

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 485-E

SOUTHEAST WATERSHED ALLIANCE

Section 485-E:1

485-E:1 Findings and Purpose. –

I. New Hampshire's coastal water resources have significant ecological, commercial, cultural, and recreational values for the state and its citizens. The state's coastal water resources are highly sensitive and are subject to intense and increasing pressures associated with population growth and development, including increased pollution loads from many sources, including wastewater treatment facilities, stormwater runoff, septic systems, and land use practices. Excess levels of nutrients are of particular concern, have become a significant problem in the Great Bay estuary, and are likely to result in more stringent water quality requirements that could affect activities occurring in municipalities throughout the coastal watershed. In order to improve and protect water quality and meet state and federal regulations, it is necessary for municipalities to reduce nutrient pollution loads from wastewater treatment facilities, stormwater runoff, septic systems and septage, and land use practices. It is essential that the state, and municipalities located within the state's coastal watershed, work in a coordinated way to address these problems and protect the health and sustainability of New Hampshire's coastal resources.

II. The purposes of this chapter are to:

- (a) Create better municipal, intermunicipal, and regional planning and coordination relative to wastewater and stormwater management, water quality and water supply planning, and land use;
- (b) Establish a regional framework for coastal watershed communities, regional planning commissions, the state, and other stakeholders to collaborate on planning and implementation measures to improve and protect water quality and more effectively address the challenges of meeting clean water standards, particularly with respect to nutrients pollution;
- (c) Encourage coastal watershed municipalities, the state, and other stakeholders, individually and in collaboration with one another, to plan, implement, and invest in wastewater, stormwater, and land use planning and management approaches that protect the water quality, natural hydrology, and habitats of the state's coastal resources and associated waters and that advance the state's economic growth, resource protection, and planning policy, established in RSA 9-B; and
- (d) Seek innovative solutions to reducing pollution and enhancing water quality.

Source. 2004, 258:1. 2009, 220:1, eff. July 15, 2009.

Section 485-E:2

485-E:2 Definitions. –

In this chapter:

- I. "Alliance" means the Southeast Watershed Alliance.
- II. "Associated waters" means freshwater surface waters and groundwater located in the coastal watershed, which contribute flows downstream to the state's coastal water resources.
- III. "Coastal watershed" means the land area in New Hampshire contributing groundwater, surface water, and stormwater to the state's coastal water resources and associated waters. The coastal watershed consists all or portions of the following municipalities: Barrington; Brentwood; Brookfield; Candia; Chester; Danville; Deerfield; Dover; Durham; East Kingston; Epping; Exeter; Farmington; Fremont; Greenland; Hampton; Hampton Falls; Kensington; Kingston; Lee; Madbury; Middleton; Milton; New Castle; New Durham; Newfields; Newington; Newmarket; Nottingham; North Hampton; Northwood; Portsmouth; Raymond; Rochester; Rollinsford; Rye; Sandown; Seabrook; Somersworth; Strafford; Stratham; and Wakefield.

IV. "Coastal water resources" means the Gulf of Maine and associated coastal embayments on the Atlantic coast of New Hampshire, and the Great Bay estuary.

V. "Department" means the department of environmental services.

VI. "Great Bay estuary" means the Piscataqua River, Great Bay and Little Bay, all tidal portions of the Bellamy, Cocheco, Lamprey, Oyster, Salmon Falls, Squamscott, and Winnicut Rivers, and the tidal portion of all minor tributaries to the Piscataqua River Great Bay, or Little Bay.

VII. "Low impact development" means development that incorporates best management practices to reduce impervious surfaces, preserve natural hydrology, and reduce stormwater volumes and pollution. Low impact development practices include, but are not limited to, project designs that reduce the amount of impervious cover, porous pavements, gravel wetlands, and green rooftops.

VIII. "Municipalities" means cities, towns, and village districts.

IX. "State's economic growth, resource protection, and planning policy" means the policy established pursuant to RSA 9-B.

X. "Stormwater utility" means a special assessment district established to generate funding specifically for stormwater management, under RSA 149-I:6-a.

Source. 2004, 258:1. 2009, 220:1, eff. July 15, 2009.

Section 485-E:3

485-E:3 Southeast Watershed Alliance. –

There is hereby established a public body corporate and politic having a distinct legal existence separate from the state and not constituting a department or agency of the state government to be known as the Southeast Watershed Alliance, also known as the Alliance. The Alliance shall include those municipalities in New Hampshire whose boundaries include a portion of the coastal watershed and who have agreed to participate the Alliance. The public purpose of the Alliance is:

I. To engage in improved municipal, intermunicipal, and regional planning, studies, public education, and implementation measures, including potential investments, relative to water quality, water supply, wastewater and stormwater management, septic systems and septage, and land use, for the purpose of improving and protecting the water quality and natural hydrology of the state's coastal water resources and associated waters, and to more effectively address on a watershed basis the challenges of meeting state and federal regulations, including waste load limits and allocations. Such planning and investments may include, but are not limited to:

(a) Establishing intermunicipal stormwater utilities and any associated facilities.

(b) Establishing intermunicipal or regional wastewater districts and facilities.

(c) Establishing and coordinating common municipal regulations for nutrient reduction and water quality protection, such as stormwater, wetlands, and buffer regulations.

(d) Developing and implementing, in coordination with the department, innovative means to achieve compliance with nutrient and other pollutant reductions, such as a nutrients offset or trading program.

(e) Addressing water supply and water conservation measures.

II. To foster improved municipal and intermunicipal land use planning and regulation, in coordination with the applicable regional planning commissions, such as to encourage low impact development and innovative zoning and land use management approaches, and to advance the state's economic growth, resource protection, and planning policy.

Source. 2004, 258:1. 2009, 220:1, eff. July 15, 2009.

Section 485-E:4

485-E:4 Advisory Committee. – The Alliance shall include an advisory committee consisting of the commissioner of the department, or designee, the commissioner of the department of transportation, or designee, the Strafford, Rockingham, and southern New Hampshire regional planning commission executive directors, or designees, and the Piscataqua Region Estuaries Partnership director, or designee. The committee shall provide technical assistance, education, scientific advice, and consultation on whether plans advance the state's economic growth, resource protection, and planning policy, and otherwise share expertise and provide resources to assist

the Alliance, in accordance with available resources. Members of the advisory committee shall be nonvoting members of the Alliance. The Alliance may add members to the advisory committee as it determines its needs for expertise.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:5

485-E:5 Duties of the Department. –

I. The department shall, no later than October 1, 2009:

(a) Notify the governing bodies, planning boards, conservation commissions, and public works departments of each municipality in the coastal watershed, and the applicable regional planning commissions, of the establishment of the Southeast Watershed Alliance and of the need and purpose of the Alliance, and solicit their participation;

(b) Convene an organizing meeting or meetings, at which the department shall describe the purpose of this chapter, the challenges facing the Great Bay estuary and coastal resources, the potential scope of the Alliance's activities, and the method prescribed by this chapter for coastal watershed municipalities to join the Alliance; and

(c) Provide technical and logistical assistance, as resources allow, to the Alliance until such time as it is self-supporting.

II. The department shall, no later than January 1, 2010, hold a meeting of all coastal watershed municipalities that have joined the Alliance to elect a chairperson of the Alliance and to begin the process of developing the Alliance's operating procedures and organizational structure.

Source. 2004, 258:1. 2009, 220:1, eff. July 15, 2009.

Section 485-E:6

485-E:6 Method of Joining Southeast Watershed Alliance. – Any Alliance municipality may elect to participate or subsequently to withdraw from participation in the Alliance by vote of its governing body.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:7

485-E:7 General Powers and Duties. –

I. The Southeast Watershed Alliance may engage in:

(a) Intermunicipal and regional planning, coordination, and public education.

(b) Intermunicipal implementation measures, including but not limited to, intermunicipal investments and the establishment of intermunicipal agreements in furtherance of the purposes of this chapter.

II. The Alliance shall establish governing operating procedures and organizational structure, as follows:

(a) At the meeting required by RSA 485-E:5, II, members of the Alliance shall establish a planning committee which shall propose a board of directors and draft operating procedures and organizational structure in furtherance of the public purpose of the Alliance and this chapter, in accordance with all state laws. The planning committee shall include representatives from 8 coastal watershed municipalities and a representative of the advisory committee.

(b) The Alliance shall hold a meeting no later than 180 days following the meeting required by RSA 485-E:5, II at which the planning committee shall present the proposed operating procedures, organizational structure, and proposed board of directors for the Alliance's review, modification, and approval. The Alliance chairperson shall send the approved operating procedures and organizational structure to the attorney general and department of environmental services for their review and approval. 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 notify in writing to the governing bodies and the planning committee the

details 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 the operating procedures and organizational structure to be legally valid. Failure by the attorney general to disapprove an agreement within 30 days of its submission shall constitute approval. The department shall provide comment, including recommendations for improvement, to the committee and governing bodies within 30 days of the proposed agreement's submission relative to its compatibility with the state water statutes and rules.

(c) The Alliance may amend its operating procedures and organizational structure, if necessary, to engage in implementation measures, including the establishment of intermunicipal agreements pursuant to RSA chapter 53-A. Any such amendments shall be presented and approved at a properly noticed public meeting, and submitted to and reviewed by the attorney general and the department consistent with subparagraph (b).

III. The Alliance shall have the power to engage in intermunicipal and regional planning, coordination, and public education in furtherance of the purpose of this chapter during and after the establishment of the Alliance's bylaws, and before the department's final adoption of water quality standards establishing applicable numeric nutrient criteria.

IV. The Alliance shall have the power to engage in implementation measures consisting of intermunicipal agreements property and investments, staff, services and facilities, and the establishment of intermunicipal or regional districts, in furtherance of the purposes of this chapter. Intermunicipal or regional districts, and implementation measures needed to fund and construct intermunicipal or regional infrastructure, including the incurring of obligations or the raising and appropriating of revenue, shall be established pursuant to cooperative agreements, which shall be valid only if established in accordance with RSA 53-A. After the department's final adoption of water quality standards establishing applicable numeric nutrient criteria, the Alliance may develop a water quality management plan and, at its discretion, establish a water quality planning committee to determine the advisability of establishing one or more intermunicipal water quality management districts to implement such water quality management plan. The Alliance may engage in implementation measures prior to the department's final adoption of water quality standards.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:8

485-E:8 Southeast Watershed Alliance Fund. – [Repealed 2017, 195:19, eff. Sept. 3, 2017.]

Section 485-E:9

485-E:9 Regional Outfall Construction; Prohibition. – The Alliance shall not construct a regional outfall that transfers water out of the Great Bay estuary watershed directly into the Gulf of Maine absent legislation specifically authorizing it to do so.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:10

485-E:10 Exemption From Taxes. – Any property of the Alliance acquired and used to further the public purpose of planning, developing, and implementing wastewater and stormwater management and other water quality management solutions that protect the water quality and natural hydrology of the state's coastal resources and associated waters, is hereby declared to be public property and shall be exempt from all taxes and special assessments of the state or any of its subdivisions. No taxes or assessments shall be imposed upon the activities of the Alliance or upon any of its revenues.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:11

485-E:11 Exemption From Regulation. – The New Hampshire public utilities commission shall regulate the Alliance only with regard to insurance and safety requirements.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:12

485-E:12 Report. – The Alliance shall, no later than November 1 each year, provide to the senate president, the speaker of the house of representatives, the senate energy, environment and economic development committee, and the house resources, recreation and development committee, a report on the Alliance's work and progress in carrying out the purposes of this chapter, and on recommendations for further legislation.

Source. 2009, 220:1, eff. July 15, 2009.

Section 485-E:13

485-E:13 Severability. – If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

Source. 2004, 258:1. 2009, 220:1, eff. July 15, 2009.