of the municipality shall have full right of immediate entry for the purposes of detailed surveys, borings, or the conduct of any and all other actions necessary or desirable to aid the municipality in the implementation of the order of the department.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:25-a

38:25-a Village District Hearings. – Prior to authorizing the expansion of a franchise area of a water company owned or operated by a water village district, the public utilities commission shall, after notice, hold a public hearing in each town or city in which the village district is located, at which it shall hear testimony and receive evidence from any interested party.

Source. 2002, 174:1, eff. May 15, 2002.

Section 38:26

38:26 Bylaws and Ordinances. –

I. In municipalities with public water systems the governing body, or the board of water commissioners, if any, may adopt such ordinances and bylaws relating to the system or structures as required for proper maintenance and operation.

II. Any person who violates any ordinance or bylaw adopted pursuant to paragraph I of this section shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:27

38:27 Assessment for Water Supply. – The governing body, or board of water commissioners if any, may assess upon the persons who are served by the water system, or whose lands receive special benefit from the water system, their just share of the expense of constructing, acquiring, and operating the system or paying any capital debt or interest incurred for the system.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:28

38:28 Water Rates. – For the defraying of the cost of acquisition, construction, payment of the interest on any debt incurred, management, maintenance, operation, and repair of water systems, or construction, enlargement, or improvement of such systems, the governing body, or the board of water commissioners, if any, may establish a scale of rates to be called water rates, may prescribe the manner in which and the time at which such rates are to be paid and may change such scale from time to time as may be deemed advisable. The amount of such rates may be based upon the consumption of water on the premises connected to the water system, or the number of persons served on the premises, or upon some other equitable basis.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:29

38:29 Water Funds. –

I. The funds received from the collection of water rates shall be kept as a separate and distinct fund to be known as the water fund. Such fund shall be allowed to accumulate from year to year, shall not be commingled with town or city tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. Such fund may be expended only for the purposes specified in RSA 38:28, or for the previous expansion or replacement of water lines or water systems.

II. Except when a capital reserve fund is established pursuant to paragraph III, all water funds shall be held in the custody of the municipal treasurer. Estimates of anticipated water rate revenues and anticipated expenditures from the water fund shall be prepared and submitted to the governing body as set forth in RSA 32:3, if applicable, and shall be included as part of the municipal budget submitted to the local legislative body for approval. If the municipality has a properly established board of water commissioners, then notwithstanding RSA 41:29 or RSA 48:16, the treasurer shall pay out amounts from the water fund only upon order of the board of water commissioners. Expenditures shall be within amounts appropriated by the local legislative body.

III. At the option of the local governing body, or of the board of water commissioners, if any, all or part of any surplus in the water fund may be placed in one or more capital reserve funds held in the custody of the trustees of trust funds pursuant to RSA 35:7. If such a reserve fund is created, then the governing body, or board of water commissioners, if any, may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 38:21. This paragraph shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to municipal water systems.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:30

38:30 Protection of Water Supply. – Any municipality or municipal water company supplying water to the public for domestic use shall have the power to take by the exercise of the right of eminent domain any property needed to protect the purity of the water so supplied, upon petition to the superior court or in the case of a village district to the board of selectmen of the town or towns within which the district is situated and proceedings thereon as in case of a petition for the laying out of a highway.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:31

38:31 Discontinuance of Service. –

I. Notwithstanding any other provision of law to the contrary, except as provided in paragraph V of this section, no municipal water company shall disconnect service to a customer if any part of the service provided accrues to the benefit of one or more parties known by company to be residential tenants, unless the company gives written notice to the tenants. Such notice shall set forth:

- (a) The date on or after which the company proposes to disconnect service.
- (b) A statement that the reason for disconnection is a dispute between the company and the landlord.
- (c) A statement that the tenant should contact the landlord for more information.
- (d) An address and telephone at which the tenant may contact the utility in order to make arrangements to maintain service.

II. A municipal water company shall refrain from terminating service to the affected premises if so requested by the tenant, provided that the tenant agrees to be responsible for service provided as of the date of the tenant's request. However, the water company may continue to list the landlord's past due balance on the tenant's bill, and the lien created pursuant to RSA 38:22 shall include any past due charges which accrue after the company begins billing the tenant. The utility shall provide direct service to the person requesting it on terms and conditions applicable to all residential customers. Such service may include other charges, such as sewer and fire protection service, if customarily included with water service billing.

III. Immediately upon learning that a tenant has been disconnected without the notice required in paragraph I, the water company shall reconnect service and may charge a reasonable reconnection fee which may be added to the existing arrearage.

IV. The notice required by paragraph I shall be provided to the tenant no less than 7 days in advance of the proposed disconnection, by posting a conspicuously lettered notice on the main entrance door to each building in which service is being terminated. In addition, the company shall post the notice on a back door or side door to which the company has reasonable access, or in a common area of each building. The company, at its option, may notify the tenants in the affected property by mail rather than by posting.

V. The notice to tenants required by paragraph I of this section shall not be required when necessary to avoid danger to life or property, and upon the order of a duly constituted public authority such as police, firefighters, public health officer, and building inspectors.

Source. 1997, 206:1, eff. July 1, 1997.

Additional Provisions for Electric Systems

Section 38:32

38:32 Exemption for Municipal Small Scale Power Facility. – Except in municipalities which have acquired, expanded, or established a plant under this chapter, the development by a municipality of any small scale power facility, as defined in RSA 374-D:1, IV shall not be subject to the provisions of this chapter. Nothing in this section shall be construed as exempting municipalities from the provisions of this chapter with respect to the acquisition of a utility plant and equipment if there exists a dispute between the municipality and the utility.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:33

38:33 Consequential Damages. – In matters over which the Federal Energy Regulatory Commission does not have jurisdiction, or has jurisdiction but chooses to grant jurisdiction to the state, the commission shall determine, to a just and reasonable extent, the consequential damages such as stranded investment in generation, storage, or supply arrangements resulting from the purchase of plant and property from a utility and shall establish an appropriate recovery mechanism for such damages. The commission need not make such a determination when the municipality and utility agree upon the sale of utility plant and property.

Source. 1997, 206:1, eff. July 1, 1997. 2000, 164:3, eff. May 23, 2000.

Section 38:34

38:34 Unbundling Rates and Open Access. – Municipal electric utilities established after July 1, 1997, shall unbundle their rates and allow for open access to competitive retail electric supply markets as soon as retail electric competition is certified to exist anywhere in the state pursuant to RSA 38:36. Municipal electric utilities established prior to July 1, 1997, may voluntarily unbundle their rates and allow open access to competitive retail electric supply markets.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:35

38:35 Financial Responsibility. –

I. Any retail electric customer located within a municipality that has established a municipal electric utility after July 1, 1997, but who is not within the service area of such utility, shall not be responsible for, and no entity may require the customer to pay, through taxes or otherwise, any costs associated with such utility except for electric power and services consumed directly by the municipality, and any electric power and services sold by the utility to the customer.

II. Any retail electric customer located within the service area of a municipal electric utility established after July 1, 1997, who does not purchase generation services by or acquired through such municipal electric utility, as allowed by RSA 38:34, shall not be responsible for, and no entity may require the customer to pay, through taxes or otherwise, any costs of generation services from such municipal electric utility, except for electric power consumed directly by the municipality. Nothing in this paragraph shall prevent any property owners or retail electric customers from signing contracts of any duration with such municipal electric utility after retail electric competition is certified to exist pursuant to RSA 38:36, and being bound by their terms, including damages for termination.

III. If any municipal electric utility acquires existing plant and equipment used for the generation of electric power, the municipal electric utility

shall make payments in lieu of property taxes in the amount that the plant and equipment would have paid taxes if they had been owned by a private owner. Such payments in lieu of taxes shall be included in "costs of generation services" as provided in paragraph II.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:36

38:36 Certification. – The chairman of the public utilities commission shall certify to the secretary of state the date that retail electric competition exists in each portion of the state.

Source. 1997, 206:1, eff. July 1, 1997.

Section 38:37

38:37 Limitation on Purchase, Construction, or Operation of Certain Fossil Fuel Facilities. –

I. Except as provided in paragraph II, no municipal electric utility or municipality may, after July 1, 2000, purchase, construct, or operate any fossil fuel plants for the manufacture of electricity and sale to customers beyond the bounds of the municipality.

II. Following consultation with the department of environmental services to adequately address present and future environmental impacts, a municipality or a municipal electric utility may petition the department for specific permission for such acquisition, operation, or construction.

Source. 2000, 293:4, eff. June 21, 2000.

Broadband Access

Section 38:38

38:38 Broadband Access. –

I. In this subdivision:

- (a) "Access tariff" means the fee charged on a monthly or annual basis to broadband carriers for access to the broadband infrastructure.
 - (b) "Areas not served" means any part of a municipality without a wireless or facilities based broadband service or a wireless or facilities based broadband service provider. Wireless shall not include subscription satellite service.
 - (c) "Broadband" means the transmission of information, between or among points specified by the user, with or without change in the form or content of the information as sent and received, at rates of transmission defined by the Federal Communications Commission as "broadband."
 - (d) "Broadband carrier" means any provider of broadband services, except aggregators of broadband services, as defined in section 226 of the 1996 Telecommunications Act.
 - (e) "Broadband infrastructure" means all equipment and facilities, including all changes, modifications, and expansions to existing facilities, as well as the customer premises equipment used to provide broadband, and any software integral to or related to the operations, support, facilitation, or interconnection of such equipment, including upgrades, and any installation, operations and support, maintenance, and other functions required to support the delivery of broadband.
 - (f) "Broadband service" means the offering of broadband for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
 - (g) "Open network" means any broadband infrastructure which is open to any third party users in a nondiscriminatory manner on a fair and equitable basis using publicly available access tariffs for services.
 - (h) "Open network interfaces" means the technical and operational means, manners, and methods for any third party access to the broadband infrastructure, which shall be provided on the basis of generally acceptable industry standards available at the time of access.
- II. A municipality may use its broadband infrastructure for the purpose of providing an open network and assuring that third party access is available in accordance with current state and federal regulations.

Source. 2006, 225:6, eff. July 31, 2006.

Section 38:39

38:39 Broadband Access Tariffs. – For defraying the cost of acquisition, construction, payment of the interest on any debt incurred, management, maintenance, operation, and repair of broadband infrastructure, or the construction, enlargement, or improvement of such systems, the governing body may establish a scale of rates called access tariffs, may prescribe the manner and the time for the payment of such tariffs, and may change such tariffs when it deems advisable.

Source. 2006, 225:6, eff. July 31, 2006.

Section 38:40

38:40 Broadband Fund. –

I. The funds received from the collection of access tariffs shall be kept as a separate fund to be known as the broadband fund. Such fund shall be allowed to accumulate from year to year, shall not be commingled with town or city tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. Such fund may be expended only for the purposes specified in RSA 38:38, or for the previous expansion or replacement of broadband infrastructure.

II. Except when a capital reserve fund is established pursuant to paragraph III, all broadband funds shall be held in the custody of the municipal

treasurer. Estimates of anticipated revenues and anticipated expenditures from the broadband fund shall be prepared and submitted to the governing body as a special warrant article as set forth in RSA 32, if applicable, and shall be included as part of the municipal budget submitted to the local legislative body for approval. Expenditures shall be within amounts appropriated by the local legislative body.

III. At the option of the local governing body, all or part of any surplus in the broadband fund may be placed in one or more capital reserve funds held in the custody of the trustees of trust funds pursuant to RSA 35:10. If such a reserve fund is created, then the governing body, may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body, but all such expenditures shall be reported to the municipality pursuant to RSA 38:41. This paragraph shall not be construed to prohibit the establishment of other capital reserve funds for any lawful purpose relating to broadband access.

Source. 2006, 225:6, eff. July 31, 2006.

Section 38:41

38:41 Broadband Fund Report. – The governing body shall annually make a report of the broadband fund to the municipality showing the expenses and income of the fund, and all other material facts. This report shall be published in the annual report of the municipality.

Source. 2006, 225:6, eff. July 31, 2006.