

TITLE XII

PUBLIC SAFETY AND WELFARE

CHAPTER 162-A

BUSINESS FINANCE AUTHORITY

Section 162-A:1

162-A:1 Declaration of Need and Purpose. – It is declared that there is a statewide need for the preservation and development of business and industry for the betterment of the economy of the state and its inhabitants. It is the purpose of this chapter to provide for the preservation, establishment, and redevelopment of business and industry, together with adequate transportation, water, sewage and other necessary facilities, so as to provide and encourage orderly development, create or preserve employment opportunities, protect the physical environment, preserve or increase the social welfare or economic prosperity of the state or its political subdivisions, and promote the general welfare of the state's citizens. It is further declared that the business finance authority, created in this chapter shall be regarded as performing an essential governmental function in carrying out the provisions of this chapter.

Source. 1992, 262:3, eff. May 15, 1992.

Section 162-A:2

162-A:2 Definitions. – In this chapter:

I. "Authority" means the business finance authority, formerly known as the industrial development authority and the industrial park authority.

II. "Board" means the board of directors of the authority.

III. "Bond" means any bond, note or other evidence of indebtedness issued by the authority under this chapter.

IV. "Borrower" means any business that receives a loan, a loan guarantee, or other assistance pursuant to this chapter.

V. "Business" means the carrying on of any business activity, whether as a corporation, partnership, limited partnership, sole proprietorship or otherwise, including all activities that are industrial, commercial, or recreational.

VI. "CAP" means the capital access program established by RSA 162-A:12.

VII. "CAP fund" means a fund established by the authority pursuant to RSA 162-A:12, which fund shall consist of contributions from the authority, the participating state bank or state credit union, and borrowers whose loans are to be secured by the fund.

VIII. "CAP loan" means a loan that is made to a business by a participating state bank or state credit union and is entitled to be secured by a CAP fund.

IX. "CAP participation agreement" means an agreement between the authority and a participating state bank or state credit union setting out the terms and conditions under which the authority will make contributions to a CAP fund established for the benefit of that participating state bank or state credit union and specifying the criteria for a loan to qualify as a CAP loan.

X. "Financial institution" means any bank, trust company, or other organization that is in the business

of making loans to businesses, provided that such bank, trust company or other organization is duly organized under the laws of the United States or any state, and provided further that with respect to any organization that is not a bank or trust company, it is qualified to do business in New Hampshire.

XI. "Loan" means any arrangement involving an advance of money to a borrower in exchange for the borrower's promise to repay such money, with or without interest, including a sale and leaseback, a financing lease or a conditional sale.

XII. "Local development organization" means any local or regional development agency, authority, corporation, association, foundation or other entity, regardless of the name or manner of organization, provided it shall have as a principal function the promotion, encouragement, or development of business. The term "local development organization" shall include a town, city or county if such town, city or county has published written procedures for participating in economic development activities through the loaning of funds or the enhancement of credit.

XIII. "Participating state bank or state credit union" means any state bank or state credit union participating in the capital access program established by RSA 162-A:12.

XIV. "Project" means all property, rights, easements, licenses, patents, rights of way, and franchises deemed necessary or convenient for the carrying out of a business activity, and shall embrace all means of accomplishing the purposes of this chapter.

XV. "Project costs" means any costs or expenses reasonably incidental to a project and may, without limitation, include the costs of:

(a) Issuing bonds or notes to finance a project.

(b) Acquiring land, buildings, structures and facilities, whether by lease, purchase, construction, or otherwise.

(c) Acquiring rights in or over land, air, or water.

(d) Improving land and improving buildings, structures and facilities by remodeling, reconstruction, replacement, or enlargement.

(e) Acquiring and installing machinery and equipment.

(f) Obtaining professional or advisory services.

(g) Interest prior to and during construction and until one year after the completion of a project.

(h) Creating or making contributions to reserves for loans, loan guarantees and projects.

XVI. "State bank" means any bank or trust company organized under the laws of the United States, any state, or any foreign country that is authorized by law to make loans and accept deposits in New Hampshire.

XVII. "State credit union" means any credit union organized under the laws of the United States, any state, or any foreign country that is authorized by law to make loans and accept deposits in New Hampshire.

Source. 1992, 262:3. 1993, 335:13. 1996, 189:5-7, eff. Aug. 2, 1996.

Section 162-A:3

162-A:3 Authority Created. – There is hereby created the business finance authority, formerly operating and known as the industrial development authority, which shall be a body corporate and politic having a distinct legal existence separate from the state and not constituting a department of state government having the powers and jurisdiction enumerated in this chapter and such other and additional powers as shall be conferred upon it by the legislature. The authority is hereby deemed to be a public instrumentality and the exercise by the authority of the powers conferred upon it by the legislature shall be deemed and held to be the performance of public and essential governmental functions of the state.

Source. 1992, 262:3. 1993, 335:2. 1997, 329:1, eff. Oct. 1, 1997.

Section 162-A:4

162-A:4 Management. –

I. The management of the authority shall be vested in a board of 14 directors, who shall serve without compensation. The governor, with the consent of the council, shall appoint 9 members of the board, who shall include an executive director of a regional planning commission and one elected or appointed local official. The governor shall designate one of the board members as chairperson. Each board member appointed by the governor shall hold office for 3 years, or until a successor has been appointed. The state treasurer shall serve as a voting ex officio member of the board. Two members of the house of representatives, who shall be appointed by the speaker of the house of representatives, and 2 members of the senate, who shall be appointed by the president of the senate, shall serve as nonvoting members of the board. A director serving as a member of the house of representatives or as a member of the senate shall serve for a term ending when the general court dissolves.

II. A director, officer, or employee of the authority shall not use his or her office for personal gain or act in a manner contrary to the public interest. A director shall abstain from voting on matters in which the director has a financial interest, whether personally or through a spouse or dependent. If in doubt, the director may submit a written request for advice to the chairperson, who shall make a ruling as to whether the director may vote on a matter.

Source. 1992, 262:3. 1997, 329:2, eff. Oct. 1, 1997.

Section 162-A:5

162-A:5 Vacancy, Removal, or Suspension. –

I. If a vacancy shall occur by death, resignation, or otherwise of a director appointed by the governor, then the governor, with the advice and consent of the council, shall fill the same for the unexpired term. The governor and council may at any time remove a director appointed by the governor for inefficiency, neglect of duty, or malfeasance in office, but no such director shall be removed without a hearing, after notice in writing of the charges against the director. A director who is appointed to the board as a member of the house of representatives shall serve at the pleasure of the speaker of the house of representatives. A director who is appointed to the board as a member of the senate shall serve at the pleasure of the president of the senate.

II. If a director is appointed to the board as an executive director of a regional planning commission or as an elected or appointed local official and the director ceases to hold such office, the director shall continue as a director for the remainder of the unexpired term and shall be treated for purposes of RSA 162-A:4 as if the director continued to hold such office. If a director is appointed to the board as a member of the house of representatives or as a member of the senate and the director ceases to be a member of the house of representatives or the senate, such director shall also cease to be a director.

Source. 1992, 262:3. 1997, 329:3, eff. Oct. 1, 1997.

Section 162-A:5-a

162-A:5-a Administrative Officers; Compensation. –

I. The board shall appoint an executive director, a senior credit officer, a chief financial officer, and other personnel determined by the board to be necessary to carry out the purposes of this chapter. The

executive director, the senior credit officer, and the chief financial officer shall serve at the pleasure of the board and shall be qualified by reason of professional competence, education, and experience.

II. [Repealed.]

Source. 1993, 335:3, 358:9. 2001, 158:109, III, eff. Dec. 28, 2001.

Section 162-A:5-b

162-A:5-b Access to Capital Funding for Community Health Centers. – The board shall develop a mechanism to open access to capital for New Hampshire community health centers. The mechanism may include prioritization within pools of funding, loans, state loan guarantees, and any other mechanisms to increase capital funding of the expansion for community health centers. For the purposes of this section, "community health centers" are nonprofit primary care providers who provide community-based primary care to the state's uninsured and Medicaid populations regardless of the patient's ability to pay.

Source. 2008, 156:2, eff. Aug. 5, 2008.

Section 162-A:6

162-A:6 Incorporation; Powers. – The authority shall be a corporation in the state of New Hampshire and shall have powers to:

- I. Sue and be sued.
- II. Have a seal and alter the same at pleasure.
- III. Adopt and amend bylaws.
- IV. Adopt rules, under RSA 541-A, relative to:
 - (a) A description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.
 - (b) Procedures of the authority in carrying out its programs under this chapter or of the authority in issuing bonds pursuant to RSA 162-I.
 - (c) Procedures for the establishment of fees and charges.
- V. Develop, construct, and reconstruct business facilities.
- VI. Acquire, hold, lease, and dispose of real and personal property for its purposes.
- VII. Acquire in the name of the authority by gift, purchase, lease or otherwise, real property and rights or easements therein, deemed by it necessary or desirable for its purposes.
- VIII. Acquire, in the name of the authority, security by way of mortgage deed or otherwise any property, title to which may be in any corporation, partnership, limited partnership, individual or group of individuals, or other entity other than the authority and upon which projects may be developed or constructed as provided in this chapter. Such security may be acquired by the authority solely in its own name, with community development organizations, with other governmental entities, or with a non-governmental entity, whether operated for profit or as a charity. If the security is acquired with any other entity, then the authority shall act in conformance to RSA 387.
- IX. Sell or lease any property it may own.
- X. Make contracts with the United States or any agency thereof, the state of New Hampshire or any agency thereof, towns or cities, public corporations or bodies, private corporations, individuals or other entities.
- XI. Accept grants that will assist in the carrying out of its purposes under this chapter and to do any and all things necessary or convenient in order to avail itself of such aid.
- XII. Employ or retain as independent contractors such assistants, agents, consultants, accountants, or

attorneys as it shall deem necessary or desirable for its purposes, notwithstanding any other provision of law.

XIII. Borrow money, make and issue negotiable notes, bonds and other evidences of indebtedness or obligations of the authority and to secure the payment of such obligations or any part thereof by pledge of all or any part of, the revenue or assets of the authority.

XIV. Develop or assist in the development of real property owned by any local development corporation or foundation which has as its primary purpose the encouragement and development of business or industry.

XV. Develop performance indicators to measure the effectiveness of authority programs.

XVI. Make or acquire loans or advances, with or without interest, and whether or not secured by a mortgage, to businesses operating within the state.

XVII. Invest or deposit for its own account moneys it may receive or hold under this chapter or RSA 162-I. Such investment may include the guaranteed portion of loans guaranteed by the state under this chapter or RSA 162-I.

XVIII. Establish and contribute to CAP funds.

XIX. Maintain offices at such place within the state as it may designate.

XX. Renegotiate, refinance or foreclose, or contract for the foreclosure of, any mortgage or loan in default; waive any default or consent to the modification of the terms of any mortgage or loan; commence any action to protect or enforce any right conferred upon it by any law, mortgage, loan, contract or other agreement, and bid for and purchase property at any foreclosure or at any other sale, or acquire or take possession of any such property; temporarily operate or manage, lease, dispose of, or otherwise deal with property, in such manner as may be necessary or desirable to protect the interests of the state, the authority and the holders of the authority's bonds; all subject to any agreements with the state or with bondholders.

XXI. Institute any action or proceeding against the maker, payor or other party, hereafter referred to as the obligor, who is liable for the payment of any obligation, mortgage or loan held or made by the authority under the provisions of this chapter in any court of competent jurisdiction in order to enforce the provisions of this chapter, or to foreclose mortgages or loans, or to protect the public interest.

XXII. Procure insurance against any loss in connection with its property and other assets, in such amounts and from such insurer as it deems advisable.

XXIII. Take such other action as may be necessary or convenient to carry out its purposes and exercise its powers under this chapter.

XXIV. Acquire, invest in, pledge, or hold debt securities issued with respect to any transaction pursuant to this chapter. Nothing in this paragraph shall be interpreted to prohibit the authority from acquiring or holding equity securities in connection with arrangements to secure repayment of obligations with respect to any transaction pursuant to this chapter.

XXV. Enter into contracts to place the investments, loans, or bonds of the authority on such interest rate or cash flow basis as the authority may determine desirable, including without limitation, contracts providing for interest rate exchanges, caps, floors, collars, options, puts, calls and other hedging transactions.

XXVI. Enter into contracts or agreements with lenders, borrowers, or other parties which may benefit from actions of the authority taken pursuant to this chapter, which agreements may provide for financial returns to the authority based on, or contingent with respect to, economic performance of such lenders, borrowers, or other parties.

Source. 1992, 262:3. 1993, 335:4. 1995, 128:1, 2, eff. May 19, 1995.

Section 162-A:7

162-A:7 Aid to Local or Regional Development Organizations. –

I. The authority may expend or loan money upon such terms and conditions as prescribed by the authority to acquire, develop, redevelop, construct, renovate, or expand real or personal property for business use. No expenditure or loan shall be made by the authority under this section unless it is with the approval of, or in cooperation with, a local development organization.

II. Prior to the expenditure or loan of any money under this section, the authority shall enter into one or more agreements with such organization to provide for the conditions on which the expenditures or loans will be made, the terms of repayment of such expenditure or loan, the time and manner of such repayment, conditions under which the property is to be used by or leased to one or more businesses, the form and amount of security if any, to be pledged to the authority for such repayment, and such other provisions as the authority may determine are necessary or desirable. Repayment of any expenditure or loan made by the authority may be with or without interest and may take the form of cash, real or personal property, or services.

III. Any property acquired, developed, redeveloped, constructed, renovated, or expanded under this section may be leased by the authority or the local development organization, as appropriate, for business use, and under such terms and conditions as they shall deem appropriate. Any such lease may include options of the lessee to purchase the property, provided that the purchase price upon the exercise of any such option shall not be less than the amount necessary to reimburse the authority, with interest if applicable, for any unpaid balance of expenditures made by the authority for such property. Any lease shall obligate the lessee to pay all costs and expenses of upkeep, maintenance and operation of the property during the lease term.

IV. The authority shall not expend or loan any money or make a binding commitment to spend any money for a particular project under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1993, 335:5, eff. June 29, 1993.

Section 162-A:7-a

162-A:7-a Guarantee of Loans to Local Development Organizations. –

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans to local development organizations which provide new private capital for business loan funds and meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 80 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee, but the total outstanding amount of principal guaranteed by the state under this section shall not exceed, in the aggregate at any time, \$3,000,000, nor shall the guarantee cause the contingent credit limit of RSA 162-A:22 to be exceeded. The authority shall establish appropriate guidelines to insure that the guarantee is used to capitalize loan funds that serve the most economically distressed areas of the state.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to

honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. The guarantee agreement shall specifically require that the proceeds of a guaranteed loan shall be used by the local development organization only to make loans to businesses within a particular locale or region of the state. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. The amount payable under a guarantee awarded under this program may be based upon the percentage of the maximum principal amount available under the loan, and as may be determined by the authority, need not be reduced in proportion to any reduction in the principal balance of the loan.

IV. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source. 2000, 10:1, eff. July 1, 2000.

Section 162-A:8

162-A:8 Guarantee of Loans to Small Businesses. –

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and related reasonable collection expenses and costs of any loan made by a private financial institution to any business that is or will be operating in the state, provided either that the loan is also guaranteed in part under a program administered by the United States Small Business Administration or that the loan is made in connection with another loan which is guaranteed in part under a program administered by the United States Small Business Administration. Such state guarantee may be up to 90 percent of the portion of the loan not guaranteed through the United States Small Business Administration, or in the case of a loan made in connection with another loan which is guaranteed in part under a program administered by the United States Small Business Administration, such state guarantee may be made up to 90 percent of the principal of such loan. The authority may execute and deliver any agreement or document required by the United States Small Business Administration to implement the guarantee program authorized in this section. The full faith and credit of the state may be pledged for any such guarantee. In addition, the guarantee shall also include interest and related reasonable collection expenses and costs and shall not cause the contingent credit limit under RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lending financial institution, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lending financial institution to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice

chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. The sum of the guarantees issued to any one borrower by both the authority and the United States Small Business Administration shall not exceed \$1,500,000 of principal. The total principal amount of any loan or loans guaranteed under this section made to one borrower to finance working capital shall not exceed \$1,500,000. In addition, the guarantee shall also include interest and related reasonable collection costs and expenses.

IV. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1993, 335:6, 7. 1995, 128:3. 1997, 329:4, eff. Oct. 1, 1997.

Section 162-A:9

162-A:9 Temporary Loans to Business. –

I. The authority may lend money to businesses for any project. Any such loan shall be on such terms and conditions as prescribed by the authority and shall be evidenced by a promissory note given by the business to the authority. In addition, prior to making any loan, the authority and the business shall enter into a loan agreement specifying the terms and conditions of the loan. Any loan agreement shall specify the terms of repayment of the loan, provide for the payment of an appropriate interest rate, and obligate the business to pay all the costs and expenses of upkeep, maintenance, and operation of the project being financed. A loan agreement may also provide such terms and conditions as the authority shall deem necessary or desirable, including, without limitation, provisions requiring that collateral be pledged to secure the loan, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, controls on the requisition of loan proceeds, appropriate events of default, provisions for payment to the authority of origination fees, late charges and additional interest on overdue payments of principal, interest or other charges, appropriate financial covenants, and provisions for the establishment of reserves for the project or the loan.

II. Any loan made under this section shall meet the following minimum requirements:

(a) The total principal amount of any loan or loans made to one borrower under this section shall not exceed \$2,000,000.

(b) The final maturity date of any loan or loans, including renewals, shall not be later than the later of 3 years from the date the loan is made or one year after the project was placed in service.

III. The authority shall not make any loan or enter into any loan agreement under this section unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1995, 128:4, eff. May 19, 1995.

Section 162-A:9-a

162-A:9-a Energy Conservation Loan Program. –

I. The authority shall establish an energy conservation loan program to encourage small businesses and agricultural entities to improve energy efficiency, particularly through the adoption of conservation and cogeneration initiatives. Pursuant to the terms and conditions for loan guarantees under RSA 162-A:8 and

for temporary loans under RSA 162-A:9, the authority shall provide loan guarantees and direct loans to small businesses and agricultural entities for energy efficiency improvements.

II. The authority shall not make any loan or enter into any loan agreement under this section unless, after a hearing, the governor and council have made the findings specified in RSA 162-A:18.

Source. 2006, 159:1, eff. July 21, 2006.

Section 162-A:10

162-A:10 Secondary Market for Loans Made by Local Development Organizations. –

I. The authority may acquire for its own account, or for resale, loans made by local development organizations to businesses operating within the state. The authority shall acquire such loans only if the local development organization agrees to use the proceeds of the sale of such loans for the promotion, encouragement, or development of business within the state, or a region or community of the state.

II. Prior to the acquisition of any loans from a local development organization, the authority shall enter into a loan purchase agreement with such organization. Such loan purchase agreement shall specify terms and conditions under which the authority will purchase loans, the purchase price for such loans, and the terms and conditions for use of the purchase price by the local development organization. The loan purchase agreement may also contain such provisions as the authority may deem necessary or desirable, including, without limitation, representations, warranties, and covenants of the local development authority regarding the loans, conditions under which the local development authority may be required to repurchase the loans, provisions for the payment of guarantee fees to the authority in the event the loans are guaranteed under RSA 162-A:10, III, provisions for payment of the authority's costs and expenses, and provisions for the local development authority to continue servicing the loans on behalf of the authority or any subsequent purchaser.

III. In order to facilitate the resale of loans acquired under this section the governor and council, at the request of the authority, may award a state guarantee of up to 90 percent of the principal of, interest on, and reasonable collection expenses related to such loans. The full faith and credit of the state may be pledged for such guarantee. In addition, the total amount guaranteed shall also include interest and related reasonable collection expenses and costs and shall not cause the contingent credit limit under RSA 162-A:22 to be exceeded. The state's guarantee of loans under this section shall be evidenced by a guarantee agreement between the state and the purchaser of the loans. Such guarantee agreement shall be assignable to any subsequent purchaser or purchasers of the loans and shall contain such provisions as the authority and the governor and council may deem appropriate. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

IV. The authority shall not purchase any loans under RSA 162-A:10, I or enter into a loan purchase agreement under RSA 162-A:10, II unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

V. The governor and council shall not award any state guarantee under RSA 162-A:10, III unless after a hearing they have made findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1993, 335:8. 1995, 128:5. 1997, 329:5, eff. Oct. 1, 1997.

Section 162-A:11

162-A:11 Guarantee Fund Established. – In order to provide additional security to the state for any loan guarantees made under RSA 162-A:8, RSA 162-A:10, or RSA 162-A:13, there is hereby established a loan guarantee reserve fund, which shall be held by the authority apart from all of its other funds, and which shall be deemed irrevocably pledged to secure all loans guaranteed under RSA 162-A:8, RSA 162-A:10, III, or RSA 162-A:13. Whenever a loan guarantee is awarded under RSA 162-A:8, RSA 162-A:10, III, or RSA 162-A:13 the authority, the borrower, the lending financial institution, the local development organization, the purchaser of the loans, or any appropriate combination of them shall deposit in such fund an amount equal to not less than 10 percent of the guaranteed portion of the principal of the loan or loans. If a state guarantee is called upon to be honored, the authority, upon direction of its treasurer or assistant treasurer, shall draw upon such fund for the purpose of honoring such guarantee, and only when amounts in the fund are exhausted shall the governor be called upon to draw a warrant pursuant to RSA 162-A:8, II, RSA 162-A:10, III, or RSA 162-A:13, II. Interest earned on amounts invested in the fund shall be accumulated therein or paid to the authority upon its direction. If earnings are paid to the authority, they may be used by the authority for any of its purposes. If at any time the amount in the fund exceeds 10 percent of the guaranteed portion of the principal of all loans guaranteed under this section, or such higher amount as may be determined by the authority, the authority may withdraw the excess. Any loan guaranteed under this chapter shall be a permitted investment in this fund. The authority may enter into such trust agreements, depository agreements, or other arrangements with one or more state banks in order to carry out the purposes of this section.

Source. 1992, 262:3. 1997, 329:6, eff. Oct. 1, 1997.

Section 162-A:12

162-A:12 Capital Access Program. –

I. The authority may contribute money to funds, to be known as "CAP funds," that shall be held for the benefit of participating state banks and state credit unions. Each such fund shall be held by the authority separate and apart from all other funds of the authority and shall be held exclusively to secure principal of and interest on CAP loans made by a participating state bank or state credit union.

II. The amount of the authority's contribution to a CAP fund shall not exceed 10 percent of the principal amount of the CAP loans to be secured by the CAP fund. As a condition of the authority making a contribution to a CAP fund, the authority may require the borrower or the participating state bank or state credit union to make a contribution to the CAP fund and may impose such other conditions or requirements as the authority may deem necessary or desirable. All moneys contributed to a CAP fund shall be held in the name of the authority. Investment earnings on the CAP fund shall be credited to the fund, and such earnings shall be periodically paid to the authority unless the CAP participation agreement otherwise provides.

III. Prior to establishing a CAP fund at a participating state bank or state credit union, the authority shall enter into a CAP participation agreement with the participating state bank or state credit union. The CAP participation agreement shall specify:

- (a) The maximum amount of the authority's contributions to the CAP fund.
- (b) The conditions under which the authority will make contributions to the CAP fund.
- (c) The conditions under which the participating state bank or state credit union may demand payment from a CAP fund to pay a defaulted CAP loan.
- (d) Minimum due diligence procedures for servicing CAP loans.
- (e) Conditions under which the participating state bank, or state credit union, or other borrower will

be required to contribute to the CAP fund.

(f) Provision for the payment of authority fees, costs, and expenses from earnings on the CAP fund or otherwise.

(g) Provisions for the termination of the CAP fund, in whole or in part, and disbursement of any excesses in the CAP fund.

(h) Criteria and procedures for qualifying a loan as a CAP loan.

(i) Requirements that the participating state bank or state credit union report to the authority not less often than annually regarding outstanding balances on CAP loans, delinquent CAP loans and such other information as the authority may deem appropriate.

(j) Permitted investments in the CAP fund.

(k) Other terms and conditions as the authority may deem necessary or desirable.

IV. (a) At a minimum, CAP loans shall meet the following requirements:

(1) The borrower is either a start-up business or did not have annual sales in its most recently completed fiscal year of greater than \$5,000,000.

(2) The total outstanding principal amount of CAP loans to the borrower does not exceed \$500,000.

(3) The proceeds of the CAP loan shall be used for business purposes.

(b) The authority may from time to time impose requirements on CAP loans in addition to those contained in subparagraph (a) or in a CAP participation agreement by written notice to participating state banks and state credit unions, but such additional requirements shall not apply to CAP loans already made, or to CAP loans for which written commitments exist, provided CAP loans from these written commitments are made within 3 months of the date of the written notice. Such notices shall not constitute rules within the meaning of RSA 541-A.

V. The authority shall not initially fund any CAP fund or enter into a CAP participation agreement or any material amendment to a CAP participation agreement, unless after a hearing the governor and council have made the findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1996, 189:8, eff. Aug. 2, 1996.

Section 162-A:13

162-A:13 Capital Asset Backed Guarantee Program. –

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 90 percent of the principal, interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the

extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following minimum requirements.

(a) The authority shall have received an appraisal of an independent party which shall state that the appraised fair market value equals or exceeds 125 percent of the total debt secured by the property.

(b) The authority shall have received a certification from the lender and the borrower which shall state that no more than 40 percent of the total principal amount of the loan shall be used to finance working capital.

(c) The final maturity date of the loan shall not be later than the later of 10 years from the date the loan was made or 10 years from the date the project was placed in service, provided that each loan may be renewed or refinanced for up to 2 additional 10-year periods.

(d) After the project has been placed in service, the principal balance of the loan shall be scheduled to be reduced annually by an amount equal to not less than the principal amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective, provided that in connection with any renewal of a loan such principal reduction shall not be required.

(e) Nine months before the maturity date of any loan the borrower shall be required to give written notice to the authority of whether or not it intends to seek a renewal of the loan.

IV. The amount of any guarantee awarded under this section shall be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source. 1992, 262:3. 1993, 335:9-11. 1995, 128:6, 7. 1997, 329:7. 2001, 1:1, eff. Feb. 9, 2001. 2006, 157:2, eff. May 22, 2006.

Section 162-A:13-a

162-A:13-a Working Capital Loan Guarantee Program. –

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. Such state guarantee shall not at any time exceed 75 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus interest and related reasonable collection expenses with respect to such loan. For purposes of this section, the term "loan" shall include, but not be limited to, revolving credit arrangements that provide for advances and repayment of principal based on the quality and amount of certain assets of a borrower, including rights to receive payments under contracts to provide services or products. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. Such guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions

for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The agreement establishing the loan shall provide for adequate monitoring of collateral by the lender in accord with reasonable commercial practices; provided, however, that for loans the maximum principal amount of which may not exceed \$500,000, the authority may provide alternative monitoring measures that reduce the costs of monitoring the loan.

(b) If the principal amount that may be borrowed under the loan may vary based on the quality and amount of specific assets of the borrower, then the repayment of the loan shall be secured by a first priority security interest in such specific assets.

(c) If the principal amount that may be borrowed under the loan may vary based on the quality and amount of specific assets of the borrower, then the agreement establishing the loan shall provide that the maximum amount of principal that may be advanced shall not exceed:

(1) Ninety percent of the borrower's accounts and accounts receivable which arise in the ordinary course of the borrower's business and which are not more than 90 days old from the due date of the invoice; and

(2) Sixty percent of the borrower's inventory valued at lower of cost or market value.

(d) The maximum principal amount available under the loan to any borrower shall not exceed \$2,000,000.

IV. The amount payable under a guarantee awarded under this program may be based upon the percentage of the maximum principal amount available under a loan, and as may be determined by the authority, need not be reduced in proportion to any reduction in the principal balance of the loan.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source. 1995, 128:8. 1997, 329:8, eff. Oct. 1, 1997.

Section 162-A:13-b

162-A:13-b Business Loan Enhancement Program. –

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall not at any time exceed the lesser of \$250,000 or 22.23 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus in either case interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement

entered into by the state, the lender, and the borrower. The guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. Subject to this section and the terms and conditions of such guarantee agreement, the guarantee agreement may provide that the state shall be liable to pay the first dollar of loss realized by the bank with respect to the guaranteed loan. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The total principal amount of the loan shall not exceed 90 percent of the appraised fair market value of the collateral securing repayment of the loan, as determined pursuant to an appraisal of the collateral prepared by an independent party in connection with such loan and provided to the authority prior to awarding a guarantee.

(b) The final maturity date of the loan shall not be later than the later of 10 years from the date the loan was made or 10 years from the date the project was placed in service.

(c) After the project has been placed in service, the principal balance of the loan shall be scheduled to be reduced annually by an amount equal to not less than the principal amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective, provided that in connection with any renewal of a loan such principal reduction shall not be required.

IV. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall be reduced by one dollar for every dollar of principal that is paid with respect to the loan that is subject to the guarantee.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

Source. 2006, 157:1, eff. May 22, 2006.

Section 162-A:13-c

162-A:13-c Intellectual Property Business Loan Development Program. –

I. Upon recommendation of the authority for the proper implementation of the declared purposes of this chapter, the governor and council may award a state guarantee of the principal of, interest on, and reasonable collection expenses related to, loans which meet the requirements set forth in this section. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall not at any time exceed the lesser of \$250,000 or 75 percent of the maximum principal amount that may be borrowed under the terms of the loan, plus in either case interest and related reasonable collection expenses with respect to such loan. The full faith and credit of the state shall be pledged for any such guarantee; provided that the guarantee shall not cause the contingent credit limit of

RSA 162-A:22 to be exceeded.

II. The state's guarantee of a loan under this section shall be evidenced by a guarantee agreement entered into by the state, the lender, and the borrower. The guarantee agreement shall contain such terms and conditions as the authority and the governor and council may impose, including, without limitation, restrictions on the use of loan proceeds, restrictions on the use and operation of any project financed or assisted by the loan, appropriate controls on the requisition of loan proceeds by the borrower, provisions for the state to demand acceleration of the payment of the loan in the event of a default by the borrower, provisions for payment to the authority of guarantee fees and reimbursement of costs and expenses, provisions for reimbursement of the state if the state is required to honor the guarantee, appropriate financial covenants, and provisions for the establishment of reserves. Subject to this section and the terms and conditions of such guarantee agreement, the guarantee agreement may provide that the state shall be liable to pay the first dollar of loss realized by the bank with respect to the guaranteed loan. In addition, as a condition of awarding any guarantee, the state shall be subrogated to all of the rights and security of the lender to the extent it honors the guarantee. Any guarantee agreement authorized in accordance with this section shall be executed on behalf of the state by the chairperson, vice chairperson, or executive director of the authority. The governor, with the advice and consent of the council, is authorized to draw a warrant for such sum as may be necessary out of money in the state treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section.

III. Any loan guaranteed under this section shall meet the following requirements:

(a) The loan shall be secured by a first priority security interest in "intellectual property assets," including:

(1) Patents, patent applications, patent disclosures and all related continuation, divisional, reissue, patent applications and registrations.

(2) Trademarks, service marks, trade drafts, trade names, corporate names, and logos.

(3) Copyrights and registrations and applications for registration of copyrights.

(4) Computer software, data and documentation.

(5) Trade secrets and confidential business information, know-how, manufacturing and product processes and techniques, research and development information, business and marketing plans and customer and supplier lists and information.

(6) Other proprietary rights relating to any of the foregoing.

(7) Copies and tangible embodiments of the foregoing.

(b) The total principal amount of the loan shall not exceed 75 percent of the appraised fair market value of the intellectual property assets securing repayment of the loan, as determined pursuant to an appraisal of the collateral prepared by a competent independent party approved by the authority in connection with such loan and provided to the authority prior to awarding a guarantee.

(c) The final maturity date of the loan shall not be later than 10 years from the date the loan was made.

(d) After the project has been placed in service, the principal balance of the loan shall be scheduled to be reduced annually by an amount equal to not less than the principal amount that would be paid under a 20-year amortization schedule requiring fixed annual payments, to be applied to accrued interest first with any excess to principal, and a fixed interest rate not less than the interest rate in effect on the date the loan becomes effective, provided that in connection with any renewal of a loan such principal reduction shall not be required.

IV. The maximum amount for which the state may be liable pursuant to a guarantee awarded in accordance with this section shall be reduced by one dollar for every dollar of principal that is paid with respect to the loan that is subject to the guarantee.

V. The governor and council shall not award or renew any state guarantee under this section unless after a hearing they have made the findings specified in RSA 162-A:18.

VI. The total amount of guarantees awarded under this section shall not exceed in the aggregate at any time \$1,000,000 plus interest.

VII. Whenever a guarantee is awarded under this section, the authority, the borrower, the lending institution or any appropriate combination of them shall deposit in the guarantee fund established under RSA 162-A:11 an amount equal to not less than 50 percent of the guaranteed portion of the principal of the loan.

Source. 2007, 317:1, eff. July 13, 2007.

Section 162-A:13-d

162-A:13-d Innovation Business Job Growth Program. –

I. The authority may establish and administer an innovation business job growth program to increase the supply of venture capital to the economy of the state. The program is intended to promote investment in qualified venture capital funds by guaranteeing or insuring portions of the principal of investments in such funds and through direct investment in qualified venture capital funds by the authority. Creation of the program is intended to improve access by innovative businesses in this state to venture capital funds, and to create or preserve employment opportunities for the state's citizens. The program shall be known as the "New Hampshire innovation business job growth program."

II. The authority is authorized to apply for and accept grants from the federal government and sources other than the state of New Hampshire that will assist in carrying out the purposes of this section. The authority shall establish a fund to be known as the New Hampshire innovation business job growth fund which shall be established exclusively for the purpose of receiving, holding, and investing all such moneys or grants consistent with the purposes of this section, including any investment income earned with respect to such moneys or grants. The authority shall maintain the fund and all moneys, grants, and investment income earned thereon separate and distinct from all other moneys of the authority.

III. Upon approval by the authority's board of directors, the authority may apply funds maintained in the New Hampshire innovation business job growth fund to provide guarantees of the principal of investments in qualified venture capital funds and to invest directly in qualified venture capital funds that by contract agree to invest such principal in New Hampshire within 60 months of the receipt of the guarantees. The authority's board of directors shall approve such application of funds after making all of the following findings:

(a) The proposed application or investment will serve a public use and provide a public benefit;

(b) The proposed application or investment is within the policy of, and the authority conferred by, this section;

(c) The proposed application or investment will preserve or increase the social welfare or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens; and

(d) The proposed application or investment will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

IV. Qualified venture capital funds are those funds that have by contract with the authority's board of directors agreed to invest, no later than 60 months after the execution of the guarantee or investment, the amount of the guaranteed or invested principal in businesses whose primary operations are located in New Hampshire and that, in opinion of the board:

(a) Will maintain a periodic presence in the state;

(b) Will build linkages to, and accept referrals from, some of the organizations promoting the state's innovation economy, including the authority, the Small Business Development Corporation, the university of New Hampshire Green Launching Pad, the department of resources and economic development, the

New Hampshire Innovation Commercialization Center, the university system of New Hampshire, and other venture capital investors within the state;

(c) Will actively invest in companies establishing their first payroll accounts in the state;

(d) Express a commitment to seek investments in businesses in this state that meet its investment criteria;

(e) Demonstrate the ability to successfully manage rapid portfolio company growth leading to excellent returns on invested capital; and

(f) Will insure that funds will be invested solely in companies operating in New Hampshire and that such funds will be used solely for New Hampshire operations.

V. The application or investment of funds pursuant to this section shall be evidenced by written agreement entered into by the authority, other parties, and qualified venture capital funds with respect to such application or investment.

VI. All gains and losses shall be maintained in the New Hampshire innovation business job growth fund, the balance of which shall be continually reinvested in the innovation business job growth program.

VII. The authority shall establish such policies and procedures as it shall determine necessary to carry out the purposes of this section.

Source. 2011, 261:1, eff. Sept. 11, 2011.

Section 162-A:14

162-A:14 Agreements Commercially Reasonable. – Any agreements entered into by the state or the authority under this chapter shall be deemed to be on commercially reasonable terms.

Source. 1992, 262:3, eff. May 15, 1992.

Section 162-A:15

162-A:15 Issuance of Bonds. –

I. The authority may issue bonds pursuant to this section which shall be obligations of the authority and not general obligations of the state, except as provided in RSA 162-A:17. Such bonds may be issued from time to time consistent with the purposes and provisions of this chapter to make expenditures in aid of local development organizations under RSA 162-A:7, to make temporary loans to businesses under RSA 162-A:9, to acquire loans under RSA 162-A:10, to fund the guarantee fund established under RSA 162-A:11, to make contributions to CAP funds under RSA 162-A:12, to pay or refund any bonds issued pursuant to this section or interest thereon, or to pay the costs and expenses of the authority. The principal of, and premium, if any, and interest on all bonds shall be payable solely by the authority in accordance with the provisions of this chapter. The bonds shall be issued by the authority in such amounts as the board shall determine, not exceeding in the aggregate at any time \$25,000,000. Bonds of each issue shall be dated, shall bear interest at such rate or rates, including rates variable from time to time as determined by such index, banker's loan rate or other method as may be determined by the authority, and shall mature at such time or times as may be determined by the authority, except that no bonds shall mature more than 30 years from their date of issue. Bonds may be made redeemable before maturity either at the option of the authority or at the option of the holder, or upon the occurrence of specified events, at such price or prices and under such terms and conditions as may be fixed by the authority prior to the issuance of the bonds. The authority shall determine the form and details of the bond. The bonds may be sold in such manner, either at public or private sale, for such price, at such rate or rates of interest, or at such discount in lieu of interest as the authority may determine.

II. Every bond shall be signed on behalf of the authority by 2 persons designated by the authority. One person shall be a member of the board who is also the chairperson of the board, or the vice chairperson of the board, or the treasurer of the authority, or an assistant treasurer of the authority. The other person shall be any member of the board or the executive director of the authority. The signatures may be manual or facsimile but at least one signature on every bond shall be manual, unless the bond bears a manual authentication or certification by a bank, trust company or other financial institution, in which case both signatures on behalf of the authority may be facsimile. Interest coupons, if any, shall bear the facsimile signature of one of the persons signing the bond on behalf of the authority. Bonds shall also bear the seal of the authority or a facsimile of the seal. Bonds executed as provided in this paragraph shall be valid notwithstanding that any or all of the persons whose signatures appear on the bond shall have ceased to hold office before delivery of and payment for the bond.

III. Any bonds issued under this chapter may be issued pursuant to and entitled to the benefits of a security document between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state, or by a security document directly between the authority and the purchasers of the bonds. Such security document shall be in such form and executed in such manner as may be determined by the board. Such security document may include the mortgage, pledge, or grant of a security interest in any property of the authority and may pledge or assign, in whole or in part, the revenues held or to be received by the authority, any contract or other rights to receive the revenues, whether then existing or thereafter coming into existence and whether then held or thereafter acquired by the authority, and any proceeds thereof. Such security documents may contain provisions for protecting and enforcing the rights, security, and remedies of the bondholders as may, in the discretion of the board, be reasonable and proper and not in violation of law. Such security documents may include provisions defining defaults and providing for remedies in the event of defaults, which may include the acceleration of maturities and the enforcement of any mortgage, pledge or security interest, and covenants setting forth the duties of, and limitations on, the authority in relation to the custody, safeguarding, investment, and application of moneys, the issue of additional or refunding bonds, the fixing, revision and collection of fees and other revenues, the use of bond proceeds, the establishment of reserves, the acquisition of any property or interest therein or undertaking of any project, any contracts relating thereto and subsequent amendments of such provisions and contracts. It shall be lawful for any bank or trust company to act as a depository or trustee of the proceeds of bonds, revenues, or other moneys under a security document and to furnish such indemnification or to pledge such securities and issue such letters or lines of credit or credit facilities as may be required by the authority acting under the paragraph. Any such security document may set forth the rights and remedies of bondholders and of the trustee and may restrict the individual right of action by bondholders.

IV. Any bonds issued under authority of this chapter may be issued pursuant to lines of credit or other banking arrangements under such terms and conditions not inconsistent with this chapter, and under such agreements with the purchasers or makers thereof, as the board may determine to be in the best interests of the authority. In addition to other security provided herein or otherwise by law, bonds issued by the authority under this section may be secured, in whole or in part, by insurance or by letters or lines of credit or other credit facilities issued to the authority by any bank, trust company or other financial institution, within or without the state, and the authority may make any pledge, mortgage, assignment or security interest in respect of its property and revenues as security for the reimbursement by the authority to the issuers of such letters or lines of credit, insurance or credit facilities, or any payments made thereunder.

V. Any mortgage, pledge or security interest made by the authority under this chapter shall be valid and binding and shall be deemed continuously perfected for the purposes of RSA 382-A and all other laws from the time when the mortgage, pledge, or security interest is made. The property or revenues so mortgaged, pledged, or subjected to a security interest then held or thereafter acquired or received by the

authority shall immediately be subject to the lien of such mortgage, pledge, or security interest without any physical delivery or segregation thereof or further act. The lien of such mortgage, pledge, or security interest shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether such parties have notice thereof. No such property or revenues may be used in a manner inconsistent with the terms governing such mortgage, pledge, or security interest. Any agreement by which a pledge or security interest in personal property is created under this chapter shall be filed or recorded in the records of the secretary of state. Any mortgage or other agreement by which a security interest in real property is created under this chapter shall be filed with the register of deeds for the county in which such property is located.

VI. Any owner of a bond issued under the provisions of this section and any trustee under a security document securing the same, except to the extent the rights given in this paragraph may be restricted by such security document, may bring suit upon the bonds and may, either at law or in equity, by suit, action, mandamus, or other proceeding for legal or equitable relief, protect and enforce any and all rights under the laws of the state granted hereunder or under such security document, and may enforce and compel performance of all duties required by this chapter or by such security document to be performed by the authority or by any director or officer of the authority.

VII. The authority may issue refunding bonds for the purpose of paying any bonds issued under the provisions of this section at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such times prior to the maturity or redemption of the bonds being refunded as the board may determine. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other expenses from the proceeds of such refunding bonds as may be required by a security document securing the bonds. The authorization and issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders thereof, and the rights, duties and, obligations of the authority in respect to the same shall be governed by the provisions of this chapter relating to the issue of bonds other than refunding bonds insofar as the same may be applicable.

VIII. Any debt service fund or debt service reserve fund established in connection with the issuance of bonds under this chapter shall be kept separate from other moneys of the authority. All proceeds of any bonds issued under this chapter, together with the income derived therefrom, shall be expended without further authorization or appropriation as provided for in the security document with respect to such bonds.

IX. Moneys in any fund or account created under the provisions of this section, subject to the terms and provisions of any security document applicable thereto, may be invested. Except as otherwise provided by any such security document, obligations so purchased as an investment of money in said fund or account shall be deemed at all times to be part of said fund or account, and the interest thereon and any profit arising from the sale thereof shall be credited to said fund or account, and any loss resulting on their sale shall be charged to said fund or account, respectively.

X. The state does hereby pledge to and agree with the holders of bonds issued under this chapter that the state shall not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders of such bonds or in any way impair the rights and remedies of such holders until such bonds, together with the interest on them, with the interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds.

XI. Bonds issued under this section and their transfer and income, including any profit made on their sale or transfer, shall at all times be exempt from all taxation by or within the state.

XII. Notwithstanding any of the provisions of this chapter or any recitals in any bonds issued under this

section, all such bonds shall be deemed to be investment securities under RSA 382-A.

Source. 1992, 262:3. 1997, 329:9, eff. Oct. 1, 1997.

Section 162-A:16

162-A:16 Eligible Investments. – Bonds issued under the provisions of this chapter are hereby made securities in which all public officers, agencies and authorities of the state and of its political subdivisions, insurance companies, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency, authority or political subdivision of the state for any purpose for which the deposit of bonds or obligations of the state or any political subdivision is now or may hereafter be authorized by law.

Source. 1992, 262:3, eff. May 15, 1992.

Section 162-A:17

162-A:17 State Bond Guarantee. –

I. In view of the general public benefits expected to be derived from the authority's activities under this chapter, and their contribution to the social welfare and economic prosperity of the state and its political subdivisions, the governor and council may award an unconditional state guarantee of the principal and interest thereon of bonds issued under this chapter. The full faith and credit of the state shall be pledged for any such guarantees of principal and interest, but the total outstanding amount of bonds guaranteed by the state under this section shall not exceed in the aggregate at any time \$25,000,000 plus interest. In addition, the state shall not award a guarantee under this section if it would cause the contingent credit limit under RSA 162-A:22 to be exceeded. The governor, with the advice and consent of the council, is authorized to draw a warrant for such a sum out of any money in the treasury not otherwise appropriated, for the purpose of honoring any guarantee awarded under this section. The state's guarantee shall be evidenced on each guaranteed bond by an endorsement signed by the state treasurer in substantially the following form:

The state of New Hampshire hereby unconditionally guarantees the payment of the whole of the principal and interest thereon of the within bond, and for the performance of such guarantee the full faith and credit of the state are pledged.

State Treasurer

II. No state guarantee shall be awarded under this section unless the guaranteed bonds are secured by, among other things, any and all fees to be received by the authority in connection with bonds issued under RSA 162-I in an original principal amount equal to or greater than \$1,500,000. In connection with the award of a state guarantee, the governor and council may impose such other terms and conditions as they may deem appropriate concerning the bonds, the use of any property or revenues of the authority, and reimbursement to the state if any state funds are used to honor the guarantee. Such terms and conditions may be contained in an agreement between the state and the authority, to be executed on behalf of the state by the governor and the state treasurer and on behalf of the authority by its chairperson, vice chairperson, or executive director.

III. Before awarding any state guarantee of bonds under this section the governor and council, after a

hearing, shall have made the following findings:

(a) The award of the state guarantee will contribute significantly to the success of the bond issue and the authority's programs under this chapter.

(b) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee shall be only incidental to the public purpose served thereby.

IV. The signature of the state treasurer on an endorsement of a state guarantee may be manual or facsimile.

Source. 1992, 262:3. 1997, 329:10, eff. Oct. 1, 1997.

Section 162-A:18

162-A:18 Programs for Public Purpose; Required Findings. –

I. The authority shall not take any action described in RSA 162-A:7, IV, 162-A:9, III, 162-A:10, IV, or 162-A:12, V, and the governor and council shall not award any guarantee under RSA 162-A:7-a, RSA 162-A:8, RSA 162-A:10, III, RSA 162-A:13, or RSA 162-A:13-a unless the governor and council have made the following findings:

(a) The proposed action will serve a public use and provide a public benefit.

(b) The proposed action is within the policy of, and the authority conferred by, this chapter.

(c) The proposed action will preserve or increase the social welfare or economic prosperity of the state and one or more of its political subdivisions, and will promote the general welfare of the state's citizens.

(d) The proposed action will promote the orderly development of business activities, create or preserve employment opportunities, or protect the physical environment.

(e) The applicable special findings in paragraph II of this section.

II. Before approving any action referred to in paragraph I, the governor and council shall also make the applicable special findings:

(a) If the action is the expenditure of money pursuant to RSA 162-A:7, the governor and council shall find that the expenditure is consistent with local or regional development plans and policies.

(b) If the action is the award or renewal of a state guarantee pursuant to RSA 162-A:7-a, RSA 162-A:8, RSA 162-A:13, or RSA 162-A:13-a, the governor and council shall find that:

(1) The award or renewal of the guarantee will contribute significantly to the success of the financing; and

(2) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee will be only incidental to the public purpose served thereby.

(c) If the action is making of a temporary loan pursuant to RSA 162-A:9, the governor and council shall find that:

(1) The loan will be a significant factor in the continued operation, competitiveness, or expansion of the business receiving it;

(2) The business is of social or economic importance to the region or community in which it is located; and

(3) The risk of loss to the authority as a result of making the loan is reasonable under the circumstances.

(d) If the action is the acquisition of loans from local development organizations pursuant to RSA 162-A:10, the governor and council shall find that:

(1) Such acquisition will make available funds for the local or regional promotion, encouragement,

or development of business activities in an area where such funds are needed; and

(2) The loans being acquired do not impose an undue risk of loss to the authority.

(e) If the action is the award of a state guarantee pursuant to RSA 162-A:10, III, the governor and council shall find that:

(1) The award of the guarantee is necessary to sell the loans at a reasonable price;

(2) The proposed use of the proceeds of sale by the authority will promote business activities within the state consistent with the purposes of this chapter; and

(3) Reasonable and appropriate measures have been taken to minimize the risk of loss to the state and to ensure that any private benefit from the award of the guarantee shall be only incidental to the public purpose served thereby.

(f) If the action is the establishment of a CAP fund or the execution or amendment of a CAP participation agreement pursuant to RSA 162-A:12, the governor and council shall find that:

(1) The proposed participating state bank or state credit union is qualified to participate under the provision of this chapter;

(2) Appropriate measures have been taken to ensure that the participating state bank or state credit union makes only CAP loans meeting the requirements of RSA 162-A:12, IV;

(3) The proposed CAP participation agreement complies with RSA 162-A:12, III; and

(4) Reasonable precautions have been taken to minimize the risk of loss to the CAP fund.

Source. 1992, 262:3. 1996, 189:9. 2000, 10:2, 3, eff. July 1, 2000.

Section 162-A:19

162-A:19 Hearings. –

I. Promptly after the beginning of each calendar year the authority shall conduct a public hearing regarding the use of any available contingent credit limit under RSA 162-A:22 and regarding the allocation of such available contingent credit limit among uses authorized by this chapter. Such hearing may be held before a hearing officer appointed by the authority who shall make a report of the hearing to the board before any final action is taken by the authority that uses a portion of the contingent credit limit.

II. Promptly after the beginning of each calendar year, before the authority makes its first assignment of state ceiling under RSA 162-M, the authority shall conduct a public hearing regarding the use of state ceiling by the authority for that year. Such hearing may be held before a hearing officer appointed by the authority who shall make a report of the hearing to the board before the authority assigns any state ceiling under RSA 162-M:2, III.

III. Any hearing required to be held by the governor and council under this chapter may be held by a single councilor as their designee, who shall make a report of the hearing to the governor and council prior to the making of any findings.

IV. Any hearings held under this chapter shall be for the information of the governor and council or the authority and shall not be treated as determining the rights, duties, or privileges of any entity or person. Neither the authority nor the governor and council shall be required to conduct adjudicative proceedings under RSA 541-A:31-36 in connection with any action taken under this chapter.

V. The authority shall hold the first hearings under RSA 162-A:19, I and II at the beginning of calendar year 1993.

Source. 1992, 262:3. 1994, 412:19. 1995, 128:17, eff. May 19, 1995.

Section 162-A:20

162-A:20 Meetings. – The authority shall hold its meetings in a building that is accessible to persons with disabilities. Six voting members of the board shall constitute a quorum, and the affirmative vote of a majority of members in attendance at a meeting shall be necessary for any action taken by the board. No vacancy in the membership of the board shall impair the power of a quorum to exercise all rights and perform all duties of the authority. Notwithstanding RSA 91-A or any other law to the contrary, members of the board shall be permitted to participate in meetings by telephone, provided that any board member so participating shall be able to be heard by and to hear every other member of the board participating in the meeting, and, unless the board is meeting in a nonpublic session as permitted by RSA 91-A:3, shall be able to be heard by all members of the public attending the meeting. Voting members of the board participating by telephone shall be treated as present at the meeting for all purposes, including the establishment of a quorum. Any meeting at which one or more board members are participating by telephone shall be recorded verbatim by magnetic tape or otherwise, and such recording shall be made available for public inspection to the same extent as minutes of the meeting, provided that the accidental destruction of a recording or the accidental failure to record any meeting shall not invalidate any action taken at that meeting.

Source. 1992, 262:3. 1997, 329:11, eff. Oct. 1, 1997.

Section 162-A:21

162-A:21 Revenues and Expenses of Authority. – The revenues received by and due to the authority from any and all sources under this chapter and RSA 162-I shall be retained by the authority and shall be used in such manner as may be determined by the authority consistent with the provisions of this chapter. The authority may expend said funds in connection with transactions and projects consummated or reasonably expected to be consummated under the provisions of this chapter and RSA 162-I as it shall determine in its sole discretion. It is the intent of the legislature that the authority be self-funding and that payment of its operating expenses shall not require state appropriation.

Source. 1992, 262:3. 1993, 335:12, eff. June 29, 1993.

Section 162-A:21-a

162-A:21-a Administration of Additional Funds Received by the Authority. – The authority may receive funds from any source in accordance with a public or private program, provided that such program shall have as a principal function the promotion, encouragement, or development of economic activity. The authority shall administer, loan, advance, or otherwise utilize such funds in such manner as may be determined by the authority in its sole discretion consistent with the provisions of this chapter.

Source. 1995, 128:9, eff. May 19, 1995.

Section 162-A:22

162-A:22 Unified Contingent Credit Limit. – The total amount of state guarantees in force under RSA 162-A:7-a, RSA 162-A:8, RSA 162-A:10, III, RSA 162-A:13, RSA 162-A:13-a, RSA 162-A:17, and RSA 162-I:9-b shall not exceed in the aggregate at any time \$50,000,000 plus interest, provided that such amount shall be increased to \$80,000,000 plus interest on January 1, 1993, and to \$95,000,000 plus interest on January 1, 1994.

Source. 1992, 262:3. 1993, 335:14. 2000, 10:4, eff. July 1, 2000.

Section 162-A:23

162-A:23 Reports. – The accounts of the authority shall be subject to an annual audit performed by an independent certified public accountant selected by the authority. The authority shall submit annually to the speaker of the house of representatives, the president of the senate, the senate clerk, the house clerk, the state library, the committee on commerce, small business, consumer affairs and economic development of the house of representatives, the committee on economic development of the senate, and the governor and council a report on its operations and its audited financial statements for the preceding fiscal year.

Source. 1992, 262:3. 1995, 9:19, eff. June 11, 1995.

Section 162-A:23-a

162-A:23-a Reports on Economic Development Programs. –

I. The authority shall include, as part of its annual report or as a separate report published and made available to the public annually on or before September 1, beginning September 1, 1997, the following information regarding each economic development program funded, bonded, or guaranteed by the authority:

(a) Information regarding the number of jobs to be created or saved and the related wages and benefits levels.

(b) The growth potential of the program.

(c) The environmental impact of the program.

(d) The amount of the loan, grant, loan guarantee, bond guarantee, or tax incentives awarded.

II. The annual report shall also include information regarding the criteria for the awarding of economic development assistance and the means by which the authority tracks the progress which each awardee makes in meeting the job, wage, and benefit projections included in its application for assistance.

Source. 1996, 189:4, eff. Aug. 2, 1996.

Section 162-A:24

162-A:24 Tax Exemption and Payment for Services in Lieu of Taxes. – Any property while owned by the authority is declared to be public property and shall be exempt from all taxes and special assessments of the state or any political subdivision of the state. In lieu of such taxes and special assessments, the state or the political subdivision shall require any business that is a tenant, occupant or user of the property to make payments annually to the municipality in which the property is located, for its just share of the public expense, including, but not limited to, education, highway maintenance, fire and police protection and other similar public expenses and governmental services. The board of tax and land appeals shall determine, after a hearing, that the payments constitute a just share of the public expense.

Source. 1992, 262:3, eff. May 15, 1992.

Section 162-A:25

162-A:25 Construction and Effect of Other Laws. –

I. The powers conferred by this chapter are supplemental and alternative to other powers conferred by law, and this chapter is intended as an independent and comprehensive conferral of powers to accomplish the purposes set forth in RSA 162-A:1.

II. No notice, hearing, proceedings or approval shall be required with respect to any action taken under this chapter except as provided in this chapter.

III. Purchases and contracts required in connection with a project may be made or let without regard to any provision of law relating to public purchases or contracts.

IV. The provisions of this chapter shall be liberally construed in order to effect its purposes.

V. If any provision of this chapter shall be held invalid in any circumstance, such invalidity shall not affect any other provisions or circumstances.

VI. This chapter shall be construed in all respects so as to meet all constitutional requirements. In carrying out the purposes and provisions of this chapter, all steps shall be taken which are necessary to meet constitutional requirements whether or not such steps are required by statute.

VII. [Repealed.]

VIII. Neither the members of the board nor any officer or employee of the authority shall be personally liable in ordinary negligence by reason of the issuance of bonds under this chapter or RSA 162-I. The state shall indemnify a board member or officer or employee of the authority for expenses related to defense against an ordinary negligence action. Neither the state nor the authority nor any officer or employee of either of them shall be subject to any liability for actions taken to protect the interests of the state, the authority, or any owner of the authority's bonds, provided that such actions are not reckless or wanton.

Source. 1992, 262:3. 1997, 329:18, eff. Oct. 1, 1997.

Section 162-A:26

162-A:26 Conflicts of Interest. – Any person or entity acting as an independent contractor for the authority shall avoid any conflict of interest. No person or entity employed or retained by the authority as an independent contractor shall, while so employed or retained, represent any interest before the authority other than those of the authority and the state. Any independent contractor who acts in a manner contrary to this section shall be dismissed by the authority unless such independent contractor takes prompt steps to eliminate any conflict of interest after receipt of notice from the authority that such a conflict exists. Nothing in this section shall prevent the authority from requiring any borrower to pay or reimburse the authority for the fees and expenses of any independent contractor in connection with the borrower obtaining assistance from the authority. Notwithstanding anything in this section to the contrary, an independent contractor may, with the written consent of the authority, represent a party other than the authority in connection with the issuance of bonds under RSA 162-I, provided the principal amount of the bond issue is not greater than \$20,000,000.

Source. 1992, 262:3, eff. May 15, 1992.

Section 162-A:27

162-A:27 False Statements Made to Business Finance Authority. – The authority may order, after hearing upon its own motion or upon complaint, that a person or entity shall be prohibited from applying to the authority for any guarantee, loan, or other credit enhancement under this chapter if the authority determines that such person or entity knowingly made a false statement, or knowingly misrepresented or

failed to state a material fact necessary in order to make a statement not misleading in light of the circumstances under which the statement was made, in any document or other presentation submitted to the authority.

Source. 1995, 128:10, eff. May 19, 1995.

Section 162-A:28

162-A:28 Exemption From Administrative Procedure Act and Rulemaking Authority. – The authority shall be exempt from the provisions of RSA 541-A and may adopt rules in accordance with its own procedures to facilitate, implement, and carry out the powers, duties, and purposes of the authority enumerated in this chapter and such other and additional powers and purposes as shall be conferred upon it by the legislature. The authority shall file in the office of legislative services a copy of all existing rules adopted by the authority. Any rule adopted after the effective date of this section or any amendment or repeal of any existing rule shall be filed in the office of legislative services within 7 days of such adoption, amendment, or repeal.

Source. 1997, 329:12, eff. Oct. 1, 1997.

Section 162-A:29

162-A:29 Relation to Other Agencies. – The financial and administrative operations of the authority shall be exempt from the rules of any department, commission, board, bureau, or agency of the state except to the extent and in the manner provided in this chapter.

Source. 1997, 329:12, eff. Oct. 1, 1997.

Section 162-A:30

162-A:30 Authorization to Accept State Money. – The authority is authorized to accept such moneys as may be appropriated from time to time by the legislature for carrying out its corporate purpose. The authority shall repay the state all sums which are appropriated to the authority for organizational purposes in 5 annual installments, beginning with the fifth year after the receipt of such funds.

Source. 1997, 329:12, eff. Oct. 1, 1997.

Section 162-A:31

162-A:31 Status of Authority Employees; Entitlement to Certain State Benefits. –

I. The authority may hire, fix, and pay compensation, prescribe duties and qualifications, and establish personnel policies without regard to any personnel or civil service law or personnel or civil service rule of the state. The employees of the authority shall not be classified employees of the state within the meaning of RSA 21-I:49. Any individual employed by the authority shall be deemed an employee at will and shall serve at the pleasure of the authority.

II. Notwithstanding the provisions of paragraph I, any individual employed by the authority whose employment calls for 30 hours or more work in a normal calendar week, and whose position is anticipated to have a duration of 6 months or more, shall be entitled to elect to receive such health, dental, and life insurance benefits as are afforded to classified employees of the state, provided, however, that the election

is made in writing within 30 days of the start of employment. Upon election by such individual, the authority shall pay from its revenues the state's share of such benefits. Any remaining costs of health, dental, and life insurance benefits which an individual elects to receive pursuant to this section shall be withheld from such individual's salary as a payroll deduction. Written notice of the availability of these benefit options shall be provided to each individual upon employment by the authority. The authority may establish a qualified retirement plan and a deferred compensation plan for those individuals covered under this paragraph.

Source. 1997, 329:12, eff. Oct. 1, 1997.