

HB 205-LOCAL – AS AMENDED BY THE HOUSE

12Mar2015... 0675h

2015 SESSION

15-0036  
09/01

HOUSE BILL            ***205-LOCAL***

AN ACT                relative to lending practices of energy efficiency and clean energy districts.

SPONSORS:            Rep. C. McGuire, Merr 29; Rep. Itse, Rock 10

COMMITTEE:          Municipal and County Government

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AMENDED ANALYSIS

This bill makes changes in the financing of loans by energy efficiency and clean energy districts.

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Explanation:          Matter added to current law appears in ***bold italics***.  
                                Matter removed from current law appears [~~in brackets and struckthrough.~~]  
                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT relative to lending practices of energy efficiency and clean energy districts.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Paragraph; Definitions. Amend RSA 53-F:1 by inserting after paragraph II the following  
2 new paragraph:

3 II-a. “Eligible property” means real property located within the boundaries of the district,  
4 whether zoned or used for residential, commercial, industrial, or other uses, excluding residential  
5 property containing less than 5 dwelling units.

6 2 Authority; Agreements; Eligibility; Financing. RSA 53-F:3 is repealed and reenacted to read  
7 as follows:

8 53-F:3 Authority. To achieve the public benefits of protecting the economic and social well-being  
9 by reducing energy costs in the community and risks to the community associated with future  
10 escalation in energy prices, and addressing the threat of global climate change, any municipality  
11 which has adopted the provisions of this chapter and established an energy efficiency and clean  
12 energy district may, upon a finding by the governing body of the municipality, after notice and  
13 hearing, that the energy conservation and efficiency and clean energy improvements will serve the  
14 public purposes as set forth in this chapter and not primarily be for the benefit of private persons or  
15 uses even though such private benefits and uses may incidentally result, do the following:

16 I. A municipality which adopts this chapter shall thereafter be authorized to establish one or  
17 more energy efficiency and clean energy districts.

18 II. Encourage private financing from individuals or institutions for qualifying improvements  
19 to eligible properties within the district and enter into agreements with those private lenders to  
20 administer the energy conservation and efficiency improvements or clean energy improvements  
21 program on their behalf, including evaluating eligible properties, supervising the improvements,  
22 arranging for the closing of the loans, collecting the special assessments and assisting them with the  
23 exercise of their lienholder rights, provided that anticipated expenses for the administration of the  
24 program shall be borne by the owners of eligible properties participating in the program.

25 III. Participate in state or federal programs providing support for municipal energy  
26 efficiency and clean energy finance programs such as those authorized by this chapter.

27 IV. Enter into agreements with owners of eligible property in which the owners consent to  
28 make energy conservation and efficiency improvements or clean energy improvements to their  
29 properties and to have the municipality include a special assessment to pay for such improvements  
30 on their property tax bills, their bills for water or sewer service or another municipal service, or

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1 separate bills, provided that such agreements shall not affect the tax liability or municipal services  
2 charges of other participating or nonparticipating property owners in the district.

3 V. Collect charges from participating owners of eligible properties to cover the cost of  
4 administration for the district.

5 VI. Otherwise administer a program for promoting and financing energy efficiency and clean  
6 energy improvements within a district in accordance with this chapter, enter into an agreement with  
7 a public or private entity to administer such a program on its behalf in accordance with this chapter,  
8 and enter into an agreement with one or more other municipalities to share services and otherwise  
9 cooperate in the administration of a district or districts in accordance with this chapter.

10 3 Agreements With Property Owners. RSA 53-F:4, I-III are repealed and reenacted to read as  
11 follows:

12 I.(a) A municipality may make an assessment under this chapter only pursuant to an  
13 agreement entered into with the free and willing consent of the owner of an eligible property to  
14 which the assessment applies. In the case of any eligible property with multiple owners, an  
15 agreement under this chapter shall be signed by all owners.

16 (b) An agreement with an owner of eligible property shall provide that the owner shall  
17 contract for qualifying improvements with one or more qualified contractors, purchase materials to  
18 be used in making qualified improvements, or both, and that, upon submission of documentation  
19 required by the municipality, the municipality shall disburse funds to those contractors and vendors  
20 in payment for the qualifying improvements or materials used in making qualified improvements.  
21 An agreement with a property owner shall require that the property owner report post-installation  
22 energy use data for program evaluation purposes over a period determined by the municipality.

23 (c) The agreement shall stipulate that all funding for the qualifying improvements shall  
24 be made by private lenders and that the loan will be evidenced by a note and secured by a mortgage  
25 on the eligible property. The agreement shall include a payment schedule showing the term over  
26 which payments will be due on the assessment, the frequency with which payments will be billed  
27 and the amount of each payment, and the annual amount due on the assessment. The obligations of  
28 the agreement and loan will run with the eligible property. If the property is sold, the new owner  
29 shall automatically assume the obligations of the agreement, note, and mortgage and shall be subject  
30 to all liability related to such obligations. Upon full payment of the amount of the special  
31 assessments, including all outstanding interest and charges and any penalties that may become due,  
32 the municipality shall provide the then participating property owner with a written statement  
33 certifying that the obligations of the agreement and the loan have been satisfied and the special  
34 assessments have been paid in full and shall record a discharge of the mortgage from the private  
35 lender.

36 II. The municipality shall disclose to the owners of eligible property participating in the  
37 program the risks associated with their participation, including risks related to their failure to make

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1 payments and the risk of enforcement of property tax or special assessment liens under RSA 53-F:8.

2 III. At least 30 days prior to entering into an agreement with a municipality under this  
3 chapter, the owner of eligible property shall provide to the holders of any existing mortgages on the  
4 property notice of his or her intent to enter into the agreement.

5 4 Eligibility of Property Owners. RSA 53-F:5 is repealed and reenacted to read as follows:

6 53-F:5 Eligibility of Property Owners.

7 I. A municipality may enter into an agreement under this chapter only with the legal owner  
8 of eligible property.

9 II. Prior to entering into an agreement with an owner of eligible property, the municipality  
10 shall determine that all property taxes and any other assessments levied with property taxes are  
11 current and have been current for 3 years or the owner's period of ownership, whichever is less; that  
12 there are no involuntary liens such as mechanic's liens on the property; and that no notices of default  
13 or other evidence of property-based debt delinquency have been recorded during the past 3 years or  
14 the property owner's period of ownership, whichever is less. The municipality shall adopt additional  
15 criteria, appropriate to property-assessed clean energy finance programs. The municipality shall  
16 determine whether any mortgages or liens of record exist in the registry of deeds on the property,  
17 whether they are current in the obligations, and whether the total debt to equity ratio specified by  
18 the private lender will be met. If any such mortgage or lien exists, the municipality shall notify each  
19 such mortgagee or lienholder in writing that a private lender is considering making a loan secured  
20 by a municipal lien pursuant to the provisions of this chapter and request the consent of each such  
21 mortgagee or lienholder to the making of such loan. Each mortgagee or lienholder shall have the  
22 right to determine in its sole discretion whether or not it will consent to such loan. If all of the  
23 mortgagees or lienholders of record elect to consent, the consents shall be in writing and recorded  
24 with the municipal lien in the registry of deeds. The legal effect of having all consents shall be that  
25 the municipal lien shall not be extinguished in the event of a foreclosure or sheriff's sale by the  
26 mortgagee or lienholder as provided in RSA 53-F:8. If all of the mortgagees or lienholders of record  
27 do not consent, but the private lender determines that it will proceed in making such loan, then in  
28 the event of a foreclosure or sheriff's sale by a mortgagee or lienholder, the municipal lien shall be  
29 extinguished.

30 5 Qualifying Improvements. RSA 53-F:6, II-IV are repealed and reenacted to read as follows:

31 II. Improvements shall be permanently affixed to an existing building or facility that is part  
32 of the eligible property. The owner of the property may not finance projects in buildings or facilities  
33 under new construction.

34 III. Improvements shall be made by a contractor or contractors, which may include a  
35 cooperative or not-for-profit organization, determined by the municipality to be qualified to make the  
36 energy efficiency or clean energy improvements in the agreement. Contractors may be designated as  
37 qualified by an electric or gas utility program or another appropriate New Hampshire-based entity.

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1 Any work requiring a license under any applicable law shall be performed by an individual holding  
2 such license. A municipality may elect to permit the financing pursuant to an agreement under this  
3 chapter of improvements made by the owner of the property, but shall not permit the value of the  
4 owner's labor to be included in the amount financed.

5 IV. Prior to disbursement of final payments to any contractor or vendor pursuant to an  
6 agreement with a property owner, submission is required by the property owner in a form acceptable  
7 to the municipality of:

8 (a) A post-installation report, based on an independent inspection acceptable to the  
9 municipality, certifying that improvements have been installed properly and verifying that they are  
10 performing satisfactorily; and

11 (b) Documentation of all costs to be financed and copies of any required permits.

12 6 Financing Terms. Amend RSA 53-F:7 to read as follows:

13 53-F:7 Financing Terms.

14 I. Improvements shall be financed pursuant to an agreement under this chapter only on  
15 terms such that the total energy cost savings realized by the property owner and the property  
16 owner's successors during the useful lives of the improvements are expected to exceed the total cost  
17 to the property owner and the property owner's successors of the improvements.

18 II. ~~[A municipality that provides financing to participating property owners shall establish a~~  
19 ~~loss reserve account and maintain funds in such account at a level that meets generally accepted~~  
20 ~~standards for property-assessed clean energy finance programs. Funds in a loss reserve account~~  
21 ~~shall not be provided from general municipal revenues.~~

22 ~~III.]~~ A property owner who escrows property taxes with the holder of a mortgage on a  
23 property subject to an agreement under this chapter may be required by the holder to escrow  
24 amounts due on the *special* assessment under this chapter and the mortgage holder shall remit  
25 such amounts to the municipality in the manner that property taxes are escrowed and remitted.

26 ~~[IV-]~~ *III.* The maximum term of finance provided pursuant to an agreement under this  
27 chapter shall be 30 years.

28 7 Priority; Collection and Enforcement. Amend RSA 53-F:8 to read as follows:

29 53-F:8 Priority; Collection and Enforcement. Collection of *special* assessments under this  
30 chapter shall be made by the tax collector or other official responsible for property tax or municipal  
31 service charge collection. A municipality shall commit bills for amounts due on the *special*  
32 assessments, including interest and any charges, to the tax collector with a warrant signed by the  
33 appropriate municipal officials requiring the tax collector to collect them. Each year bills for  
34 amounts due on the *special* assessments shall coincide with bills for property taxes or municipal  
35 service charges. Each *special* assessment on the property of a participating property owner shall  
36 create a lien on the property pursuant to RSA 80:19, except that the lien shall be junior to existing  
37 liens of record at the time the bill for the assessment is mailed to the participating property owner.

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1 Enforcement powers for nonpayment shall be those provided under RSA 80 relative to property tax  
2 collection, including RSA 80:19; provided, however, a tax sale of the property shall not extinguish  
3 prior liens of record. At the time of enforcement, only the past due balances of the *special*  
4 assessment under this chapter, including all interest, charges, and penalties, shall be due for  
5 payment. Notwithstanding any other provision of law, in the event of a transfer of property  
6 ownership through foreclosure or a sheriff's sale by a senior mortgagee or lienholder which has  
7 consented to the making of a loan by a ~~[municipality]~~ *private lender* under the provisions of this  
8 chapter, the lien of the municipality shall not be extinguished, and the net proceeds of the sale, if  
9 any, after payment of all prior obligations to mortgagees and lienholders, costs and expenses of  
10 foreclosure or sheriff's sale, shall be first applied to the payment of any past due balances of the  
11 ~~[municipal]~~ loan and then any excess shall be applied against the remaining balance of the loan. If a  
12 senior mortgagee or lienholder has not given its consent to the loan, a foreclosure or sheriff's sale by  
13 the mortgagee or lienholder shall extinguish all junior mortgages and liens. ~~[Payment of a past due~~  
14 ~~balance from the loss reserve established under this chapter shall not relieve a participating~~  
15 ~~property owner from the obligation to pay that amount.]~~

16 8 Repeal. RSA 53-F:1, V, relative to the definition of property owner, is repealed.

17 9 Effective Date. This act shall take effect upon its passage.