

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 53-F

ENERGY EFFICIENCY AND CLEAN ENERGY DISTRICTS

Section 53-F:1

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

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

II. "District" means an energy efficiency and clean energy district established under this chapter.

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

III. "Energy conservation and efficiency improvements" means measures to reduce consumption, through conservation or more efficient use, of electricity, fuel oil, natural gas, propane, or other forms of energy on or off the property, including but not limited to air sealing, installation of insulation, installation of heating, cooling, or ventilation systems meeting or exceeding ENERGY STAR standards, building modifications to increase the use of daylighting, replacement of windows with units meeting or exceeding ENERGY STAR standards, installation of energy controls or energy recovery systems, and installation of efficient lighting equipment, provided that, to be covered by an agreement with a property owner and financed under this chapter, all such improvements must be permanently affixed to a building or facility that is part of the property and shall be qualifying improvements under RSA 53-F:6.

IV. "Municipality" means any city, town, or village district, or the designated representative of the city, town, or village district.

V. [Repealed.]

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

Source. 2010, 215:2. 2011, 68:4, eff. July 15, 2011. 2014, 294:1, eff. Sept. 30, 2014. 2015, 121:1, 8, eff. June 8, 2015.

Section 53-F:2

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

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

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

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

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

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

Source. 2010, 215:2, eff. Aug. 27, 2010.

Section 53-F:3

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

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

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

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

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

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

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

Source. 2010, 215:2. 2011, 68:2, eff. July 15, 2011. 2014, 294:2, eff. Sept. 30, 2014. 2015, 121:2, eff. June 8, 2015.

Section 53-F:4

53-F:4 Agreements With Property Owners. –

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

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

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

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

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

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

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

Source. 2010, 215:2. 2011, 68:5, eff. July 15, 2011. 2014, 294:3, eff. Sept. 30, 2014. 2015, 121:3, eff. June 8, 2015.

Section 53-F:5

53-F:5 Eligibility of Property Owners. –

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

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

that it will proceed in making such loan, then in the event of a foreclosure or sheriff's sale by a mortgagee or lienholder, the municipal lien shall be extinguished.

Source. 2010, 215:2, eff. Aug. 27, 2010. 2014, 294:4, eff. Sept. 30, 2014. 2015, 121:4, eff. June 8, 2015.

Section 53-F:6

53-F:6 Qualifying Improvements. –

I. Improvements financed pursuant to an agreement under this chapter shall be based upon an audit performed by a person who has been certified as a building analyst by the Building Performance Institute or who has obtained other appropriate certification as determined by the public utilities commission or another appropriate New Hampshire-based entity. The audit shall identify recommended energy conservation and efficiency and clean energy improvements; provide the estimated energy cost savings, useful life, benefit-cost ratio, and simple payback or return on investment for each improvement; and provide the estimated overall difference in annual energy costs with and without recommended improvements. Financed improvements shall be consistent with the audit recommendations. The cost of the audit may be included in the total amount financed under this chapter.

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

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

Source. 2010, 215:2, eff. Aug. 27, 2010. 2015, 121:5, eff. June 8, 2015.

Section 53-F:7

53-F:7 Financing Terms. –

I. Improvements shall be financed pursuant to an agreement under this chapter only on terms such that the total energy cost savings realized by the property owner and the property owner's

successors during the useful lives of the improvements are expected to exceed the total cost to the property owner and the property owner's successors of the improvements.

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

III. The maximum term of finance provided pursuant to an agreement under this chapter shall be 30 years.

Source. 2010, 215:2. 2011, 68:3, eff. July 15, 2011. 2014, 294:5, eff. Sept. 30, 2014. 2015, 121:6, eff. June 8, 2015.

Section 53-F:8

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. 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. Each year 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 lien on the property pursuant to RSA 80:19, except that the lien shall be junior to existing liens of record at the time the bill for the assessment is mailed to the participating property owner. 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 private lender under the provisions of this chapter, the lien of the municipality shall not be extinguished, 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 loan and then any excess shall be applied against the remaining balance of the loan. If a senior mortgagee or lienholder has not given its consent to the loan, a foreclosure or sheriff's sale by the mortgagee or lienholder shall extinguish all junior mortgages and liens.

Source. 2010, 215:2. 2011, 68:6, eff. July 15, 2011. 2014, 294:6, eff. Sept. 30, 2014. 2015, 121:7, eff. June 8, 2015.