



# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF THE COMMISSIONER  
25 Capitol Street – Room 120  
Concord, New Hampshire 03301

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March 2, 2016

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

### REQUESTED ACTION

Approval of the Report and Findings of Councilor Colin Van Ostern with regard to a certain project in participation with the Proctor Academy, Andover, New Hampshire.

### EXPLANATION

This item is submitted pursuant to a request by the New Hampshire Health and Education Facilities Authority. Councilor Van Ostern has requested that this be placed on the agenda as a regular item for the Wednesday, March 23, 2016 meeting for ratification by the Governor and Council.

Sincerely,

Vicki V. Quiram  
Commissioner

VVQ/rjk

Attachment

**REPORT  
AND  
FINDINGS  
OF**

**COLIN VAN OSTERN**, designee of the Governor and Council of The State of New Hampshire, under the provisions of the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated, on the undertaking by the Authority of a project in participation with **Proctor Academy**, Andover, pursuant to said Act.

**Introductory**

The New Hampshire Health and Education Facilities Authority (hereafter referred to as the “Authority”), requested of Governor Maggie Hassan and the Executive Council that a hearing be held pursuant to the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated (hereafter referred to as the “Act”), and particularly as prescribed in Section 21 of the Act. The hearing is required as the result of an application submitted to the Authority by Proctor Academy (the “Borrower”), which is a not-for-profit, charitable corporation and an educational institution operating in New Hampshire and which is a participating institution under RSA 195-D:3. Such application seeks the participation of the Authority, under the Act, in the refinancing of certain existing indebtedness (hereafter sometimes referred to as the “Program”).

Pursuant to RSA 195-D:21 above cited, the Governor and Council designated me to hold a hearing and make findings in connection with the application. Following Public Notice given in accordance with Chapter 91-A of the New Hampshire Revised Statutes Annotated, by notice posted in the Union Leader on Monday, February 22, 2016, the hearing was held commencing at 9:00 a.m. on Wednesday, February 24, 2016, in Boardroom 303 of the University System of New Hampshire Administrative Offices, 5 Chenell Drive, Suite 301, Concord, New Hampshire. All witnesses were duly sworn. A summary of testimony presented at the hearing follows:

## Summary of Testimony

Bonnie S. Payette stated that she is the Director of Operations and Finance of the New Hampshire Health and Education Facilities Authority, and is familiar with the administration of the Authority's day-to-day affairs.

Ms. Payette testified that the Program was created following amendments to the Authority's statute during the 1999 legislative session. The purpose of the Program is to provide the Authority's authorized borrowers with two short-term note financing programs. The first is the Revenue Anticipation Note ("RAN") program, which provides working capital to not-for-profit borrowers. The second is the Capital Note ("CAN") program, which provides loans for capital projects to not-for-profit borrowers. Both the RAN and CAN programs provide loans from note proceeds at extremely favorable interest rates and with costs of issuance which are considerably lower than a normal note or bond issue. This is the result of pooling as many borrowers as possible together to issue notes at the same time, issuing the notes through a common offering, using standardized documents and reinvesting note proceeds to offset certain of the interest costs. Ms. Payette emphasized, however, that each institution will be issuing its own notes on its own credit (which in some cases may be based on a letter of credit) and that there will be no cross guaranties or obligations among the various borrowers.

Ms. Payette stated that there is currently one Borrower in the Program, Proctor Academy, and its project is in the CAN program and is: a \$2 million refinancing of its existing Series 2015A Capital Note.

Ms. Payette stated that the Authority is familiar with the Borrower and that it has repaid all of its prior obligations to the Authority in a timely manner. She explained that the Borrower will be judged financially responsible by the entity that purchases the Borrower's note.

Ms. Payette stated that in her capacity as Director of Operations and Finance, she has become acquainted with the Program and the details of its financing, having worked closely with the Borrower's officers in developing the financial arrangements to be reflected in the notes

proposed to be issued. She stated that the Authority will be voting to issue its notes for the Program, subject to compliance being had with all laws bearing upon such issue and the advice of counsel, including Bond Counsel. She testified that the Authority adopted a resolution on February 18, 2016, approving issuance of notes for the Borrower in the Program.

Ms. Payette testified that certain documents are being prepared for execution in connection with the Program, including the Note Indenture to be entered into between the Authority and the Trustee for the current note issue and the Agreement intended for execution between the Borrower and the Authority (or, in some cases, Agreements among a borrower, the Authority and a financial institution directly purchasing the note). She stated that there is a provision in each Agreement under which each borrower is obligated to hold and use the note proceeds for educational purposes so long as the Note is outstanding. She testified to the language in the Note Indenture which requires that each note issued by the Authority for each borrower in the Program bear on its face the following provision:

Neither the State of New Hampshire nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Note, other than from Pledged Revenues, and neither the faith and credit nor the taxing power of the State of New Hampshire or of any political subdivision thereof is pledged to the payment of the principal of or interest on this Note.

Ms. Payette testified that the note documents will make adequate provision for the payment of principal and interest on the notes, as well as the costs of the Program, so that the State will not be obligated in any way for its repayment. She stated that the Authority expects to issue up to \$2 million in notes in this phase of the Program in 2016. She characterized the Program as serving an important public purpose, namely, the provision of funds for new projects and for refinancing of existing indebtedness at extremely low rates of interest to not-for-profit institutions, thereby allowing them to keep their costs of providing education and health care at lower levels than otherwise would be the case.

Ms. Payette concluded her testimony by stating that, based on her familiarity with the statute under which the Authority operates, on her experience as Director of Operations and

Finance of the Authority, and on the advice of counsel, including Bond Counsel, the Program is within the powers conferred by law upon the Authority.

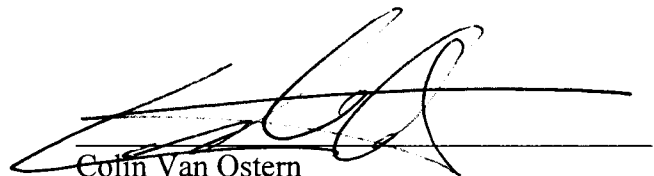
### **Findings**

Upon the testimony submitted at the hearing, and upon consideration, I find as follows:

- (1) The construction and acquisition of the project (herein referred to as the “Program”), as the same is described in such testimony, will enable and assist Proctor Academy (herein called the “Borrower”), a not-for-profit educational institution located in New Hampshire, to provide education facilities within the State of New Hampshire (herein called the “State”); and
- (2) The project financed by the Program or to which the refinancing of existing indebtedness relates will be leased to, or owned by, the Borrower, which is a financially responsible participating institution within the State; and
- (3) Adequate provision has been, or will be, made for the payment of the cost of the construction and acquisition of the project financed by the Program and any refinancing of indebtedness related thereto; and under no circumstances will the State be obligated, directly or indirectly, for the payment of the principal of, or interest on, any obligations issued to finance such construction and acquisition or to provide for the refinancing of existing indebtedness, or obligations to which such refinancing of existing indebtedness relates; and
- (4) Adequate provision has been, or will be, made in any lease or mortgage of the project financed by the Program to be undertaken or any property leased or mortgaged in connection with the issuance of notes or notes for the payment of all costs of operation, maintenance and upkeep of the project financed by the Program by the Borrower so that under no circumstances will the State be obligated, directly or indirectly, for the payment of such costs; and
- (5) Adequate provision has been made to obligate the Borrower to hold and use the project financed by the Program for educational purposes so long as the principal of and interest on notes or other obligations issued by the New Hampshire Health and Education Facilities Authority (herein called the “Authority”) to finance the cost of the Program, including any refunding notes issued to refund and refinance such notes, have not been fully paid and retired and all other conditions of the resolution or trust agreement authorizing and securing the same have not been satisfied and the lien of such resolution or trust agreement has not been released in accordance with the provisions thereof; and

- (6) The construction and acquisition of the project financed by the Program and the refinancing of any existing indebtedness will be within the authority conferred by Chapter 195-D of the New Hampshire Revised Statutes Annotated upon the Authority; and
- (7) The construction and acquisition of the projects financed by the Program serve needs presently not fulfilled in providing education and health care within the State and are of public use and benefit; and
- (8) The refinancing of existing indebtedness will assist the Borrowers in lowering the cost of providing education and health care facilities within the State and is being done in connection with the projects described herein.

Dated: February 24, 2016

A handwritten signature in black ink, appearing to read 'Colin Van Ostern', is written over a horizontal line. The signature is stylized and cursive.

Colin Van Ostern  
Executive Councilor  
Designee of the Governor  
and Council

**RATIFICATION AND GOVERNOR'S APPROVAL**

The Governor and Council hereby ratify, confirm, approve and adopt the findings set forth in the Report and Findings attached hereto made by Colin Van Ostern, the Designee of the Governor and Council to hold a hearing and make findings pursuant to Section 21 of the New Hampshire Health and Education Facilities Authority Act, Chapter 195-D of the New Hampshire Revised Statutes Annotated. The hearing was required and held as a result of an application submitted to the New Hampshire Health and Education Facilities Authority by the institutions identified in the Report and Findings, which is a not-for-profit educational institution located in New Hampshire. The hearing was held on February 24, 2016 following public notice, in Boardroom 303 of the University System of New Hampshire Administrative Offices, 5 Chenell Drive, Suite 301, Concord, New Hampshire at 9:00 a.m.

The Governor's signature constitutes her approval under Section 147(f) of the Internal Revenue Code of 1986, as amended, of the issuance of the notes described herein and in the hearing conducted by the Authority on March 8, 2016, as described in the Notices of Public Hearing published on February 22, 2016.

Dated: March 23, 2016

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Governor and Council:

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