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From: Jim Barlow [mailto:jbarlow@vlct.org]
Sent: Tuesday, January 15, 2013 3:58 PM
To: hinesburgclerk@gmavt.net; jcolangelo@hinesburg.org
Cc: Abigail Friedman
Subject: RE: Petitions for Town Meeting

Hi Joe and Missy,

Abby forwarded this over to me. I am going to rearrange your questions to answer them in somewhat-logical order.

"I think another thing you should ask for advice on is whether or not the SB is obligated to include this in the warning even if someone petitions for it."

This is an interesting question that we haven't given any advice on before. Conventional wisdom is that the voters can petition for a PACE article at a special or annual town meeting. See this statement on the PACE website: "Warning items are typically added to the Ballot by a vote of the Selectboard or City Council or as a result of a petition asking for the item to be included, which is signed by 5% of the voters and which must be received by the Selectboard or City Council at least 40 days prior to a Town election - this year, that was January 26, 2012."

The statute provides:

> **24 V.S.A. § 3261. Property-assessed clean energy districts; approval of voters**
> (a)(1) In this subchapter, "district" means a property-assessed clean energy district.
>
> > (2) The legislative body of a town, city, or incorporated village may submit to the voters of the municipality the question of whether to designate the municipality as a property-assessed clean energy district. In a district, only those property owners who have entered into written agreements with the municipality under section 3262 of this title would be subject to a special assessment, as set forth in section 3255 of this title.
>
> (b) Upon a vote of approval by a majority of the qualified voters of the municipality voting at an annual or special meeting duly warned for that purpose, the municipality may incur indebtedness for or otherwise finance projects relating to renewable energy, as defined in 30 V.S.A. § 8002(17), or to eligible projects relating to energy efficiency as defined by section 3267 of this title, undertaken by owners of dwellings, as defined in Section 103(v) of the federal Truth in Lending Act, within the boundaries of the town, city, or incorporated village.

Arguably, this language: "The legislative body of a town...**may** submit to the voters of the municipality the question of whether to designate the municipality as a property-assessed clean energy district," gives the selectboard the authority to refuse to warn a voter-petitioned PACE article. This would be unusual, because typically selectboards are required to warn petitioned articles which is requested by a petition signed by 5% of the voters of the municipality under 17 V.S.A. 2642(a), if the petition is for a matter that is not "frivolous, useless or unlawful" and "within the province of the town meeting to grant or refuse through its vote." *Royalton Taxpayers v. Wassmandsdorf*, 260 A.2d. 203 (1969). So, depending on what the selectboard wanted to do, there might be some "wiggle room" under 24 V.S.A 3261(a)(2) for the selectboard to not warn a petitioned PACE article. I would advise, however, that if the selectboard did not warn a petitioned PACE article on this basis, they better be ready to face some criticism, at least from the petitioners and perhaps other. It would be an unusual step.

"Regarding the PACE program, if a petitioner wants to place an Article on the Town Meeting Warning asking for voter approval to implement PACE would they need 5 or 10% of required signatures – is PACE considered a bond article?"

Generally, a petitioned article requires the signatures of at least 5% of the voters. It must be filed with the municipal clerk at least 40 days before the day of the meeting. 17 V.S.A. 2642(a).

"Is there a choice between floor vote and Australian ballot?"

Whether Hinesburg votes on this article from the floor or by Australian ballot would depend on whether the town has previously voted to use Australian ballot on public questions under 17 V.S.A. 2680(d). The selectboard would not get to choose.

"And can it be implemented at a later date by the SB without a town vote on it."

No. Implementation of the program requires a town vote under 24 V.S.A 3261.

I hope that this helps. Let me know if you have any additional questions.

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From: Abigail Friedman
Sent: Tuesday, January 15, 2013 1:46 PM
To: Jim Barlow
Subject: FW: Petitions for Town Meeting

Here's Joe's follow up.

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