SB 154-FN-A-LOCAL – AS INTRODUCED

2013 SESSION

13-0962
09/10

SENATE BILL ***154-FN-A-LOCAL***

AN ACT establishing an energy conservation loan program and an energy conservation project fund.

SPONSORS: Sen. Odell, Dist 8; Rep. Pastor, Graf 12; Rep. Gagnon, Sull 5

COMMITTEE: Energy and Natural Resources

ANALYSIS

This bill establishes a state energy conservation loan program and an energy conservation project fund.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT establishing an energy conservation loan program and an energy conservation project fund.

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

1 New Chapter; Energy Conservation Loan Program. Amend RSA by inserting after chapter 4-C the following new chapter:

CHAPTER 4-D

ENERGY CONSERVATION LOAN PROGRAM

4-D:1 Findings. The general court finds that it is in the best interest of the state of New Hampshire to promote energy conservation projects within the state of New Hampshire, undertaken by owners of privately-held real property, the state of New Hampshire, cities or towns, and nonprofit institutions by facilitating the financing of the acquisition, design, construction, installation, renovation, repair, or expansion of such energy conservation projects.

4-D:2 Definition. In this chapter, unless the context clearly requires otherwise:

I. "Commission" means the New Hampshire public utilities commission.

II. "Eligible borrower" means any public body, municipality, institution, or person, provided that an owner of privately-held real property may participate through the Municipal PACE program.

III. "Eligible project" means the acquisition, design, construction, repair, renovation, rehabilitation, or other capital improvement or deferred maintenance of an energy conservation project undertaken by an eligible borrower, and in the case of owners of privately-held real property, shall include, but not be limited to, energy conservation and efficiency and clean energy improvements under the Municipal PACE Program.

IV. "Energy project bonds" mean bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture, financing document, or other agreement of the state treasurer, the proceeds of which are used to finance loans for eligible projects, and that are payable from loan repayments, and are further secured by system benefits charges (SBC).

V. "Financing order" means an order of the commission which shall provide for a first priority lien on all or a portion of the SBC to further secure energy project bonds.

VI. "Fund" means the energy conservation project fund established under RSA 4-D:4 and held by the financing entity, within which the financing entity shall create loan accounts and reserve accounts.

VII. "Loan" means a direct loan of moneys or any other financing arrangement from the financing entity to an eligible borrower to finance all or a portion of an eligible project.

VIII. "Municipal PACE program" means a program implemented and administered by a municipality pursuant to RSA 53-F.

IX. "SBC" means the mandatory system benefits charge imposed pursuant to RSA 374-F:4.

X. "Special purpose entity" means any partnership, limited partnership, association, corporation, limited liability corporation, or other entity established and authorized by the state treasurer to issue energy project bonds, subject to approval by the state treasurer.

4-D:3 Loans and Financing Agreements. The state treasurer shall make loans to or enter into other financing arrangements directly with eligible borrowers for eligible projects or, in the case of eligible projects under the Municipal PACE program, shall fund loans made by municipalities to property owners in accordance with such program. Such loans shall be funded from energy project bonds issued by the state treasurer in accordance with this chapter or from amounts held in the fund. The state treasurer shall pledge loan repayments received directly from eligible borrowers, or from cities and towns on behalf of real property owners pursuant to the Municipal PACE program to the repayment of the related energy project bonds issued by the state treasurer or by a special purpose entity, as applicable. As further security for any such bonds or debt obligations, the commission shall issue one or more financing orders, granting the state treasurer a statutory first priority lien in all or a portion of the SBC as set forth in such financing order. Each loan shall be made pursuant to a loan agreement between the state treasurer and the eligible borrower. In the case of the Municipal PACE program, the state treasurer may accept loan agreements entered into by the applicable municipality and the property owner. All loan agreements, including those entered into under the Municipal PACE program, shall specify the security for such loan, and the repayment and other terms of such loan.

4-D:4 Energy Conservation Project Fund. There is established in the office of the state treasurer, the energy conservation project fund. All energy project bond proceeds, together with any other moneys lawfully made available to the fund in order to make loans, shall be credited to the loan accounts within the fund. The purpose of the loan accounts within the fund shall be to make loans to finance eligible projects.

4-D:5 Financing Terms. Pursuant to the financing order, the state treasurer shall be granted a first priority lien on all or a portion of the SBC to provide additional security for any energy project bonds issued. Amounts transferred to the state treasurer pursuant to such financing order that are not needed to pay debt service on energy project bonds or direct costs and expenses of the state treasurer associated with the issuance of such energy bonds, shall be held in the reserve account within the fund or in a reserve fund created under the financing documents, in either case, as a reserve securing the energy project bonds, in accordance with the provisions of the financing documents governing the energy project bonds. Any amounts in excess of such required reserve shall be transferred by the state treasurer to the commission in accordance with the provisions of the financing documents governing the energy project bonds. The state treasurer shall hold the reserve account within the fund in a separate account, segregated from all other financing entity funds. The state of New Hampshire does hereby pledge and agree with the holders of energy project bonds that the state of New Hampshire shall not:

I. Alter the provisions of RSA 374-F:4 which imposes the SBC in a manner that limits or otherwise adversely affects the amount of SBC pledged to secure any energy project bond in accordance with a financing order; or

II. Limit or alter the financing order and all rights thereunder until the energy project bonds, together with the interest thereon, are fully met and discharged.

4-D:6 Tax Exemption. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the people of the state of New Hampshire by increasing the energy efficiency of buildings in the state of New Hampshire. As the exercise of such powers shall constitute the performance of essential government functions, the state treasurer shall not be required to pay any taxes or assessments upon the property acquired or used by the state treasurer pursuant to the provisions of this chapter or upon the income therefrom. The energy project bonds issued pursuant to the provisions of this chapter, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be exempt from taxation within the state of New Hampshire.

4-D:7 Issuance of Energy Project Bonds. Upon the written approval of the state treasurer and the commission, the state treasurer may issue energy project bonds on behalf of the fund. Proceeds of energy project bonds shall be used for the purposes authorized by this chapter. Any such energy project bonds shall be issued as revenue bonds and shall be recourse only to the related loan repayments by eligible borrowers and other moneys available in the reserve account within the fund or held under the related financing documents. The energy project bonds shall not be general obligations of the state of New Hampshire.

4-D:8 Reimbursement of Administrative Costs. The state treasurer shall be reimbursed from the loan account within the fund for all reasonable and necessary direct costs and expenses incurred in any fiscal year associated with its bond issuance, administration, management, and operation of the funds, including reasonable staff time and out-of-pocket expenses and the reasonable and approved administrative costs incurred by any qualified organizations which the state treasurer may contract for services. The state treasurer may establish a minimum reserve to be maintained by the fund for the purpose of ensuring the satisfaction of the state treasurer's and its agents' administrative costs.

4-D:9 Contracts for Administration. The state treasurer may enter into contracts with one or more qualified organizations to manage some or all of the administrative aspects of managing the loan program on behalf of the state treasurer, and on behalf of municipalities participating in the Municipal PACE program. Contracts executed pursuant to this section shall address, but shall not be limited to, proposed rules and guidelines for the funds; providing technical assistance to potential eligible borrowers and to municipalities in implementing and managing their Municipal PACE programs; reviewing and evaluating loan applications; providing findings and recommendations to the financing entity as to which loans should be approved and awarded; and serving such loans once they are awarded and funded.

2 New Section: Priority Lien. Amend RSA 374-F by inserting after section 4 the following new section:

374-F:4-a Priority Lien.

I. Notwithstanding the foregoing, upon receiving notice from the state treasurer that energy project bonds are to be issued in accordance with RSA 4-D the commission shall issue in a timely manner one or more financing orders, granting a first priority lien on the mandatory charge established by RSA 374-F:4, VIII, and all or a portion of the amounts collected pursuant thereto, as set forth in such financing order to secure such energy project bonds. Upon the effective date of a financing order, there shall exist a first priority lien on all mandatory charges imposed by this section then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this paragraph automatically without any action on the part of the commission, the financing entity, or any other person. This lien shall secure all obligations then existing or subsequently arising to the holders of such energy project bonds, the trustee or representative for such holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall upon the occurrence of any defaults specified in the financing order, have all the rights and remedies of a secured party upon default pursuant to RSA 382-A, the uniform commercial code, and shall be entitled to foreclose or otherwise enforce this statutory lien in the mandatory charges. This lien shall attach to such mandatory charges regardless of who shall own, or shall subsequently be determined to own, the mandatory charges, including any electric distribution companies and municipal aggregators, any affiliate thereof, the financing entity, or any other person. This lien shall be valid, perfected, and enforceable against all third parties upon the effectiveness of the financing order without any further public notice; provided, however, that any person may, but, shall not be required to, file a financing statement. A perfected statutory lien in the mandatory charges shall be a continuously perfected lien in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued.

II. The commission may issue financing orders in accordance with this section to facilitate the financing or refinancing of eligible energy projects, as defined in RSA 4-D:3. A financing order shall specify that all or a portion of the amounts collected pursuant to the mandatory charges set forth in paragraph I, shall be allocated first to the energy project bonds, and shall be paid over to the state treasurer upon receipt and second to other projects financed in accordance with this section. Financing orders issued pursuant to the provisions of this section shall not constitute a debt or liability of the state of New Hampshire or of any political subdivision thereof, and shall not constitute a pledge of the full faith and credit of the state of New Hampshire or any of its political subdivisions, but, shall be payable solely from the funds provided therefor pursuant to the provisions of RSA 4-D and this section.

3 New Paragraph: Municipal PACE Program. Amend RSA 53-F:3 by inserting after paragraph IX the following new paragraph:

X. In furtherance of the provisions of this section, participate in the energy conservation loan program established pursuant to RSA 4-D for the purposes of obtaining funds to make loans in accordance with this section. To the extent that the city or town receives funds pursuant to such program, it shall enter into a loan agreement with the property owner that has been approved by state treasurer, and will pledge such loan agreement and all amounts received pursuant thereto to the state treasurer. In the event of a payment default by the property owner, the city or town shall enforce its rights under any betterments or other security granted under the applicable loan agreement. All amounts realized by the city or town as a result of such enforcement, or otherwise realized under the betterments or other security granted under the applicable loan agreement or as a result of this section shall be immediately transferred to the state treasurer.

4 Effective Date. This act shall take effect July 1, 2013.

LBAO
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Revised 03/07/13

SB 154 FISCAL NOTE

AN ACT establishing an energy conservation loan program and an energy conservation project fund.

FISCAL IMPACT:

The State Treasury states this bill, **as introduced,** will increase state restricted revenues and expenditures by an indeterminable amount in FY 2014 and each fiscal year thereafter. The Public Utilities Commission states this bill may decrease county and local expenditures by an indeterminable amount in FY 2014 and each fiscal year thereafter. There will be no fiscal impact on county and local revenues.

METHODOLOGY:

The State Treasury and the Public utilities Commission state this bill establishes an energy conservation loan program and an energy conservation project fund. The proposed legislation requires the Treasury to make loans or enter into financing agreements with eligible borrowers and to fund loans made by municipalities under the Property Assessed Clean Energy (PACE) program. Loans are designated to be funded from revenue bonds issued by the Treasury or from amounts held in a designated fund created by the proposed legislation with loan repayments required to be pledged to the repayment of the related bonds. The proposed legislation establishes bonds that are to be secured by the systems benefits charges imposed by energy providers and allows for reimbursement of Treasury costs associated with the administration of the proposed legislation to be recovered from the loan fund.

The Treasury states the proposed legislation will increase state restricted revenues in FY 2014 and each fiscal year thereafter as the Treasury issues the revenue bonds necessary to implement the loan program and fund loans. Subsequently, the Treasury states there will be an indeterminable increase in state restricted revenues in FY 2014 and each fiscal year thereafter as the state begins to collect payments on the issued loans. The Treasury notes the proposed legislation does not identify a financial limit to the bonds issued or loans issued. The Treasury is also unable to determine the extent of system benefits charges available for use in securing the revenue bonds. Accordingly, the Treasury is unable to determine to what extent state restricted revenues or expenditures will be impacted by this bill. However, the Treasury notes they do not presently maintain the infrastructure necessary to administer this program and therefore initial costs involved with establishing the necessary infrastructure may be significant.

The Public Utilities Commission states to the extent the proposed legislation reduces financing costs to counties and municipalities for energy efficiency projects, and to the extent those energy efficiency projects financed as a result of this bill reduce subsequent energy costs, county and local expenditures will be reduced. The Commission is unable to estimate to what extent county and local expenditures will be reduced in FY 2014 and each fiscal year thereafter as a result of this bill.