



February 5, 2015

The Honorable Representative James Belanger
Chairman, Municipal and County Government Committee
New Hampshire House of Representatives
Legislative Office Building, Room 301
33 North State Street
Concord, NH 03301

Regarding: Opposition to House Bill 205

Dear Chairman Belanger and Members of this Committee:

Thank you for the opportunity to provide testimony in opposition to House Bill 205, relative to lending practices of energy efficiency and clean energy districts. The Jordan Institute respectfully disagrees with the premise of this bill's language that New Hampshire's Constitution prohibits for-profit entities from participating in a program such as C-PACE, and that in fact it allows the General Court to enable such activities. Further, once New Hampshire's C-PACE program is fully operational, energy-efficiency and renewable-energy projects that qualify for C-PACE financing will help temper energy-cost volatility for the region, reducing the need for additional fossil-energy infrastructure.

The Jordan Institute and our partners are designing a statewide C-PACE program using private funds – no municipal bonds, no taxpayer dollars, no utility ratepayer funds. This program will provide significant opportunities for economic development, attract and retain businesses that are concerned about escalating energy costs, and keep our energy dollars local instead of sending them up the chimney and out of state. For-profit companies should absolutely be included in this program, and using municipalities that elect to be in the program as conduits for repayment of these projects is what enables the program and activates the benefits.

Part 2, Article 5 of the New Hampshire Constitution is *not* counter to Chapter 53-F, Energy Efficiency and Clean Energy Districts. In fact it directly provides the New Hampshire General Court:

“... full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws,

statutes, ordinances, directions, and instructions, either with penalties, or without, so as the same be not repugnant or contrary to this constitution, as they may judge for the benefit and welfare of this state, and for the governing and ordering thereof, and of the subjects of the same...”

Called enabling legislation, this language allows the General Court to authorize laws which will achieve certain public benefits that would otherwise not be allowed by the Constitution. Without RSA 53-F in statute, municipalities *would not* be permitted to participate in energy efficiency and clean energy districts as that action would be considered unconstitutional. However, in 2010, the General Court enacted Article 53-F to authorize and enable municipalities to voluntarily adopt the provisions of energy efficiency and clean energy districts, and further in 2014, did not challenge the authority of Section 53-F:3, but made changes to the statute elsewhere. The General Court found that PACE would:

“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 the municipality will finance pursuant to this chapter 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” ...

There are numerous examples of successful programs authorized by the New Hampshire General Court where municipalities provide benefits to businesses, as individual companies – such as in PILOT agreements and community revitalization tax relief districts, or in regional approaches – such as sewer districts, sidewalk districts, and tax increment financing districts. Without question, for-profit companies participating in these programs benefit directly and indirectly.

New Hampshire’s business community faces many challenges, but here finally is a voluntary program for them to pursue to undertake energy upgrade projects – that uses private investment, that is cash-flow positive, that improves their assets, that has quality control standards built into it, that allows them to address deferred maintenance projects, that provides local jobs that cannot be outsourced, and that is comfortably constitutional.

Thank you very much for the opportunity to provide this testimony. I urge you to vote HB205 Inexpedient to Legislate so that New Hampshire’s businesses can take advantage of this opportunity.

Most sincerely,

Laura Richardson
Executive Director