



State of New Hampshire

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

3C *DM*

VICKI V. QUIRAM
Commissioner
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Assistant Commissioner
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December 1, 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 Joseph D. Kenney with regard to a certain project in participation with Proctor Academy in Andover, New Hampshire.

EXPLANATION

This item is submitted pursuant to a request by the New Hampshire Health and Education Facilities Authority. Councilor Kenney has requested that this be placed on the agenda as a regular item for the Wednesday, December 21, 2016 meeting for ratification by the Governor and Council.

Sincerely,

A handwritten signature in cursive script that reads "Vicki V. Quiram".

Vicki V. Quiram
Commissioner

VVQ/dph

Attachment

**REPORT
AND
FINDINGS
OF**

JOSEPH D. KENNEY, 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 certain project in participation with **PROCTOR ACADEMY** of Andover, New Hampshire, 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, a not-for-profit, voluntary corporation formed under New Hampshire law and located in Andover, New Hampshire (hereinafter referred to as “Proctor” or the “Academy”), which is a participating educational institution under RSA 195-D:3. Such application seeks the participation of the Authority, under the Act, in the refinancing of certain of the Academy’s existing indebtedness and the financing of certain capital expenditures (hereinafter referred to as the “Project”).

Pursuant to RSA 195-D:21, 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 published in the Union Leader on November 22, 2016, the hearing was held commencing at 10:00 a.m. on November 29, 2016 in the office of the Chief Financial & Operating Officer on the

first floor in the Newell Building located on the campus of Proctor Academy, 190 Main Street, Andover, New Hampshire.

All witnesses were duly sworn. A summary of testimony presented at the hearing follows:

Summary of Testimony

John Ferris, Chief Financial & Operating Officer, was the first witness. He stated that Proctor Academy is a coeducational, independent private day and boarding school providing a college preparatory curriculum for students in grades 9-12. Mr. Ferris explained that Proctor Academy has an enrollment of 372 students for the 2016-17 school year.

Mr. Ferris testified that the Academy intends to refinance certain of its existing indebtedness, being the bonds issued by the Authority on the Academy's behalf in 2010 (the "Series 2010 Bonds") and the 2016 Capital Anticipation Note also issued by the Authority (the "Capital Note"). He testified that the proceeds of this prior indebtedness were used for a variety of capital projects and improvements as well as the refinancing of certain then-existing indebtedness. The outstanding principal amount of the Series 2010 Bonds is approximately \$9.57 million and the outstanding principal amount of the Capital Note is \$2 million.

The balance of the proceeds of the proposed Bond Issue (the "Series 2017 Bonds") will be used to finance the design and construction of an approximately 18,000 square foot new dining facility, the design and construction of a new 11-student dormitory with attached three bedroom faculty apartment, the design and renovation of the main school building bringing it up to current buildings codes and install new HVAC systems, and to finance other miscellaneous capital expenditures. Mr. Ferris explained that certain bond proceeds will be used to pay the costs of issuing the Series 2017 Bonds and incidental costs related to the 2017 Bonds.

Mr. Ferris stated that the principal amount of the Bonds to be issued is not expected to exceed \$25 million. He explained that Proctor expects to sell the bonds in a private placement to Lake Sunapee Bank.

Mr. Ferris confirmed that, under the Loan Agreement with the Authority and the purchaser of the Series 2017 Bonds, the Academy will be required to continue to carry blanket fire and extended coverage as well as general liability insurance.

Mr. Ferris testified that, in his view, the Project would be of public use and benefit and would permit Proctor to continue to render an appropriate level of service to its current and future students. Based upon his position at the Academy, he stated his opinion that Proctor would be able to meet its financial obligations under the proposed bond issue and that the Academy is currently operating in a financially responsible manner. He concluded his testimony by explaining that the refinancing of existing indebtedness would assist the Academy in lowering the cost of providing education facilities in New Hampshire and would be done in connection with the Project.

David C. Bliss was the final witness. He stated that he is the Executive Director and Secretary of the New Hampshire Health and Education Facilities Authority, charged with the administration of the Authority's day-to-day affairs. In his capacity as Executive Director he has become acquainted with the Project and the details of its financing, having worked closely with the Academy's officers in developing the financial arrangements to be reflected in the bonds proposed to be issued. He stated that the Authority has voted to issue its bonds for the Project, subject to compliance being had with all laws bearing upon such issue and the advice of counsel, including Bond Counsel. He testified that the Authority adopted a resolution on November 17, 2016 approving issuance of bonds for Proctor.

Mr. Bliss testified that certain documents are being prepared for execution in connection with the Project, including a Loan Agreement intended for execution among the Academy, the Authority and the purchaser of the Series 2017 Bonds that will purchase the Series 2017 Bonds. He stated that there is a provision in the Loan Agreement under which the Academy will be obligated to hold and use the Project for educational purposes so long as the Series 2017 Bonds are outstanding. He testified to the language in the Loan Agreement which requires that each Series 2017 Bonds issued by the Authority for Proctor Academy 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 bond, 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 bond.

Mr. Bliss testified that the bond documents will make adequate provision for the payment of principal and interest on the bonds, as well as the costs of the Project, so that the State will not be obligated in any way for their repayment.

Mr. Bliss concluded his testimony by stating that, based on his familiarity with the statute under which the Authority operates, on his experience as Executive Director of the Authority, and on the advice of counsel, including Bond Counsel, the Project is within the powers conferred by law upon the Authority.

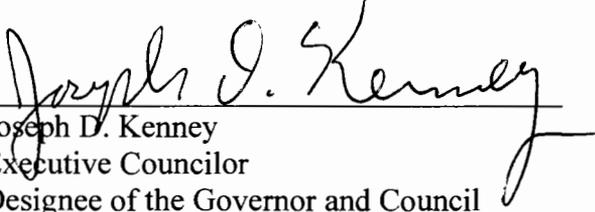
Findings

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

- (1) The construction and acquisition of the Project, and the refinancing of existing indebtedness, as the same is described in such testimony, will enable and assist Proctor Academy (herein called the "Academy"), a not-for-profit educational institution located in Andover, New Hampshire, to provide educational facilities within the State of New Hampshire (herein called the "State"); and

- (2) The Project will be leased to, or owned by, the Academy, 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 and any refinancing of existing indebtedness; 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 or financing of the Project to be undertaken or any property leased or mortgaged or financed in connection with the issuance of bonds or notes for the payment of all costs of operation, maintenance and upkeep of the Project by the Academy 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 Academy to hold and use the Project for educational purposes so long as the principal of and interest on bonds or other obligations issued by the New Hampshire Health and Education Facilities Authority (herein called the "Authority") to finance the cost of the Project, including any refunding bonds issued to refund and refinance such bonds, 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 or any refinancing of existing indebtedness will be within the authority conferred by Chapter 195-D of the New Hampshire Revised Statutes Annotated upon the Authority;
- (7) The construction and acquisition of the Project serves a need presently not fulfilled in providing education within the State and is of public use and benefit; and
- (8) The refinancing of existing indebtedness will assist the Academy in lowering the cost of providing education facilities within the State and will be in connection with a project being provided by the Academy.

Dated: November 29, 2016



Joseph D. Kenney
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 Joseph D. Kenney, 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 Proctor Academy, a not-for-profit participating educational institution which is located in Andover, New Hampshire. The hearing was held on November 29, 2016, following public notice, in the office of the Chief Financial & Operating Officer on the first floor in the Newell Building located on the campus of Proctor Academy, 190 Main Street, Andover, New Hampshire at 10:00 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 bonds described herein, and in the hearing held by the Authority on December 15, 2016, as described in the Notices of Public Hearing published on November 22, 2016 and December 1, 2016.

Dated: December 21, 2016

Governor and Council:

