

Amendment to HB 1684-FN-A-LOCAL

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to energy efficiency and clean energy districts.
4

5 Amend the bill by replacing all after the enacting clause with the following:
6

7 1 Towns, Cities, Village Districts, and Unincorporated Places; Energy Efficiency and Clean
8 Energy Districts. RSA 53-F is repealed and reenacted to read as follows:

9 CHAPTER 53-F

10 ENERGY EFFICIENCY AND CLEAN ENERGY DISTRICTS

11 53-F:1 Definitions. In this chapter:

12 I. "Capital provider" means an entity that funds the cost of clean energy improvement or
13 energy conservation and efficiency improvements.

14 II. "Clean energy improvement" means the installation of any system on property, including
15 a newly constructed building, for producing electricity for, or meeting heating, cooling, or water
16 heating needs of the property, using either renewable energy sources, combined heat and power
17 systems, waste heat, natural gas, or district energy systems using wood biomass except construction
18 and demolition waste. Such improvements include, but are not limited to, solar photovoltaic, solar
19 thermal, wood biomass, wind, and geothermal systems, provided that, to be covered by an agreement
20 with a property owner and financed under this chapter, such improvements shall be qualifying
21 improvements under RSA 53-F:6.

22 III. "District" means an energy efficiency and clean energy district established under this
23 chapter.

24 IV. "Eligible property" means real property located within the boundaries of the district,
25 whether zoned or used for residential, commercial, industrial, or other uses, excluding residential
26 property containing less than 5 dwelling units. Eligible property includes properties owned by for-
27 profit or nonprofit entities.

28 V. "Energy conservation and efficiency improvements" means measures to reduce
29 consumption, through conservation or more efficient use of electricity, fuel oil, natural gas, propane,
30 water, or other forms of energy on or off the property, and including measures in a newly constructed
31 building. Energy conservation and efficiency improvements shall include, but not be limited to, air
32 sealing, installation of insulation, installation of heating, cooling, or ventilation systems meeting or

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1 exceeding ENERGY STAR standards, building modifications to increase the use of daylighting,
2 replacement of windows with units meeting or exceeding ENERGY STAR standards, installation of
3 energy controls or energy recovery systems, and installation of efficient lighting equipment, provided
4 that, to be covered by an agreement with a property owner and financed under this chapter, all such
5 improvements shall be permanently affixed to a building or facility that is part of the property and
6 shall be qualifying improvements under RSA 53-F:6.

7 VI. "Financing" means the arrangement to fund clean energy improvement or energy
8 conservation and efficiency improvements.

9 VII. "Municipality" means any city, town, or village district, or the designated
10 representative of the city, town, or village district.

11 VIII. "Special assessment" means a special assessment within the meaning and subject to
12 the provisions of RSA 80:19, except as provided in RSA 53-F:8.

13 53-F:2 Adoption by Municipality. A city, town, or village district may adopt the provisions of
14 this chapter in the following manner:

15 I. In a town, other than a town that has adopted a charter pursuant to RSA 49-D, the
16 question shall be placed on the warrant of an annual meeting only by the governing body, and not
17 pursuant to RSA 39:3.

18 II. In a city or a town that has adopted a charter pursuant to RSA 49-C or RSA 49-D, the
19 legislative body may consider and act upon the question in accordance with its normal procedures for
20 passage of resolutions, ordinances, and other legislation. In the alternative, the legislative body of
21 any such municipality may vote to place the question on the official ballot for any regular municipal
22 election.

23 III. In a village district, the question may be considered and acted upon by any means
24 authorized by RSA 52.

25 IV. The language of the question shall designate an energy efficiency and clean energy
26 district, which may cover all or a portion of the area within the municipality, or may designate all or
27 a portion of the area within the municipality as part of an energy efficiency and clean energy district
28 that encompasses all or portions of multiple municipalities.

29 V. A municipality may vote to rescind its action in the same manner as it may vote to adopt,
30 provided that all agreements entered into with property owners and related legal obligations created
31 prior to its vote to rescind shall remain in effect.

32 53-F:3 Authority. To achieve the public benefits of protecting the economic and social well-being
33 by reducing energy and water consumption in the community and risks to the community associated
34 with future escalation in energy prices, and addressing the threat of global climate change, any
35 municipality which has adopted the provisions of this chapter and established one or more energy
36 efficiency and clean energy districts may, upon a finding by the governing body of the municipality,

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1 after notice and hearing, that energy conservation and efficiency improvements and clean energy
2 improvements will serve the public purposes as set forth in this chapter, do the following:

3 I. Encourage private financing from capital providers for qualifying improvements to eligible
4 properties within the district and enter into agreements with such capital providers to administer
5 the energy conservation and efficiency improvements or clean energy improvements program on
6 their behalf, including evaluating eligible properties, supervising the improvements, arranging for
7 the closing of the financing, collecting the special assessments, and assisting capital providers with
8 the exercise of their lienholder rights, provided that anticipated expenses for the administration of
9 the program shall be borne by the owners of eligible properties participating in the program.

10 II. Participate in state or federal programs providing support for municipal energy efficiency
11 and clean energy finance programs such as those authorized by this chapter.

12 III. Enter into agreements with owners of eligible property in which the owners consent to
13 make energy conservation and efficiency improvements or clean energy improvements to such
14 properties and to have the municipality include a special assessment to pay for such improvements
15 on their property tax bills, their bills for water or sewer service or another municipal service, or
16 separate bills, provided that such agreements shall not affect the tax liability or municipal services
17 charges of other participating or nonparticipating property owners in the district.

18 IV. Collect charges from participating owners of eligible properties to cover the cost of
19 administration for the district.

20 V. Otherwise administer a program for promoting and financing energy efficiency and clean
21 energy improvements within a district in accordance with this chapter, enter into an agreement with
22 a public or private entity to administer such a program on its behalf in accordance with this chapter,
23 and enter into an agreement with one or more other municipalities to share services and otherwise
24 cooperate in the administration of a district or districts in accordance with this chapter.

25 53-F:4 Agreements With Property Owners.

26 I.(a) A municipality may make an assessment under this chapter only pursuant to an
27 agreement entered into with the free and willing consent of the owner of an eligible property to
28 which the assessment applies. In the case of any eligible property with multiple owners, an
29 agreement under this chapter shall be signed by all owners. The assessment shall also result in a
30 municipal lien on the property for the amount of the financing under the agreement.

31 (b) An agreement with an owner of eligible property shall provide that the owner shall
32 contract for qualifying improvements with one or more qualified contractors and require that the
33 property owner certify that the qualifying improvements were installed and are in good working
34 order.

35 (c) The agreement shall stipulate that all funding for the qualifying improvements shall
36 be privately made by third party capital providers. The agreement shall include a payment schedule
37 showing the term over which payments will be due on the assessment, the frequency with which

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1 payments will be billed and the amount of each payment. The obligations of the agreement and
2 financing will run with the eligible property. If the property is sold, the new owner shall
3 automatically assume the obligations of the agreement, note, and mortgage and shall be subject to
4 all liability related to such obligation, unless paid off in accordance with the terms of the agreement.
5 Upon full payment of the amount of a special assessments, including all outstanding interest and
6 charges and any penalties that may become due, the capital provider shall provide the then
7 participating property owner with a written statement certifying that the obligations of the
8 agreement and the financing have been satisfied and the special assessment has been paid in full.

9 II. The special assessment amount may include all hard and soft costs to install or construct
10 the improvements, including all financing charges, capitalized interest, and interest reserve, if any.

11 III. The financing agreement shall disclose to the owners of eligible property participating in
12 the program the risks associated with their participation, including risks related to their failure to
13 make payments and the risk of enforcement of property tax or special assessment liens under RSA
14 53-F:8.

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

18 V. The municipality shall file a notice of the assessment under this chapter for recording in
19 the county registry of deeds. The notice shall consist of the following statement or its substantial
20 equivalent: "This property is subject to a special assessment related to the installation of qualifying
21 cost-effective energy conservation and efficiency improvements or clean energy improvements under
22 RSA 53-F."

23 VI. Any personal or business financial information provided to a municipality or an entity
24 administering a program under this chapter on behalf of a municipality by a participating property
25 owner or potential participating property owner shall be confidential and shall not be disclosed to
26 any person except as required to administer the program and only on a need-to-know basis.

27 53-F:5 Eligibility of Property Owners.

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

30 II. In order to be eligible, a property owner shall:

31 (a) Be current on property taxes and have been current for 3 years or the owner's period
32 of ownership, whichever is less;

33 (b) Verify that there are no involuntary liens such as mechanic's liens recorded on the
34 property; and

35 (c) Verify that no notices of default or other evidence of property-based debt delinquency
36 have been recorded during the past 3 years or the property owner's period of ownership, whichever is
37 less. The municipality shall adopt additional criteria, appropriate to commercial property-assessed

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1 clean energy finance programs. The municipality shall identify the appropriate municipal office or
2 employee responsible for approving special assessments and the office or employee responsible for
3 collecting payments.

4 III. The property owner shall be responsible for notifying any mortgage holder in the
5 registry of deeds on the property. If any such mortgage exists, the property owner shall notify each
6 such mortgagee in writing that a capital provider is considering making a financing arrangement
7 secured by a municipal lien pursuant to the provisions of this chapter and request the consent of
8 each such mortgagee to the making of such financing. Each mortgagee shall have the right to
9 determine in its sole discretion whether or not it will consent to such financing. All consents shall be
10 in writing and recorded with the municipal lien in the registry of deeds. If all of the mortgagees of
11 record consent, the municipal lien shall not be extinguished or accelerated in the event of a
12 foreclosure or sheriff's sale by the mortgagee or lienholder as provided in RSA 53-F:8. If all of the
13 mortgagees do not consent, but the capital provider determines that it will proceed with the
14 financing, then in the event of a foreclosure or sheriff's sale by a mortgagee, the municipal lien shall
15 be extinguished.

16 53-F:6 Qualifying Improvements.

17 I. Improvements in an existing building financed pursuant to an agreement under this
18 chapter shall be based upon an audit performed by a person certified as a building analyst by the
19 Building Performance Institute or who has obtained other appropriate certification as determined by
20 the public utilities commission or another appropriate New Hampshire-based entity. Improvements
21 in a newly constructed building shall be analyzed to confirm that the building has the capacity for
22 energy efficiency superior to the current building code in effect. The audit shall identify
23 recommended energy conservation and efficiency and clean energy improvements; provide the
24 estimated energy cost savings, useful life, benefit-cost ratio, and simple payback or return on
25 investment for each improvement; and provide the estimated overall difference in annual energy
26 costs with and without recommended improvements. Financed improvements may include some or
27 all of the audit recommendations. The cost of the audit may be included in the total amount
28 financed under this chapter.

29 II. Improvements shall be permanently affixed to an existing building or facility that is part
30 of the eligible property. The owner of the property may finance projects in buildings or facilities
31 under new construction.

32 III. Improvements shall be made by a contractor or contractors, which may include a
33 cooperative or not-for-profit organization, determined by the municipality to be qualified to make the
34 energy efficiency or clean energy improvements in the agreement. Contractors may be designated as
35 qualified by an electric or gas utility program or another appropriate New Hampshire-based entity.
36 Any work requiring a license under any applicable law shall be performed by an individual holding
37 such license. A municipality may elect to permit the financing, pursuant to an agreement under this

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chapter, of improvements made by the owner of the property, but shall not permit the value of the owner's labor to be included in the amount financed.

IV. Submission is required by the property owner in a form acceptable to the municipality of:

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

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

53-F:7 Financing Terms. The maximum term of finance provided pursuant to an agreement under this chapter shall be 30 years.

53-F:8 Priority; Collection and Enforcement. Collection of special assessments under this chapter shall be made by the tax collector or other official responsible for property tax or municipal service charge collection. The tax collector may assign its rights to enforce the special assessment and foreclose on the municipal lien to the capital provider. A municipality shall commit bills for amounts due on the special assessments, including interest and any charges, to the tax collector with a warrant signed by the appropriate municipal officials requiring the tax collector to collect them. Bills for amounts due on the special assessments shall coincide with bills for property taxes or municipal service charges. Each special assessment on the property of a participating property owner shall create a municipal lien on the property pursuant to RSA 80:19. Enforcement powers for nonpayment shall be those provided under RSA 80 relative to property tax collection, including RSA 80:19; provided, however, a tax sale of the property shall not extinguish prior liens of record. At the time of enforcement, only the past due balances of the special assessment under this chapter, including all interest, charges, and penalties, shall be due for payment. Notwithstanding any other provision of law, in the event of a transfer of property ownership through foreclosure or a sheriff's sale by a senior mortgagee or lienholder which has consented to the making of a loan by a capital provider under the provisions of this chapter, the lien of the municipality shall not be extinguished nor accelerated, and the net proceeds of the sale, if any, after payment of all prior obligations to mortgagees and lienholders, costs and expenses of foreclosure or sheriff's sale, shall be first applied to the payment of any past due balances of the financing and then any excess shall be applied against the remaining balance. If a senior mortgagee has not given its consent to the financing, a foreclosure or sheriff's sale by the mortgagee or lienholder shall extinguish all junior mortgages and liens.

2 Effective Date. This act shall take effect 60 days after its passage.

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2020-0499h

AMENDED ANALYSIS

This bill modifies provisions pertaining to energy efficiency and clean energy districts.