

Governance Comparison Table

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The following table compares the current Joint Powers Board (JPB) to three alternatives: an enhanced Joint Powers Agreement (JPA)/JPB, a solid waste management district (SWMD) under current Minnesota state statute and an SWMD under proposed legislation. Content herein is based on **Attachment 4**, the Husch Blackwell memorandum titled Potential Future Governance Options Analysis.

The table summarizes the following elements in the four scenarios:

- Creation
- Term
- Alteration
- Termination of the organization
- Potential for regional coordination
- Ability for metro and non-metro counties to form entity
- Autonomy
- Powers
- Delegation of powers
- Board of directors
- Employment
- Liabilities
- Solid waste service charge
- Debt issuance
- Loan and grant funding
- Waste designation

Attachment 5: Governance Comparison Table

Element	Current JPB	Enhanced JPB	SWMD under current statute	SWMD under proposed legislation
Creation	Already exists. Can be amended by counties as it has been historically. No requirement for hearings or state agency involvement.	Straightforward: decided by the counties following negotiation of an agreement. Can be established relatively quickly. No requirement for hearings or state agency involvement.	Complex and with uncertain timing; Minnesota Pollution Control Agency (MPCA) makes decisions. Lack of MPCA rules creates uncertainty for legality, process and outcome. No districts have ever been formed under this law.	Decided by member counties following a process prescribed in law. Processes are more structured and transparent. It takes more time than an enhanced JPB. Process balances transparency, accountability and efficiency.
Term	Determined by the counties.	Flexible, determined by the counties.	Exists in perpetuity.	
Alteration	An additional county can be added to a JPB by creating a new JPA with the additional county. There was previously one formal attempt to add Dakota County in the late 1980s. At the time of the final decision, Dakota County decided not to join.	An additional county can be added to a JPB by creating a new JPA with the additional county. For a county to leave a JPB, it must follow the process for withdrawal that is set out in the JPA. A withdrawal provision will generally include a notice period and settlement of financial and other obligations that must be fulfilled as a part of the withdrawal.	The procedure for altering an existing waste district is like the procedure for forming a waste district. A petition is jointly submitted by the governing bodies of at least half of the counties within the district. The MPCA reviews the petition for legal requirements. If objections are received, a hearing is conducted. The MPCA then submits the petition to advisory councils for review and prepares a report. The MPCA makes a final decision.	Clear process for district modification under the proposed legislation. Modification begins with a resolution from the board of commissioners of the county/ counties seeking the change. The proposal is then submitted to the district's board of directors, accompanied by supporting documentation similar to that required for initial district formation. The district and affected counties hold public hearings to gather input from residents and stakeholders, with notice requirements ensuring broad awareness. If the modification is confirmed, the district updates its articles of incorporation and files the changes with the Secretary of State, making the alteration official.

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Element	Current JPB	Enhanced JPB	SWMD under current statute	SWMD under proposed legislation
Termination of the organization	<p>The current JPA provides for conditions of termination or dissolution of the JPB.</p> <p>In no event shall the Agreement be terminated prior to the payment in full of all bonds and other indebtedness of the R&E Board incurred to acquire or improve the facility.</p>	<p>Decision made by counties following the process set out in the enhanced JPA.</p>	<p>Decision made by MPCA with uncertain effect or timing.</p>	<p>Decision made by unanimous decision of member counties with public input.</p>
Potential for regional coordination	<p>A new JPA would be required to add additional counties.</p>	<p>A JPB can collaborate with other counties. To expand, a new joint powers agreement among all parties would need to be negotiated and approved.</p>	<p>A district is positioned to coordinate waste management activities across multiple counties, streamline operations and pursue greater regional waste management goals without the constraints of individual county priorities.</p>	
Ability for metro and non-metro counties to form entity	<p>Each governmental unit party to the JPA must have independent authority to exercise the power delegated.</p> <p>The JPA needs to be carefully drafted to ensure commonality of powers being delegated to the JPB, which could mean limiting the overall scope of powers.</p>	<p>Metro and non-metro counties can be in a district, but the entire district must follow law and policy required of metro counties.</p>		
Autonomy	<p>Delegates specific powers to the JPA. Was designed for purchase of the R&E Center and converting it from being privately owned to publicly owned. Includes joint activities for certain non-facility work.</p>	<p>A JPA is an agreement among counties, and as such, is accountable to counties, and has the level of autonomy it is allowed to have.</p>	<p>A waste district is a completely distinct governmental entity, separate from the counties that comprise it. This allows for greater autonomy in decision-making and operations, potentially reducing outside influence and day-to-day oversight from county boards.</p>	

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Board of directors	Two commissioners from Washington County and three commissioners from Ramsey County. The commissioners are appointed by the respective county boards. Each county may appoint an alternate commissioner.	Structure determined by members but can only include all or a subset of county commissioners of member counties.	Must be made up of residents of the district. Elected representation is not required.	At least five members, only county commissioners appointed by member counties.
Employment	Has the authority to hire R&E employees. Has its own human resources services, but contracts with Ramsey County for certain employee benefits.	Joint powers employees tend to be employed by the JPB but may actually work through the employment system of one of the member counties. For R&E, this is partially true, with employee benefits associated with Ramsey County.	May employ persons or firms and contract for services to perform engineering, legal or other services necessary to carry out its functions.	May employ persons or firms and contract for services to perform engineering, legal or other services necessary to carry out its functions. A district may give preference to hiring employees employed by member counties.
Liabilities	Is considered a separate and distinct public entity to which the Counties have transferred all responsibility and control for actions taken pursuant to this Agreement. R&E is required to comply with all laws and rules that govern a public entity, and the protections of Minnesota Statutes Chapter 466.	It is possible for liabilities of the JPB, in some instances, to reach back and become liabilities of the member counties. The JPA needs careful drafting to maximize protection for the member counties.	All liability would reside with the district.	

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Powers	<p>Per the JPA: In addition to the responsibilities associated with ownership and operation of the facility, R&E administers joint activities, which include but are not limited to:</p> <ul style="list-style-type: none"> • a Hauler Rebate program, as determined necessary • waste education and outreach related to reduction, recycling, waste processing and other waste management • engaging with schools, including facility tours and other efforts • administering BizRecycling and related programs • making plans and conducting research • initiating or administering other joint solid waste management projects on behalf of the Counties, as determined by the board 	<p>Can be delegated any powers held in common by counties, except taxing authority; change in powers possible by amending the JPA.</p>	<p>Counties forming the district decide in a petition to the MPCA what powers are assigned to the district. Change in powers is subject to a petition process with the MPCA deciding.</p>	<p>Counties forming a district prepare a transition plan that details the powers, as well as articles of incorporation.</p>
Delegation of powers	Revocable		Irrevocable	

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Solid waste service charge	Has not been delegated to the R&E Board. Each county retains that authority and implements a service charge, called a County Environmental Charge.	<p>Could be delegated to a JPB under an enhanced JPA. Once delegated, it is unlikely that the county could continue to retain and use this authority unless the JPA provides for a division of responsibility between the member counties and the JPB.</p> <p>The JPB could, through its governing documents, contractually return proceeds from the service charge to member counties.</p>	<p>Can utilize service charges as a primary mechanism.</p> <p>There is legal uncertainty whether counties could continue to use service charges once a district exercises its authority to issue rates and charges.</p>	<p>Can use existing fee and service charge authority under state law.</p> <p>There is legal uncertainty whether counties could continue to use service charges once a district exercises its authority to issue rates and charges.</p>
Debt issuance	<p>Is authorized “to incur and discharge debts, liabilities and obligations, including the authority to issue [revenue] bonds pursuant to Minnesota and federal law. Any issuance of debt must be approved by a two-thirds (2/3) majority of the [R&E] Board.” Additionally, each County Board must agree that R&E may issue bonds (also consistent with Minn. Stat. 471.59, subd. 11(a)).</p> <p>Counties may not delegate the authority to pledge their full faith and credit or taxing power to a JPB.</p>	<p>Could receive a delegation of county revenue bond authority.</p> <p>Counties may not delegate the authority to pledge their full faith and credit or taxing power to a JPB, thus limiting the JPB to revenue bonds, subject to the requirements of the JPA and state law.</p>	<p>May possess separate statutory revenue bond authority if granted by the petitioning counties.</p> <p>Would require counties to assign general obligation bonding authority.</p>	<p>Can issue revenue <u>and</u> general obligation bonds and levy property taxes.</p>

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Loan and grant funding	<p>Authority to apply for, accept, receive and disburse grants, loans, donations and other assistance from the federal government, state of Minnesota or any other agency or organization.</p>	<p>Appears to be eligible for the same loan and grant programs, including the Solid Waste Processing Facilities Capital Assistance Program (CAP) and, likely, Local Recycling Development Grant (LRDG) funds.</p> <p>Because counties are eligible recipients of LRDG funds, an enhanced JPB may receive such funds if the member counties delegate that authority and, likely, LRDG funds.</p>	<p>Appears to be eligible for the same loan and grant programs, including CAP.</p> <p>For LRDG funds, a metropolitan-area district, which assumes county authorities under Chapter 473, would also be eligible.</p> <p>The statutes are less clear regarding SCORE funding.</p>	<p>Appears to be eligible for the same loan and grant programs, including CAP.</p> <p>For LRDG funds, a metropolitan-area district, which assumes county authorities under Chapter 473, would also be eligible.</p> <p>The proposed legislation specifies that a district can receive SCORE funds that would otherwise have been distributed to individual counties.</p>
Waste designation	<p>Waste designation ordinances were adopted by and are implemented by each of the Counties. The Counties agree to coordinate with each other and maintain and enforce these ordinances.</p> <p>At the same time, R&E holds Waste Delivery Agreements with haulers as a voluntary business relationship, with contracted haulers receiving benefits such as ability to deliver to R&E-contracted transfer stations.</p>	<p>Under an enhanced JPB, the new entity would likely need to independently enact waste designation if that authority is delegated to the JPB, unless the JPB makes a contractual arrangement with one or more counties to continue implementing waste designation on its behalf.</p>	<p>A district possessing designation authority in its articles of incorporation may be authorized to designate a resource recovery facility under the waste designation statutes.</p> <p>It is unclear in the law how the transfer of authority from counties to a district is handled.</p>	<p>For a district formed under the proposed legislation, the new entity must independently enact waste designation if that authority is included in the district's articles of incorporation.</p> <p>The proposed legislation streamlines this process for districts by requiring that designation plans be included as part of the transition plan during district formation. This ensures that the transition from county to district governance is comprehensive and coordinated.</p>