



**Town of Londonderry, New Hampshire**  
**268B Mammoth Road • Londonderry, NH 03053**  
**(603) 432-1100 • londonderrynh.gov**

---

**Town Council Meeting – Agenda Item Coversheet**

**Meeting Date:** 10/20/2025  
**Submitted By:** TM Shaun Mulholland  
**Department:** Town Manager

**Contact Information:** Email or Telephone  
**Estimated Discussion Time:** 20 Minutes  
**Agenda Item Number:** TC OFFICE USE

**Agenda Item Title:** Discuss the creation of warrant articles to create a fund and make appropriations for the purpose of water line as well as water service line extensions within the Town.

**Background and Purpose:** The Town has multiple locations where individual drinking water wells for homeowners and businesses are contaminated or at risk of contamination by chemicals or otherwise. These contaminates pose a risk to the health of people consuming water from these wells. The Town has received grants and loans from the State of New Hampshire to extend water mains in some parts of the Town to provide safe drinking water to its residents. There are more areas of the Town that have contaminated drinking water or there are identified risks to those drinking water wells. The Town is working in conjunction with the State of New Hampshire and US Environmental Protection Agency to address these issues.

The Town Manager proposes the creation of the Water Capital Reserve Fund and the Water Special Assessment Trust Fund. The purposes of these respective funds are outlined below.

- A. Water Capital Reserve Fund**- This fund would be established in accordance with the provisions of NH RSA 35:1 which would require approval of the voters at Town Meeting. The purpose of the fund would be as follows,
1. Provide funding for the construction or reconstruction of water distribution lines, property or easements for related water lines and related infrastructure for the purposes of providing water to homes and businesses within the Town.
  2. This would include studies and engineering that would be needed in furtherance of construction or reconstruction projects related to water lines. This is particularly important to develop grant applications for these proposed projects.
  3. These funds could be used as matching funds for grants from governmental entities or private sources.
- B. Water Special Assessment Trust Fund**- This fund would be established in accordance with the provisions of NH RSA 52-A:11 by the Town Council and which would require appropriations from the voters at Town Meeting. The purposes of this fund would be part of a process by which the Town Council would create a special assessment district for the purposes of providing potable water pursuant to NH RSA 52-A:1 and RSA Chapter 52-A in general. The Town Council has the authority to create the fund however the voters at Town Meeting must approve appropriations to the fund.

The creation of a Special Assessment District is a separate process which will be addressed in January through a separate agenda item by the Town Council. However, because the appropriations must be made at Town Meeting by the voters a warrant article will be needed to make those appropriations.

**Why should we consider a Special Assessment District?** The Town receives grants and low interest loans to expand the water lines and the service lines to each property (home or business). The service line is the smaller water line or pipe that comes off of the water main (pipe) in the street. The water main is owned by the water provider (Pennichuck Water Works, Manchester Water Works or Derry DPW). The service line from the water main to the edge of the Town's right of way is generally owned by the water provider. Usually there is a gate valve (curb stop) at the edge of the Town's right of way. The remainder of the service line from the gate valve to the home or business is generally on the private property of the home or business. This part of the service line is the responsibility of the property owner for initial installation and maintenance thereafter.

The Town is presently working in partnership with Pennichuck Water Works to construct water mains along High Range Rd. The Town has grants and loans to construct these water lines. The Town is contracted with Pennichuck Water Works to construct those water lines which will then be under the ownership of Pennichuck Water Works. This project includes the construction of the water main and the lateral service lines to the gate valve. The property owners will be responsible for the cost of constructing the remainder of the service line into their house or business. The cost of the construction of the remainder of the service line will vary depending upon the property. Some will be longer than others depending upon distance the house or business is from the gate valve. Some of these properties may have ledge that would need to be hammered out to install the water line. Therefore the cost to construct the service line for each property would vary.

There is a program administered by the NH Dept. of Environmental Services that provides funds to property owners that have unsafe levels of PFAS compounds in their drinking water wells. These funds provide up to \$10,000 for the construction of the service line from the gate valve to the home or up to \$5,000 for a Point of Entry Treatment (POET) system.

The purpose of this fund would be to allow the Town to provide what would resemble a no or low interest loan (assessment) to property owners for the construction of those service lines to cover costs that are not otherwise covered by grant funds or the funding from the responsible party causing the contamination.

This program would be voluntary on the part of the property owner. These loans could be structured for terms from one year to twenty years. They would be paid back on an agreed upon schedule annually through a special tax assessment that would be added to the property owners property tax bill. The collection of the assessment would be the same as that of property taxes including interest and fees as well as tax delinquency for failure to pay the assessment. The assessment amounts collected would be placed in the Water Special Assessment Trust Fund to replenish that fund.

**Action:** 1. Direct the Town Manager to develop one or both of the warrant articles proposed. 2. Direct the Town Manager to further develop the Special Assessment District concept in partnership with the Utilities Committee to be brought before the Town Council for consideration in January 2026.

**Proposed Motion:** *None required.*

**Attachments:** [Chapter 52-A SPECIAL ASSESSMENT DISTRICTS](#) [Chapter 35 CAPITAL RESERVE FUNDS OF COUNTIES, TOWNS, DISTRICTS, AND WATER DEPARTMENTS](#)

# TITLE III

## TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### Chapter 52-A

#### SPECIAL ASSESSMENT DISTRICTS

##### Section 52-A:1

###### **52-A:1 Definitions. –**

In this chapter:

- I. "Improvement plan" means the plan for the special assessment district which sets forth the supplemental public services and facilities to be provided in the district and a plan for providing such services and facilities, including a budget and fee structure, which is approved by the municipal governing body as part of the creation of the special assessment district. An improvement plan shall be updated at least once every 3 years by the governing body.
- II. "Proportionate share of the benefits" means that share, or portion, of the value of the total public facilities and service which specially and peculiarly benefits the property upon which they are imposed, as determined under RSA 52-A:3, III.
- III. "Public facilities" means capital improvements, including but not limited to transportation, sanitary sewer, solid waste, drainage, potable water, communication infrastructure, and parks and recreational facilities that have a life expectancy of 3 or more years.
- IV. "Public services" means the performance by employees, consultants, or agents of functions, operations, design, engineering, planning and maintenance, and repair activities in order to provide public facilities.
- V. "Special assessment" means a charge imposed upon properties located within a designated special assessment district by a town or city to pay for public facilities and services which specially benefit the properties upon which they are imposed.
- VI. "Special assessment district" means the district in which public facilities and services are to be provided and in which special assessments and charges may be levied and collected pursuant to this chapter to pay for those public facilities and services.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

##### Section 52-A:2

###### **52-A:2 Authority. –**

- I. Consistent with the provisions of this chapter, any town or city may establish special assessment districts for a part of the area of the town or city, within which may be provided public facilities and services from funds derived from service charges, special assessments, or other charges within the special assessment district.
- II. For the purpose of providing public facilities and services within any special assessment district, the town or city may levy and collect service charges, special assessments, or other charges within the district, and borrow and expend money, and issue bonds, notes, and other obligations of indebtedness, which powers shall be exercised in the manner and subject to the limitations provided by this chapter and by the general laws of the state.
- III. The provisions of this chapter shall not affect or limit any other provisions of law authorizing or providing for the furnishing of public facilities and services or the raising of revenue for these purposes. A town or city may use the provisions of this chapter instead of, or in conjunction with, any other method of financing part or

all of the cost of providing the public facilities and services authorized under this chapter.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:3**

#### **52-A:3 Requirements for Special Assessment Districts. –**

A special assessment district shall meet the following requirements:

- I. Public facilities and services for which special assessments are levied and collected must peculiarly and specially benefit the properties upon which the special assessments are imposed.
- II. Special assessments levied and collected pursuant to a designated special assessment district shall not exceed a proportionate share of the benefits received by the property upon which the special assessments are imposed.
- III. The proportionate share of the benefits received by the properties upon which a special assessment is imposed shall be calculated and apportioned by using any equitable means of assessment and apportionment which the governing body of the municipality may prescribe, including but not limited to square footage, front-footage, increased value, number of dwelling units, distance from the public facility, traffic generation, or other impact generation factors, or any combination thereof.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:4**

#### **52-A:4 Procedures for Initiation of Special Assessment Districts. –**

I. Proceedings for the establishment of a special assessment district may be instituted by a petition filed with the governing body. The petition shall:

- (a) Describe the boundaries of the territory which is proposed for inclusion in the special assessment district and include a map clearly delineating the boundaries.
- (b) Contain a proposed improvement plan, as defined in RSA 52-A:1, I, for the special assessment district.
- (c) Be signed by the owners of at least 50 percent of the lots within the proposed district, representing at least 65 percent of the assessed valuation within the proposed district. The name of each property owner signing the petition shall be indicated clearly on the petition, along with a listing by street address or lot number of all properties owned. In the case of any property that is owned jointly or in the name of a corporation, partnership, trust, or other legal entity, the signature and authority of any person purporting to represent the owner or owners shall be presumed valid for that purpose, subject to challenge. In the event of any dispute about the validity of such a signature or the authority of the person purporting to represent the entity, the decision of the governing body shall be conclusive.
- (d) Designate a representative of the petitioners solely for the purpose of payment of mailing costs under RSA 52-A:5, I.

II. If the governing body finds that the petition is signed by the requisite number of petitioners under subparagraph I(c), that finding shall be final and conclusive.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:5**

#### **52-A:5 Establishment of District. –**

I. Within 15 days after receipt of a petition that satisfies the requirements of RSA 52-A:4, the governing body shall notify the petitioners' representative that it has determined the petition to be sufficient and shall request payment of the cost of mailing notice under paragraph II.

II. Within 60 days after receipt of payment under paragraph I, the governing body shall hold a hearing on the establishment of the special assessment district. Written notice of the date, time, and location of the hearing, together with a copy of the proposed improvement plan, or a summary of the plan, and a description of the proposed boundaries of the district, shall be posted in 2 public places in the municipality, one of which may be

on the municipality's Internet website. Written notice shall also be sent by first-class mail at least 30 days before the hearing to the owner of each property within the boundary of the proposed district. For each property, notice shall be sent to the person and address listed in the municipality's property tax records. In the case of property under a condominium or similar form of collective ownership, notice shall be sent to the officers of the collective or association, as defined in RSA 356-B:3, XXIII. In the case of property under a manufactured housing park form of ownership as defined in RSA 205-A:1, II, notice shall be sent to the manufactured housing park owner. In the case of 2 or more properties owned by the same person or persons, a single notice shall be sufficient.

III. At the public hearing, the proposed improvement plan shall be presented in writing. The governing body shall obtain public comment regarding the plan and the effect that creation of the proposed special assessment will have on the property owners, tenants, and others within the district. Any proposed changes to the improvement plan shall be submitted in writing at the hearing. The hearing may be continued one or more times, and additional notice shall not be required if the date, time, and location of the continued hearing are announced at the hearing and are included in the minutes of the hearing.

IV. Within 45 days after the conclusion of the public hearing, the governing body, in its sole discretion, shall either approve or disapprove establishment of the special assessment district. Approval shall be based upon the improvement plan presented at the hearing, subject only to changes that were presented in writing at the hearing and other minor technical changes. If the governing body approves establishment of the district, it shall declare the district organized and describe the boundaries and service area of the district. Upon such declaration, the district may commence operations and the municipality may impose and collect special assessments as provided in the improvement plan and in this chapter.

V. In establishing the boundaries of a special assessment district, the governing body may alter the exterior boundaries of a special assessment district to include less territory than that described in the notice of the public hearing, but it may not include any territory not described in the notice of the public hearing.

VI. In designating the types of public facilities and services to be provided in a special assessment district, the governing body may eliminate one or more of the types of public facilities or services specified in the improvement plan, but it may not include any types of public facilities or services not specified in the improvement plan.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

## **Section 52-A:6**

**52-A:6 Method of Appropriation.** – The municipality shall adopt a budgetary appropriation for capital and operating expenditures in a special assessment district as part of its budget process. The expense of constructing and maintaining the public facilities and performing public services described in the improvement plan, or paying off any capital debt or interest incurred in constructing or maintaining the public facilities on an annual basis, shall be included in the budgetary appropriation. At the end of each fiscal year, a full accounting of expenditures shall be made.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

## **Section 52-A:7**

**52-A:7 Assessment and Collection of Special Assessments.** – Upon adoption of the budgetary appropriation, the municipality may levy assessments in an amount necessary to fund the appropriation, net of other revenues applied to the appropriation. The assessments shall be made against the owners of properties in the special assessment district based on their proportionate shares of the benefits as determined by the governing body. Government property and nonprofit organizations within the district shall be subject to the assessments. The special assessments shall be assessed and collected in the same manner as property taxes under RSA 76 and RSA 80 and be subject to the same penalties and the same procedure and sale in case of delinquency. The town or city shall commit a special assessment 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.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:8**

**52-A:8 Use of Proceeds.** – Any special assessments collected pursuant to this chapter shall be used, in whole or in part, only for public facilities and services authorized by this chapter or for the payment of the principal and interest of bonds and other obligations of indebtedness for such public facilities and services.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:9**

#### **52-A:9 Issuance of Bonds and Other Indebtedness.** –

I. A municipality may borrow money and issue bonds or notes to finance the public facilities and services of a special assessment district, provided that bonds or notes may be issued only for the purposes authorized under RSA 33:3 or RSA 33:3-c. All bonds or notes authorized in accordance with this section shall be issued under the procedures in RSA 33, provided that the payments on the bond and note shall be made only from special assessment district revenues.

II. Any such debt shall at no time be included in the net indebtedness of the municipality for the purpose of ascertaining its borrowing capacity under RSA 33.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:10**

**52-A:10 Priority of Lien.** – A special assessment shall be payable at the same time and in the same manner as property taxes assessed under RSA 76 and shall remain a lien, co-equal with the lien of all state, county, district, and municipal taxes, superior in dignity to all other liens, titles, and claims until paid.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

### **Section 52-A:11**

#### **52-A:11 Assessment Funds.** –

I. The funds received from the collection of special assessments shall be kept as a separate fund to be known as the special assessment fund. The fund shall be allowed to accumulate from year to year, shall not be commingled with municipal tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. The fund shall be expended only for the purposes of this chapter.

II. Except when a capital reserve fund is established pursuant to paragraph III, all special assessment funds shall be held in the custody of the municipal treasurer. Estimates of anticipated assessments and anticipated expenditures from the assessment funds shall be submitted to the governing body under RSA 32:6 if applicable, and shall be included as part of the municipal budget submitted to the legislative body for approval. The treasurer shall pay out amounts from the assessment funds only upon order of the governing body. Expenditures shall be within amounts appropriated by the legislative body.

III. All or part of any surplus in the special assessment fund may be placed in one or more capital reserve funds under RSA 35 and placed in the custody of the trustees of trust funds. If such a reserve fund is created, the governing body may expend such funds pursuant to RSA 35:15 without prior approval or appropriation by the local legislative body.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

## **Section 52-A:12**

**52-A:12 Dissolution of District.** – A special assessment district created under this chapter may not be dissolved until all debt incurred with respect to the district is finally discharged and all special assessments levied for the purpose of paying the debt have been paid or otherwise satisfied. Upon satisfaction of those conditions, the municipality's governing body may dissolve the district, and it shall dissolve the district upon receipt of a petition signed by the number of property owners specified in RSA 52-A:4, I(c). Upon dissolution of the district, all amounts remaining in the special assessment fund shall become part of the municipality's general fund accumulated surplus.

**Source.** 2015, 240:2, eff. Sept. 11, 2015.

# TITLE III

## TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

### Chapter 35

#### CAPITAL RESERVE FUNDS OF COUNTIES, TOWNS, DISTRICTS, AND WATER DEPARTMENTS

##### Section 35:1

###### **35:1 Establishment of Reserves Authorized.** –

Any town, school district, village district, or county, as provided by RSA 35:3 may raise and appropriate money for the establishment of a capital reserve fund for the financing of all or part of the cost of:

- I. The construction, reconstruction or acquisition of a specific capital improvement, or the acquisition of a specific item or specific items of equipment; or
- II. The construction, reconstruction, or acquisition of a type of capital improvement or the acquisition of a type of equipment; or
- III. A reappraisal by appraisers of the department of revenue administration or such other appraisers, appraisal firms or corporations approved by the commissioner of revenue administration, of the real estate in such town for tax assessment purposes; or
- III-a. The acquisition of land; or
- IV. The acquisition of a tax map of said town; or
- V. Extraordinary legal fees and expenses related to present or foreseeable litigation involving the town or its officers and employees; or
- VI. Municipal and regional transportation improvement projects including engineering, right-of-way acquisition and construction costs of transportation facilities, and for operating and capital costs for public transportation.

**Source.** 1943, 160:1. RSA 35:1. 1973, 51:2. 1983, 42:2. 1985, 285:2, eff. Aug. 10, 1985. 1998, 4:3, eff. May 17, 1998.

##### Section 35:1-a

**35:1-a Reserve Fund in Anticipation of New Fiscal Year.** – Any county, city or town may establish a reserve fund in anticipation of the optional fiscal year pursuant to RSA 31:94-a through 94-d.

**Source.** 1973, 96:1, eff. June 23, 1973.

##### Section 35:1-b

**35:1-b Reserve Fund for Education of Persons with Disabilities.** – Any school district may establish a reserve fund under RSA 35:1 to meet the expenses of educating children with disabilities.

**Source.** 1983, 106:1. 1990, 140:2, III, X, eff. June 18, 1990. 2008, 274:31, eff. July 1, 2008.

##### Section 35:1-c

**35:1-c Non-Capital Reserve Funds Authorized.** – Any town, school district, county, or village district may establish a reserve fund for the maintenance and operation of a specific public facility or type of facility, a

specific item or type of equipment, or for any other distinctly-stated, specific public purpose that is not foreign to its institution or incompatible with the objects of its organization. Such funds shall be subject to all provisions and limitations of this chapter as are applicable to capital reserve funds. The legal validity of such a fund properly established shall not be affected by its designation as a "trust," "reserve," "capital reserve," or any other designation.

**Source.** 1995, 20:6, eff. June 11, 1995.

## **Section 35:2**

**35:2 Custody of School District Reserves.** – Whenever any capital reserve of a school district is established the same shall be held in custody by the trustees of trust funds of the town wherein the school district lies or, in case of school district embracing 2 or more towns, by the trustees of trust funds of that town which the voters of the school district may elect.

**Source.** 1947, 8:2, eff. Feb. 26, 1947.

## **Section 35:3**

**35:3 Meetings.** – Except as provided in RSA 35:7, the authority granted by RSA 35:1 shall be exercised only by a majority vote of the legal voters present and voting at an annual or special meeting in the case of a town, school district, or village district. The warrant for a town, school district, or village district meeting, to consider the establishment or discontinuance of such a reserve, shall include an article distinctly stating the purposes for which such reserve is to be established or was established as appropriate. In the case of a county, the authority granted in RSA 35:1 shall be exercised by a majority vote of the county delegation after a public hearing on the budget as required by RSA 24:23, RSA 24:13-c, IV, or RSA 24:14-a. The public notice of such hearing shall include a statement distinctly stating the purpose for which such reserve is to be established.

**Source.** 1943, 160:2. RSA 35:3. 1977, 287:2. 1991, 167:1, eff. July 26, 1991.

## **Section 35:4**

**35:4 Exception.** – The authority hereby granted shall not be exercised by any city, except as may be necessary in connection with the authority granted by RSA 35:7.

**Source.** 1943, 160:3, eff. May 5, 1943.

## **Section 35:5**

**35:5 Payments Into Fund.** – There may be paid into any such capital reserve fund, except as provided in RSA 35:7, such amounts as may from time to time be raised and appropriated therefor under a special warrant article, from any source other than money given to the town, district, or county for charitable purposes. Such amounts shall be within the limits as provided in RSA 35:8, and any such town, district, or county may also vote to transfer to said fund, under a special warrant article in the case of a town or district, any of its unencumbered surplus funds remaining on hand at the end of any fiscal year.

**Source.** 1943, 160:4, eff. May 5, 1943. 2000, 224:4, eff. July 31, 2000. 2017, 127:1, eff. Aug. 15, 2017.

## **Section 35:6**

**35:6 Funds Received in Eminent Domain Proceedings.** – Any town, school district, village district or county which may receive funds from the United States or any agency thereof in eminent domain proceedings for the taking of its property or other public facilities or in settlement for such taking or of claims for damages to

its property or other public facilities, may vote to use said funds, under a proper article in the warrant in the case of a town, school district or village district or by vote of the county delegation in the case of a county, to establish a capital reserve fund under this chapter. Funds so received shall not be subject to restriction as to investments prescribed in RSA 35:9 and may be invested in the same manner as trust funds under RSA 31:25. Funds so received may, if so voted, be used to retire existing indebtedness as well as for the purposes specified in RSA 35:1. In cases in which the United States or any agency thereof shall acquire a flowage easement in highways or bridges under the jurisdiction of a town, the town, if it votes to establish a capital reserve fund out of the funds received therefor from the United States or any agency thereof, may use such fund not only for capital improvements and capital expenditures as provided in RSA 35:1, but also for the maintenance, repair and reconstruction of the particular highways and bridges in which easements have been acquired or of such highways and bridges as may be provided in substitution therefor.

**Source.** 1947, 91:1. 1951, 106:1, eff. May 11, 1951.

### **Section 35:7**

**35:7 Water Departments.** – Any water works or sewer department of a city or town, organized by general law or special act of the legislature and financed principally by water or sewer rentals, may, by unanimous vote of the body charged with the administration thereof, whether the local governing body, water board, or a board of water or sewer commissioners, establish a capital reserve fund for said department for the purposes as provided in RSA 35:1. Such reserve shall be established only from surplus from water or sewer rentals and no part thereof shall be made from appropriations by said city or town.

**Source.** 1943, 160:5. 1994, 95:1, eff. July 8, 1994.

### **Section 35:8**

**35:8 Limitations on Appropriations.** – No town, school district, or village district shall raise and appropriate in any one year for such reserve an amount in excess of 1/2 of one percent of the last base valuation for debt limit computed pursuant to RSA 33:4-b of said town or district; no county shall raise and appropriate for such reserve an amount in excess of 1/50 of one percent of the last base valuation for debt limit computed pursuant to RSA 33:4.

**Source.** 1943, 160:6. 1945, 35:2. RSA 35:8. 1993, 176:6, eff. Aug. 8, 1993. 2016, 114:1, eff. July 19, 2016.

### **Section 35:9**

**35:9 Investment.** – Each capital reserve fund shall be maintained separately on the books of the town. The assets of such funds may be pooled in order to invest in a broader range of investments to maximize growth and mitigate risk. Said capital reserve funds shall be invested only in deposits in any federally insured bank authorized to accept deposits under RSA 6:8, I and I-a, or in bonds or notes of this state, in such stocks and bonds as are legal for investment by banks chartered by this state to engage in a banking business, or in participation units in the public deposit investment pool established pursuant to RSA 6:45, or in obligations with principal and interest fully guaranteed by the United States government. The obligations may be held directly or in the form of securities of or other interests in any open-end or closed-end management-type investment company or investment trust registered under 15 U.S.C. section 80a-1 et seq., if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations. When so invested the trustees hereinafter named shall not be liable for the loss thereof. Any interest earned or capital gains realized on the moneys so invested shall accrue to and become a part of the individual funds on a pro rata basis. Deposits in federally or state-chartered banks shall be made in the name of the town, district, or county which holds the same as a reserve, and it shall appear upon the books thereof that the same is a capital reserve fund. Any person who directly or indirectly receives any such capital reserve funds for deposit or for investment in securities of any kind shall, prior to acceptance of such funds, make available at

the time of such deposit or investment an option to have such funds secured by collateral having a value at least equal to the amount of such funds. Such collateral shall be segregated for the exclusive benefit of the town, school district, village district, or county depositing or investing such funds. Only securities defined by the bank commissioner as provided by rules adopted pursuant to RSA 383-B:3-301(e) shall be eligible to be pledged as collateral. The trustees shall formally adopt an investment policy for all investments made by them or by their agents for any trust funds in their custody in conformance with the provisions of applicable statutes. The trustees shall review and confirm the investment policy at least annually. A copy of the investment policy shall be filed with the attorney general.

**Source.** 1943, 160:7. RSA 35:9. 1961, 136:8. 1991, 268:7; 383:4. 1995, 20:7, eff. June 11, 1995. 1996, 209:9, eff. Aug. 9, 1996. 2001, 54:6, eff. Jan. 1, 2002. 2007, 164:3, eff. Aug. 17, 2007. 2010, 52:1, eff. July 17, 2010. 2015, 272:42, eff. Oct. 1, 2015. 2021, 65:13, eff. Aug. 3, 2021. 2023, 36:2, eff. July 16, 2023.

## **Section 35:9-a**

### **35:9-a Professional Banking or Brokerage Assistance. –**

I. Any trustee or trustees of trust funds having custody of capital reserve funds authorized by this chapter may contract with the trust department or departments of a bank, a brokerage firm, a portfolio management department, or investment advisor in the same manner and for the same purposes as described in RSA 31:38-a, III. They may also place securities in the nominee name of a trust department of a bank, or departments, a brokerage firm, a portfolio management department, or investment advisor, to facilitate transfers for such securities. Capital reserve fund records maintained by any bank, brokerage firm, portfolio management department, or investment advisor shall be available at all times for examination by local auditors, by independent accountants or auditors retained by a municipality, or by the auditors of the department of revenue administration; and such records shall be municipal records and property. In employing such trust departments of banks, brokerage firms, portfolio management departments, or investment advisor, the trustees may enter into contracts or agreements delegating the management of such capital reserve funds to those departments or brokerage firms subject to investment guidelines adopted by the trustees under applicable statutes and subject to at least quarterly review and approval of such management by the trustees. For purposes of this section, the terms "bank," "brokerage firm," "portfolio management department" and "investment advisor" shall have the definitions set forth in RSA 31:38-a.

II. The town meeting may adopt an article authorizing the trustees of trust funds, without further action of the town meeting, to charge any expenses incurred pursuant to paragraph I against the capital reserve funds involved. Such authority shall remain in effect until rescinded by a vote of the town meeting. No vote by the town to rescind such authority shall occur within 5 years of the original adoption of such article. In a town that has a town council, such authority may be granted by the town council and shall remain in effect until rescinded by the town council. No vote by the town council to rescind such authority shall occur within 5 years of the original adoption of such article. Any professional banking and brokerage fees incurred shall be reported in the annual report of the trustees of trust funds as expenditures out of capital reserve funds.

III. The school district meeting may adopt an article authorizing the trustees of trust funds, without further action of the school district meeting, to charge any expenses incurred pursuant to paragraph I against the capital reserve funds involved. Such authority shall remain in effect until rescinded by a vote of the school district meeting. No vote by the school district meeting to rescind such authority shall occur within 5 years of the original adoption of such article. Any professional banking and brokerage fees incurred shall be reported in the annual report of the trustees of trust funds as expenditures out of capital reserve funds.

**Source.** 2014, 32:5, eff. July 26, 2014. 2018, 191:1, eff. Aug. 7, 2018.

## **Section 35:10**

**35:10 Trustees of Funds. –** The trustees of trust funds of a town or city shall have custody of any capital reserve of a town, district or water departments therein, the trustees of trust funds as provided in RSA 35:2 shall have custody of such capital reserve of a school district, and the county treasurer of a county shall have custody of any capital reserve of his county. Said trustees or treasurer shall give bond in such amount and in such form as

the commissioner of revenue administration shall prescribe, and any such trustee or treasurer who shall make any payment of income or principal from any such capital reserve fund before the approval of his bond in writing by the commissioner of revenue administration shall be personally liable to the town, district, department or county for any loss resulting from such payment, to be recovered for the town, district, department or county at the suit of any citizen. The expenses of said trustees or treasurer in said capacity and the expense of their bonds shall be charged as incidental town, district, department or county charges.

**Source.** 1943, 160:8. RSA 35:10. 1973, 544:8, eff. Sept. 1, 1973.

### **Section 35:11**

**35:11 Payments from Surplus.** – Whenever any town shall have voted to transfer any accumulated surplus to the capital reserve fund, the town clerk shall forward to the board of selectmen and to the town treasurer, within 10 days of the adoption of such vote, a certified copy of the same. The selectmen shall then draw an order on the town treasurer for the amount of surplus set forth in said vote. The town treasurer shall on receipt of the order immediately transfer to the trustees of trust funds of the town the amount specified in the order, or in the case of an optional fiscal year town, within 10 days of the determination of surplus following the close of the fiscal year.

**Source.** 1947, 91:2, par. 8a. RSA 35:11. 1993, 176:7, eff. Aug. 8, 1993.

### **Section 35:12**

**35:12 Appropriation.** – Whenever the vote of the town is to appropriate any sum for the capital reserve fund pursuant to RSA 35:5, the same duties shall devolve upon the town clerk, selectmen, and town treasurer, as specified in RSA 35:11, except that the order must be drawn, and the sum transferred on or before December 15 following the vote, or, in the case of an optional fiscal year town, after July 1, but no later than June 15, of the fiscal year for which the sum was appropriated.

**Source.** 1947, 91:2, par. 8b. RSA 35:12. 1993, 176:8, eff. Aug. 8, 1993. 2000, 224:5, eff. July 31, 2000. 2014, 32:3, eff. July 26, 2014. 2017, 127:2, eff. Aug. 15, 2017.

### **Section 35:13**

**35:13 School or Village District.** – When a capital reserve fund is established by a school or village district, the same duties shall devolve upon the clerk of the school or village district, the members of the school board or the commissioners of the village district, the treasurer of the school district or the treasurer of the village district, as are prescribed in RSA 35:11 and 35:12 for the corresponding town officers.

**Source.** 1947, 91:2, par. 8c, eff. April 15, 1947.

### **Section 35:14**

**35:14 Penalty.** – Any of the above officers failing to perform the duties above set forth, shall be guilty of a violation for every week said failure shall continue.

**Source.** 1947, 91:2, par. 8d. RSA 35:14. 1973, 531:9, eff. Oct. 31, 1973, at 11:59 p.m.

### **Section 35:15**

**35:15 Expenditures.** –

I. Persons holding said capital reserve funds in trust, as provided in this chapter, shall hold the same until such time as the town, district or county shall have voted to withdraw funds from such capital reserve fund or shall have named agents of the town, district or county to carry out the objects designated by the town, district or

county, in the manner prescribed by RSA 35:3.

II. Expenditures from any fund established for the acquisition of land pursuant to RSA 35:1 shall be made only as authorized:

- (a) By a majority vote of the legal voters present and voting at an annual or special meeting, in the case of a town, school district or village district, or by majority vote of the county delegation, in the case of a county, or
- (b) By the selectmen, appointed as agents pursuant to RSA 41:14-a, provided that the selectmen shall not have authority to expend any sum in excess of the amount contained in any capital reserve account created for the purchase of land other than any grant moneys which may be received.

III. (a) Notwithstanding the prohibition of debt retirement fund establishment in RSA 33:2, capital reserve funds may be used for multiple payments under a financing agreement for the purpose for which the capital reserve was established, including a lease/purchase agreement.

(b) If agents have been named according to RSA 35:15, then no further vote is required to disburse funds following the initial vote which ratified the financing agreement.

IV. In the case of a water works or sewer department, as provided in RSA 35:7, the governing body, water board, or the water or sewer commissioners if any, shall determine when expenditures from said reserve shall be made.

V. In all cases, expenditures from a capital reserve fund shall be made only for or in connection with the purposes for which said fund was established or as amended as provided in RSA 35:16.

**Source.** 1943, 160:9. RSA 35:15. 1985, 285:3. 1991, 167:2. 1994, 95:2, eff. July 8, 1994. 1998, 43:1, eff. July 4, 1998. 2001, 187:1, eff. Sept. 3, 2001. 2007, 178:3, eff. Aug. 17, 2007. 2021, 105:2, Pt. III, Sec. 1, eff. Aug. 30, 2021.

## **Section 35:16**

**35:16 Change of Purpose.** – After the purpose for which a capital reserve fund is established has been determined, no change shall be made in the purpose for which said fund may be expended unless and until such change has been authorized by a vote of 2/3 of all the voters present and voting at an annual town or district meeting, in the case of a town or district, or by vote of 2/3 of the entire membership of a county delegation, in case of a county, or by unanimous vote of the water board or commissioners of the water department, in the case of a water works department, as provided in RSA 35:7.

**Source.** 1943, 160:10, eff. May 5, 1943.

## **Section 35:16-a**

**35:16-a Discontinuing Fund.** – Any town, school district, village district or county which has established a capital reserve fund pursuant to the provisions of this chapter may, as provided by RSA 35:3, vote to discontinue such capital reserve fund. If such fund is discontinued, the trustees of the trust fund holding the account for said fund shall pay all the monies in such fund to the town, district or county treasury as applicable.

**Source.** 1977, 287:1, eff. Aug. 26, 1977.

## **Section 35:17**

**35:17 Audit; Records.** – The accounts of the persons holding capital reserve funds shall be audited annually by the auditor of the town, in the case of a town, district, or water works department, or by the commissioner of revenue administration, in the case of a county, the securities shall be exhibited to said auditor or commissioner, and said auditor or commissioner shall certify the facts found by the audit and the list of all securities held. Said persons holding said funds shall keep a record of all such capital reserve funds in a record book, which shall be open to the inspection of all persons of their town, district, or county respectively.

**Source.** 1943, 160:11. RSA 35:17. 1973, 544:8, eff. Sept. 1, 1973.

## Section 35:18

**35:18 Disbursements.** – No person holding in custody such capital reserve fund shall make any payment of income or principal or authorize the same to be done except in accordance with the provisions hereof. Whoever violates the provisions of this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** 1943, 160:12. RSA 35:18. 1973, 529:5, eff. at 11:59 P.M., Oct. 31, 1973.