

New Hampshire PACE Enabling Laws

N.H. Rev. Stat. Ann. §§ 227-M:1 to 227-M:17
Current through the 2019 Regular Session (Act Ch. 346)

Chapter 227-M: Land and Community Heritage Investment Program

227-M:1. Purpose.

The general court finds that in order to maintain New Hampshire's quality of life and economic vitality for its citizens, growth and development should be balanced with careful protection of the state's most important natural, cultural, and historical resources. Permanent protection of these resources, through acquisition of lands, buildings, and other physical assets, or interests in these assets, must be accomplished along with their planned long-term stewardship. The general court further recognizes the importance of public-private partnerships to achieve these ends. To protect and preserve New Hampshire's natural, cultural, and historical resources for this and future generations, the general court establishes in this chapter the New Hampshire land and community heritage investment program. The intent of the program is to conserve and preserve this state's most important natural, cultural, and historical resources through the acquisition of lands, and cultural and historical resources, or interests therein, of local, regional, and statewide significance, in partnership with the state's municipalities and the private sector, for the primary purposes of protecting and ensuring the perpetual contribution of these resources to the state's economy, environment, and overall quality of life.

History: 2000, 245:1, eff. June 8, 2000.

227-M:2. Definitions.

In this chapter:

- I. "Authority" means the New Hampshire land and community heritage investment authority.
 - II. "Board" means the board of directors of the New Hampshire land and community heritage investment authority.
 - III. "Building" means a construction made by humans and created to shelter human activity.
 - IV. "Easement interests" means conservation, historic preservation, or scenic easements, development rights, or any other similar protective interest in real property held in perpetuity, or a term easement that is held for a specific period of time and not in perpetuity as part of a farm viability program.
 - V. "Eligible resource" means a natural, cultural, or historical resource including archaeological sites; historic buildings and structures which house cultural events and programs; historic properties including buildings and structures; historic and cultural lands and features; ecologically significant lands; existing and potential public water supply lands; farmland; forestland; habitat for rare species or important wildlife; wildlife corridors and habitat strongholds as defined in RSA 207:1; lands for recreation; riverine, lake, estuarine, and ocean shorelands; scenic areas and viewsheds; and wetlands and associated uplands.
- V-a. "Farm viability program" means a program overseen by an eligible applicant under RSA 227-M:8, I that preserves farmland:
- (a) By enhancing the long-term viability of farms, principally through assistance in business plan development and implementation; and

(b) By requiring term easements on farms participating in such a program and receiving assistance funded through this chapter.

VI. "Monitoring" means the regular and systematic gathering of information about a resource asset to identify changes to the property over time to ensure that it is being used in accordance with any easement interest restrictions or other legal obligations entered into under this chapter.

VII. "Resource asset" means the lands, buildings, structures, and other physical assets or the easement interests in the lands, buildings, structures, and other physical assets that comprise the real property of an eligible resource.

VIII. "Stewardship" means planning for and taking the necessary actions over the long term to successfully preserve and protect the natural, cultural, or historical value of a resource asset. Such actions include, as applicable, managing the resource asset in accordance with all legal obligations entered into under this chapter, performing regular maintenance and upkeep, providing for necessary monitoring, educating or informing those that might negatively impact upon the resource asset about the need and/or legal obligation to protect and preserve it, paying tax or in-lieu-of tax obligations, obtaining liability insurance, and securing sufficient levels of financial resources to carry out all such necessary actions.

History: 2000, 245:1; 2006, 39:1; 2008, 136:1, 2, eff. August 5, 2008; 2019, 243:7, effective September 10, 2019.

227-M:3. Land and Community Heritage Investment Program Established.

There is hereby established the New Hampshire land and community heritage investment program. The program shall acquire resource assets, through voluntary negotiations with property owners and utilization of all available federal, state, local, private, and other matching funds and incentives. The program shall also provide funding for restoration and rehabilitation of cultural and historical resources and for certain costs associated with the acquisition of resource assets. All deeds or other documents evidencing purchase of any fee interest or other easement interest in resources under this chapter shall be drawn and held in the name of the municipality, other political subdivision, or qualified publicly-supported nonprofit corporation purchasing the interest through the use of program funds. All easement interests and legal obligations that are attached in perpetuity to any property shall be recorded in the deed. The state of New Hampshire shall hold an executory interest in all easement interests acquired by the program and held by municipalities, other political subdivisions, or qualifying nonprofit corporations. There shall be no power by the state of New Hampshire to take any resource by eminent domain, nor shall any funds made available by this program be used to take by eminent domain except in cases involving the voluntary quieting of title. All acquisition projects shall involve a willing seller and willing buyer, or a willing donor of resource assets.

History: 2000, 245:1, eff. June 8, 2000.

227-M:4. New Hampshire Land and Community Heritage Authority Established; Board of Directors.

I. There is hereby established the New Hampshire land and community heritage investment authority, a body corporate and politic. The authority is constituted a public instrumentality of the state. The exercise by the authority of the powers conferred by this chapter shall be deemed and held to be the performance of public and essential governmental functions. The authority shall be a nonprofit corporation organized under RSA 292.

II. The authority shall be governed by a board of directors composed of 18 members. Voting members shall not appoint designees to act in their places. The chairperson shall be elected from among the public members. Board membership shall be as follows:

- (a) Two members of the senate, to be appointed by the senate president.
- (b) Two members of the house of representatives, to be appointed by the speaker of the house.
- (c) Eight public members, to be appointed by the governor and council:
 - (1) Two of whom shall represent cultural and historic resource interests;
 - (2) One of whom shall represent natural resources interests;
 - (3) One of whom shall represent outdoor recreation interests;
 - (4) One of whom shall represent business or real estate interests;
 - (5) One of whom shall represent municipal interests;
 - (6) One of whom shall represent local planning interests; and
 - (7) One of whom shall represent regional planning commissions.
- (d) The director of the office of strategic initiatives, or designee.
- (e) The director of the division of historical resources, department of natural and cultural resources, or designee.
- (f) The director of the division of forests and lands, department of natural and cultural resources, or designee.
- (g) The commissioner of the department of environmental services, or designee.
- (h) The commissioner of the department of agriculture, markets, and food, or designee.
- (i) The executive director of the department of fish and game, or designee.

III. Members appointed under subparagraphs II(d) through II(i) shall be advisory, non-voting members.

- IV. (a) The terms of the state agency members and the members of the senate and the house of representatives shall be coterminous with their respective terms in office. Members appointed by the governor and council under subparagraph II(c) shall serve a 4-year term, and may serve no more than 10 successive years.
- (b) Members appointed by the governor and council may be removed from office for cause, by the governor and council. Cause for removal shall include, but not be limited to, incapacity or failure to perform the duties of a member of the board of directors. Vacancies shall be filled for the unexpired term of the office in the same manner as the original appointment. Legislative members shall be entitled to mileage reimbursement at the legislative rate.

V. Seven voting members shall constitute a quorum. Decisions shall be made by a majority of those present and voting. Each member appointed under subparagraphs II(a) through (c) shall have one vote on matters coming before the board. The board shall meet quarterly and at such other times as may be deemed necessary by the chairperson.

VI. Board members shall not be subject to civil liability for acts performed in accordance with their duties under this chapter.

History: 2000, 245:1; 2003, 319:9; 2004, 257:44, eff. July 1, 2004; 2017, 156:45, 64, effective July 1, 2017.

227-M:5. Powers and Duties of the Authority.

The authority shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter and shall:

- I. Adopt bylaws for the regulation of its affairs and the conduct of its business.
- II. Adopt criteria and guidelines for:

- (a) The acquisition of resource assets;
- (b) The restoration or rehabilitation of cultural and historical buildings or structures; and
- (c) The stewardship and monitoring of resource assets on which program funds are expended.

III. Adopt definitions deemed important or necessary to carry out the purposes of this chapter.

IV. Oversee and direct the expenditure of funds deposited in the trust fund of the New Hampshire land and community heritage investment program in accordance with the purposes of this chapter. This includes, but is not limited to, the authority to draw upon funds for acquisition of resource assets, or related program purposes, and for the administrative costs of the program.

V. Make and execute contracts for services necessary to carry out the purposes of this chapter or necessary and convenient for the exercise of its powers and functions.

VI. Temporarily acquire real property or interests in real property, only when such acquisition is necessary or appropriate to protect or secure any investment in which the authority has an interest.

VII. Prepare an annual report to be presented no later than December 1 of each year to the president of the senate, the speaker of the house, and the governor and council, and filed with the state library. The report shall detail the activities of the program during the past year including a listing of all resource assets acquired and restoration and rehabilitation projects undertaken, along with the associated expenditures. All administrative costs shall be provided, as well as a complete financial accounting of the trust fund established under RSA 227-M:7. The report shall also include a historical summary of the program's activities to date. A copy of the report shall be made available to any interested person. The authority shall cause an audit by an independent certified public accountant of its books and accounts to be made each fiscal year.

VIII. In addition, the authority may:

- (a) Adopt an official seal.
- (b) Maintain an office and hire staff.
- (c) Apply for and accept from any source gifts and donations of: money, including money from appropriate fundraising activities; labor, equipment, and supplies; land and other real property; interests in land and other real property; federal, local, private, and other matching funds and incentives; and other assets to be deposited in the fund for the purposes of this chapter and to aid the authority in the conduct of its affairs.
- (d) Employ or retain as independent contractors architects, engineers, attorneys, accountants, and other advisors and employees, consultants, and agents as may be necessary in its judgment without regard to any personnel or civil service law of the state to prescribe their duties and qualifications and to fix and pay their compensation if any.
- (e) Appoint qualified individuals to serve as unpaid volunteers under such terms and conditions as it deems necessary. Said volunteers or advisors may be paid a stipend and/or reimbursed for any incidental expenses determined by the authority to be necessary and incurred while performing the business of the authority.

History: 2000, 245:1; 2001, 158:12, eff. July 1, 2001.

227-M:6. Executive Director.

The board of directors shall nominate one or more persons for appointment by the governor and council to serve as executive director. The executive director shall serve a term of 5 years, with reappointment or a vacancy to be filled in the same manner as the original appointment. At the request of the board, the governor and council may remove the executive director for cause. The executive director shall:

I. Coordinate the activities of state agencies directly involved with the administration of the program in accordance with this chapter.

II. Evaluate the eligible resources proposed for protection or restoration under this program, and determine if these resources meet the criteria of the program, subsequent to instruction by the board.

III. At the direction of the board, administer the affairs of the program and be directly responsible for executing all policies of the board.

History: 2000, 245:1, eff. June 8, 2000.

227-M:6-a. Status of Employees.

I. The authority may hire, fix, and pay compensation, prescribe duties and qualifications, and establish personnel policies without regard to any personnel or civil service law or personnel or civil service rule of the state. The employees of the authority shall not be classified employees of the state within the meaning of RSA 21-I:49. Any individual employed by the authority shall be deemed an employee at will and shall serve at the pleasure of the authority.

II. Notwithstanding the provisions of paragraph I, any individual employed by the authority whose employment calls for 30 hours or more work in a normal calendar week, and whose position is anticipated to have a duration of 6 months or more, shall be entitled to elect to receive such health, dental, life insurance, deferred compensation, and retirement benefits as are afforded to classified employees of the state provided, however, that the election is made in writing within 30 days of the start of employment. Upon election by such individual, the authority shall pay from its revenues the state's share of such benefits. Any remaining costs of health, dental, life insurance, deferred compensation, and retirement benefits which an individual elects to receive pursuant to this section, shall be withheld from such individual's salary as a payroll deduction. Written notice of the availability of these benefit options shall be provided to each individual upon employment by the authority.

History: 2001, 158:14, eff. July 1, 2001.

227-M:7. Trust Fund Established; Administration.

I. There is established in the office of the state treasurer the trust fund for the New Hampshire land and community heritage investment program. Moneys in the fund and any interest earned on the fund shall be used for the purpose of this chapter and shall not be used for any other purpose. The trust fund shall be non-lapsing.

II. The state treasurer is instructed to invest the sums deposited in the fund in a prudent manner consistent with the purposes of this chapter. Interest earned on moneys in the fund shall accrue to the fund to the extent allowed under federal law.

III. No funds of any state agency shall be transferred to the trust fund without specific authorization from the general court. Federal funds accepted by the fiscal committee and governor and council for purposes similar to those of this chapter may be deposited in the trust fund.

History: 2000, 245:1, eff. June 8, 2000.

227-M:7-a. Administrative Fund.

I. There is established in the office of the New Hampshire land and community heritage investment authority a fund to be known as the land and community heritage investment program administrative fund into which the commissioner of safety shall credit any revenue generated pursuant to RSA 261:97-

b, I-a. There shall also be deposited, on a monthly basis, interest income generated on appropriations made to the land and community heritage investment program trust fund pursuant to RSA 227-M:7. The total revenues generated to the administrative fund from these 2 sources shall not exceed \$335,000 for each fiscal year. Any revenue generated from these 2 sources in excess of the \$335,000 maximum per year shall be credited by the New Hampshire land and community heritage investment authority to the land and community heritage investment program trust fund in RSA 227-M:7. The authority shall include in its annual report the amount of revenues exceeding the maximum which are credited to the trust fund.

II. All sums so credited shall be appropriated to the authority for the following purposes:

(a) To pay the costs of administering and operating the authority, including, but not limited to, all wages, salaries, benefits, and other expenses authorized by the board or the executive director. The authority may enter into a contract or agreement for provision of services to withhold on a monthly basis all payroll and benefit costs for employees.

(b) In general for the payment of all expenses incident to the management and operation of the authority as are consistent with its statutory purpose and as the board or the executive director thereof may from time to time determine.

III. This fund shall constitute a continuing appropriation for the benefit of the authority. Any amount remaining to the credit of the authority at the close of any fiscal year, and any interest accrued, shall be nonlapsing and shall be carried over and credited to the fund for the succeeding year.

History: 2001, 158:13; 2003, 319:170; 2005, 177:22; 2007, 375:2, eff. July 1, 2007; 2016, 61:2, effective July 4, 2016.

227-M:8. Program Administration; Eligible Applicants; Matching Funds.

I. The authority shall distribute funds to further the purposes of this chapter only to eligible applicants. Eligible applicants shall include:

(a) Municipalities or other political subdivisions of the state; and

(b) Publicly-supported nonprofit corporations exempt from federal income taxation under section 501(c) of the Internal Revenue Code.

II. Other parties wishing to participate in the program may partner with one or more eligible applicants. At the option of eligible applicants and with the approval of the board, state agencies may hold rights in resource assets acquired through the program by eligible applicants. The applicant must demonstrate the commitment of the owner of the assets to participate in the proposed action.

III. Financial assistance to eligible applicants shall be provided through grants and block grants (grants to another organization for re-granting) and loans. Up to 50 percent of financial assistance provided each year may be provided through loans. Principal and interest paid on such loans shall be deposited in the trust fund for the New Hampshire land and community heritage investment program established in RSA 227-M:7. Financial assistance may only be expended on eligible resources for the following purposes:

(a) Acquisition of real property in fee simple.

(b) Acquisition of easement interests in real property.

(c) Restoration or rehabilitation of buildings or structures which are publicly-owned, or which are owned by a qualified publicly-supported nonprofit corporation.

(d) Surveys, appraisals, title work, and other legal or ancillary work necessary to carry out acquisitions.

(e) Resource inventories and planning.

(f) Other professional services.

IV. The authority shall not fund more than 50 percent of the appraised market value of any resource asset acquisition or more than 50 percent of any other expense eligible for financial assistance under RSA 227-M:8, III(c)–(f).

V. All eligible applicants are required to provide a level of matching resources that is no less than 50 percent of the appraised market value for any resource asset acquisition and that is no less than 50 percent of any other expense for which financial assistance is sought under RSA 227-M:8, III(c)–(f). A minimum of $\frac{1}{2}$ of the applicant's minimum match requirement must be provided in cash to be used in the purchase or preservation of the resource asset. Nothing shall prevent the eligible applicant from using all cash to fulfill the match requirements of the program. The balance, if any, of the non-cash match requirement may be met through any combination of:

- (a) In-kind services;
- (b) The appraised market value of donated real property or interest in real property, provided such real property is located in the municipality or municipalities in which the applicant property is located;
- (c) Expenses specified under RSA 227-M:8, III(c)–(f), incurred or to be incurred; or
- (d) A one-time investment in a stewardship endowment fund established by the applicant for the resource asset.

VI. Qualifying matching funds from the applicant may include, but are not limited to, municipal appropriations, private donations, federal funds, and monies from a conservation fund established under RSA 36-A:5.

VII. Matching beyond the minimum shall be encouraged of all applicants. The board is authorized, for a particular project, to either reduce the applicant's minimum match requirements under paragraph V or exceed the amount of financial assistance allowed under paragraph IV, but only by an affirmative vote of 9 voting members.

History: 2000, 245:1; 2002, 148:10; 2005, 234:1, eff. July 1, 2005.

227-M:9. Acquisition, Restoration, and Protection Criteria and Guidelines.

I. The criteria and guidelines adopted pursuant to RSA 227-M:5, II for acquiring resource assets shall include, but shall not be limited to, the following:

- (a) Imminence of threat to the land or property, such that the preservation of endangered structures and land conservation projects in densely developed or rapidly developing areas of the state shall receive a higher ranking;
- (b) Uniqueness or significance of the resource;
- (c) Proximity to other protected resources;
- (d) Extent to which project meets multiple objectives of the program (natural, historic, and cultural);
- (e) Strength of local support, such that project applications accompanied by an affirmative vote of the governing body of the municipality or governing bodies of the municipalities in which the project is located shall receive a higher ranking;
- (f) Strength of private support;
- (g) Cooperation between or among communities;
- (h) Extent of leverage (ability of state funds to attract other public and private funds in a cost-share arrangement);

- (i) Demonstrated ability and qualifying stewardship plan of eligible applicant to provide stewardship for the resource being protected; and
- (j) Extent to which benefits can be conserved only through fee acquisition of the resource asset, weighed against acquisition through easement interest.

II. Nothing in this section shall be construed to require that each acquisition of a resource asset under this chapter must meet all the criteria listed in this section.

History: 2000, 245:1, eff. June 8, 2000.

227-M:10. Management.

Any owner of a resource asset acquired in fee simple under this chapter or for which program funds have been expended for restoration or rehabilitation work, shall manage such asset in accordance with any stewardship plan approved for the asset and any legal obligations entered into under this chapter pertaining to the resource asset. The program shall not manage any resource asset, except to the extent permissible under RSA 227-M:5, VI.

History: 2000, 245:1, eff. June 8, 2000.

227-M:11. Stewardship.

All applications submitted for funding resource asset acquisitions or restoration or rehabilitation projects must contain a stewardship plan. Applicants shall be allowed flexibility in devising such plans, but the authority shall make an affirmative finding that the stewardship plan is acceptable before awarding funds. Applications to the program for activities such as resource inventories and engineering studies are not required to include stewardship plans.

History: 2000, 245:1, eff. June 8, 2000.

227-M:12. Monitoring Endowment.

I. For every eligible resource protected under this chapter by an easement interest, a percentage of funds from the program or contributions from the applicant, as specified by the authority, shall be provided to the monitoring endowment established under RSA 162-C:8.

II. Funds added to the monitoring endowment pursuant to RSA 227-M:12, I shall be used to support monitoring by state agencies, local municipalities, and qualifying nonprofit corporations of easement interests acquired under this chapter. Such monitoring shall be to ensure that the resource protected through the program will be managed according to the legal agreements concerning easement interests in the resource.

History: 2000, 245:1, eff. June 8, 2000.

227-M:13. Road Expansion.

I. Notwithstanding any other provisions of this chapter, the New Hampshire land and community heritage authority shall recognize that the public interest and public safety and welfare may, from time to time, require minor expansion, minor modification, or minor alteration of existing roads within the state highway system. After review and approval by the authority, and notwithstanding RSA 227-M:14, the department of transportation may obtain interests in lands acquired by the authority under this chapter adjacent to state highways. Permissible expansion, modifications, or alterations under this section shall include drainage easements, slope easements, lane widening, the addition of a passing,

climbing, or turning lane, protection of wildlife corridors and habitat strongholds as defined in RSA 207:1, or similar adjustments, but shall not include construction of a new highway or portion thereof, construction of a bypass for an existing highway, or similar major alterations. Approval shall not be granted if reasonable and prudent alternatives exist nor if individual or cumulative approvals are likely to materially impair the conservation or preservation purposes for which the parcel was originally protected. Projects determined by the authority to be outside of the scope permitted by this chapter shall require approval from the general court.

II. The department of transportation shall submit a written request to the authority with plans and supporting documentation to demonstrate compliance with the provisions of this chapter. The authority shall hold a public hearing within 90 days of receipt of a complete request to release land and community heritage investment program interests. The authority shall provide at least 10 calendar days notice in advance of such hearing. Notification shall be made, at the expense of the department, to the landowner, local governing body and conservation commission, abutters, the Society for the Protection of New Hampshire Forests, the Nature Conservancy, the Audubon Society of New Hampshire, the New Hampshire Wildlife Federation, the New Hampshire Preservation Alliance, the local historic district commission or the local heritage commission, or both, and the county conservation district, or their successors. Notification of the public hearing shall be published, by the department, in a paper of general circulation in the municipality and shall be posted, by the department, in at least 2 public places. At the hearing or within 15 days after the hearing, a majority of the authority's voting members shall vote to approve or deny the application, unless a time extension is requested by the department. Aggrieved parties, which include all parties who must be notified under this paragraph, may appeal the authority's decision to the superior court in the same manner as planning board decisions are appealed under RSA 677:15.

III. Compensation for any interest in land obtained by the department of transportation under this section shall be at the appraised full fair market value of those property interests at the time of the department's acquisition. Alternative forms of compensation such as replacement land with comparable conservation value, or a combination of monetary compensation and replacement land may be considered in appropriate circumstances, provided all parties owning an interest in the property agree to such terms.

IV. Compensation due to municipalities and nonprofit organizations shall be dedicated to the acquisition, managing, or monitoring of protected lands consistent with the purposes of this chapter. Compensation due landowners shall be as specified in the deed or as otherwise negotiated. Any party aggrieved by the amount of compensation may file a petition with the superior court in the same manner as damage appeals are filed from the board of tax and land appeals under RSA 498-A:27.

History: 2000, 245:1, eff. June 8, 2000; 2019, 243:8, effective September 10, 2019.

227-M:14. Public Trust.

Resource assets acquired under this chapter through the use of the trust fund for the program shall be held in public trust and used and applied for the purposes of this chapter. Notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any resource asset so acquired to uses or purposes not consistent with the purposes of this chapter shall be permitted. The sale, transfer, conveyance, or release of any resource asset from public trust is prohibited, except as provided in RSA 227-M:13.

History: 2000, 245:1, eff. June 8, 2000.

227-M:15. Public Access; Liability.

Lands and interests in lands purchased with funds from this program by any eligible applicant shall be open in perpetuity for passive recreational purposes or shall be for the term of any farm viability term easement. Language to be used in easement interests secured through the program shall approximate the intent of the following:

I. There is hereby conveyed pedestrian access to, on, and across the property for hunting, fishing, and transitory passive recreational purposes, but not camping, by members of the public. A grantor may reserve the right to post against vehicles, motorized or otherwise and against access to active livestock fields, against access to agricultural cropland during planting and growing season, and against access to forest land during harvesting or establishment of plantations.

II. The authority shall have the discretion to limit or prohibit passive recreational use on a case-by-case basis, where this activity would be inconsistent with the purpose for protecting the property and/or when public safety would be at risk. Additionally, the authority may stipulate, as a condition of funding, on a case-by-case basis where appropriate, that certain lands or interests in lands be available for motorized recreational uses.

III. No person, or successor in title, who has granted or sold rights of public access by virtue of an easement, right-of-way, development right, or other means in accordance with the purposes of this chapter shall be liable to a user of that right of access for injuries suffered on that portion of the access unless those injuries are caused by the willful or wanton misconduct of the grantor or successor in title.

History: 2000, 245:1; 2006, 39:2; 2008, 136:3, eff. August 5, 2008.

227-M:16. Recapture.

If property is sold, by a seller who has received funds under this program regarding such property, to a non-eligible applicant, the program trust fund's cash investment in the property shall be returned to the program trust fund by the property seller. This section shall not apply to a sale between eligible applicants.

History: 2000, 245:1, eff. June 8, 2000.

227-M:17. Receipt of Grant Recorded in Registry of Deeds.

Receipt of a grant award under this program and conditions of such award shall be recorded in the registry of deeds for the county in which the property is located.

History: 2000, 245:1, eff. June 8, 2000.

<http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XIX-A-227-M.htm>