

Amendment to SB 537

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT conferring extraterritorial financing powers on the New Hampshire business finance
4 authority.
5

6 Amend the bill by replacing section 1 with the following:

7

8 1 New Chapter; Extraterritorial Financing Powers of the New Hampshire Business Finance
9 Authority. Amend RSA by inserting after chapter 162-R the following new chapter:

10 CHAPTER 162-S

11 EXTRATERRITORIAL FINANCING POWERS

12 OF THE NEW HAMPSHIRE BUSINESS FINANCE AUTHORITY

13 162-S:1 Declaration of Policy. It is declared that the policy of the state of New Hampshire to
14 promote itself as an effective location for private enterprise, and therefore the policy of the state of
15 New Hampshire is to provide for the establishment, support, preservation, and redevelopment of
16 business and industry, whether or not operated for profit, located outside the state of New
17 Hampshire. It is further declared that the performance of the powers conferred on the business
18 finance authority as set forth in this chapter shall be regarded as performing an essential
19 governmental function in carrying out the policy set forth in this section and by the carrying out of
20 the powers set forth in the following provisions of this chapter. The purpose of this chapter is to
21 expand and not to limit the existing powers of the business finance authority in order to carry out
22 this policy.

23 162-S:2 Definitions. Unless the context otherwise clearly requires, in this chapter:

24 I. "Authority" or "national finance authority" means the business finance authority acting
25 pursuant to this chapter and operating under the name "national finance authority".

26 II. "Business finance authority" means the New Hampshire business finance authority
27 created pursuant to RSA 162-A.

28 III. "Bond" means any bond, note, or other obligation evidencing indebtedness issued or
29 entered into or acquired or incurred by the authority under this chapter, including any certificate of
30 participation or lease or lease-purchase, installment sale, or other financing agreement, and any
31 refunding bond or other indebtedness with respect to a bond or any other evidence of indebtedness
32 issued by the authority or another party.

33 IV. "Designated member" means the executive director of the business finance authority

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1 and the 4 members of the board of directors of the authority appointed pursuant to RSA 162-S:3, II.

2 V. "Executive board" means the executive board of the national finance authority, whose
3 designated members collectively shall have and carry out the powers conferred on the business
4 finance authority in this chapter.

5 VI. "Participating institution" means any project owner, co-owner, operator, sponsor, or
6 other party which, pursuant to the provisions of this chapter, undertakes the financing and
7 construction or acquisition of a project or undertakes the refunding or refinancing of bonds relating
8 to a project as provided in and permitted by this chapter.

9 VII. "Project" means any capital improvement, purchase of receivables, property, assets,
10 commodities, bonds, or other revenue streams or related assets, working capital program, or
11 liability or other insurance program, located outside of the state. The term "project" shall include
12 any housing facility, located outside the state, for students, faculty, or staff affiliated with an
13 educational institution and any housing facility, including without limitation any senior living,
14 assisted living, or nursing home facility, used or operated by or for the benefit of any hospital,
15 health care, senior care, or senior living institution in connection with the carrying out of hospital,
16 health care, senior care, or senior living services, but shall not include any housing, housing project,
17 or any other facility that may be financed by the New Hampshire housing finance authority under
18 RSA 204-C without the written consent of the New Hampshire housing finance authority's
19 executive director or designee. Notwithstanding anything in this definition or chapter to the
20 contrary, the participating institution shall be afforded the ability to use whichever authority it
21 chooses in writing.

22 VIII. "Revenue" means all moneys and fees received from participating institutions or any
23 other source with respect to a project or otherwise for services provided by or on behalf of the
24 authority.

25 IX. "State" means the state of New Hampshire.

26 162-S:3 Establishment of the Authority; Membership; Meetings; Reporting.

27 I. The national finance authority is hereby established within and as a component unit of
28 the business finance authority for the purpose of exercising the powers, duties and responsibilities
29 conferred by this chapter. While acting pursuant to this chapter, the business finance authority
30 shall operate under the name "national finance authority". Subject to the provisions of this chapter,
31 the authority shall be governed by the designated members as provided in paragraph II. The
32 authority shall not be separate from the business finance authority but through its executive board
33 shall exercise all powers and take all actions pursuant to this chapter on behalf of the business
34 finance authority.

35 II. All of the powers of the authority are vested in the executive board of the authority,
36 comprising 5 members, one of whom shall be the executive director of the business finance
37 authority serving ex officio and 4 of whom shall be current members of the board of directors of the

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1 business finance authority who have been appointed by the chairman of the business finance
2 authority. Of the 4 initial appointed members of the executive board of the authority, one shall be
3 appointed for a term ending on November 3, 2019, one shall be appointed for a term ending on
4 November 3, 2020, one shall be appointed for a term ending on November 3, 2021, and one shall be
5 appointed for a term ending on November 3, 2022. Successors to those initial executive board
6 members whose terms expire each year shall be appointed by the chairman of the business finance
7 authority, each of whom shall be a current member of the board of directors of the business finance
8 authority and each whom be appointed for a term of 3 years. An appointed member may continue
9 to serve until a successor is appointed and so long as such appointed member is a member of the
10 board of directors of the business finance authority. The term of an appointed member of the
11 executive board shall terminate at the time such appointed member ceases to be a member of the
12 board of directors of the business finance authority. If a vacancy occurs in the membership of the
13 appointed members of the executive board, the chairman of the business finance authority shall
14 appoint a successor to complete the remainder of the unexpired term of the appointed member
15 leaving such vacancy. Any appointed member of the executive board shall be eligible for re-
16 appointment. Members of the executive board shall not receive compensation for serving in such
17 capacity, but shall be entitled to reimbursement for any expenses actually incurred in connection
18 with such service, if the executive board shall determine that such expenses shall be reimbursed
19 and there are unencumbered funds of the authority available for such purpose.

20 III. The members of the executive board shall elect one of its members as chairperson of the
21 executive board and another as vice chairperson of the executive board, and shall also elect a
22 secretary of the executive board, who need not be a member of the executive board.
23 Notwithstanding any provision of RSA 162-A or RSA 162-I to the contrary, 3 members of the
24 executive board shall constitute a quorum for any meeting of the authority under this chapter, and
25 the vote of a majority of the members of the executive board constituting a quorum present and
26 voting shall be a prerequisite to any action taken by the authority. A vacancy in the membership of
27 the executive board shall not impair the right of a quorum to exercise all the powers and perform
28 the duties of the authority under this chapter. Notwithstanding RSA 91-A or any other law to the
29 contrary, members of the executive board shall be permitted to participate in meetings of the
30 authority by telephone or video conference, provided that any member so participating shall be able
31 to be heard by and to hear every other member of the executive board participating in the meeting
32 and, unless the authority meeting is a nonpublic session being conducted pursuant to RSA 91-A:3,
33 shall be able to hear and be heard by all members of the public attending the meeting, and provided
34 further that the meeting is held at a physical location available to the public and identified in the
35 notice of the meeting. Voting members participating by telephone or video conference shall be
36 treated as present at the meeting for all purposes, including the establishment of quorum.

37 IV. Any action taken by the authority under this chapter may be authorized by resolution

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1 at any regular or special meeting, and each such resolution shall take effect immediately and need
2 not be published or posted.

3 V. The business finance authority, acting pursuant to its general powers set forth in RSA
4 162-A and RSA 162-I, shall have the power to establish rules, requirements, and procedures with
5 respect to the operations and activities of the authority pursuant to this chapter. Such rules shall
6 be subject to the requirements of RSA 162-A:28.

7 VI. Upon dissolution of the authority, subject to the adequate provision for the payment of
8 its bonds, including interest on the bonds, and the performance of its contractual obligations, the
9 property and other net assets of the authority shall remain with or be transferred to the business
10 finance authority.

11 162-S:4 Powers of the Authority. Subject to the powers of the business finance authority
12 established under RSA 162-S:3, V to establish rules, requirements, and procedures, the authority
13 shall have all of the powers necessary or convenient to carry out the purposes and provisions of this
14 chapter. In addition to all other powers conferred on the business finance authority under the laws
15 of the state, the business finance authority, acting under this chapter by, through, and as the
16 national finance authority, and further subject to the powers of the business finance authority
17 established under RSA 162-S:3, V, shall have power to do any of the following in connection with
18 bonds issued under this chapter:

19 I. Adopt policies for the regulation of its affairs and the conduct of the business of the
20 authority.

21 II. Sue, with the approval of the business finance authority, and be sued in the name of the
22 authority, and in such capacity to plead and be impleaded in judicial proceedings.

23 III. Acquire, buy, own, operate, sell, lease as lessor or lessee, encumber, mortgage,
24 hypothecate, pledge, assign, gift, or otherwise transfer any real, personal, tangible, intangible, or
25 other property or interest in real, personal, or other property that is located outside of the state,
26 either in the name of the authority or in the name of a partnership, trust, corporation, limited
27 liability corporation, or other special purpose entity created by and under the control of the
28 authority.

29 IV. Enter into contracts relating to the issuance of bonds.

30 V. Issue bonds or refunding bonds, subject to RSA 162-S:5 and RSA 162-S:10, to finance or
31 refinance a project, including to fund a reserve fund or capitalized interest, payment of costs of
32 issuance and other costs related to the financing or refinancing or credit enhancement, and enter
33 into agreements related to the issuance of bonds, including liquidity and credit facilities,
34 remarketing agreements, insurance policies, debt service guarantee agreements, letters of credit or
35 reimbursement agreements, indexing agreements, interest rate swap agreements, currency
36 exchange agreements, commodity swap agreements, other hedge agreements, and any other like
37 agreements, in each case with such payment, interest rate, currency security, remedy, and other

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1 terms and conditions as the authority shall approve.

2 VI. Retain or appoint such agents, finance professionals, and special advisors as the
3 authority finds necessary or convenient and fix their compensation.

4 VII. Accept gifts, loans, or other aid.

5 VIII. Establish and collect fees, including charges to recover the administrative expenses of
6 the authority, from participating institutions and other parties who benefit from the provision of
7 services by the authority, or services provided by an outside entity on behalf of the authority.

8 IX. Make loans to, lease real, personal, and other property from or to, or enter into any
9 other kind of an agreement with a participating institution or other entity, in connection with the
10 financing or refinancing of a project.

11 X. Mortgage, pledge, or otherwise encumber the authority's property assigned to or
12 transferred to it in connection with bonds or its interest, or any portion of its interest, in a project.

13 XI. Assign or pledge any portion of its interest in projects, mortgages, deeds of trust,
14 indentures of mortgage or trust, leases, purchase or sale agreements, other financing agreements,
15 or similar instruments, bonds, notes, and security interests in property, of a participating
16 institution, or contracts entered into or acquired in connection with bonds.

17 XII. Issue, obtain, or aid in obtaining, from any person, any insurance or guarantee to, or
18 for, the payment or repayment of interest or principal, or both, on any bond, loan, lease or other
19 obligation evidencing or securing such a bond, loan, lease or obligation that is issued, incurred, or
20 entered into under this chapter.

21 XIII. Apply on its own behalf or on behalf of a participating institution to any unit of
22 government for an allocation of volume cap, tax credit, subsidy, grant, loan, credit enhancement or
23 with respect to any other federal program or any program of any other unit of government in
24 connection with the financing or refinancing of a project.

25 XIV. Invest any bond proceeds or any money held for payment or security of the bonds, or
26 any contract entered into under this chapter, in any securities or obligations permitted by the
27 resolution, trust agreement, indenture, or other agreement providing for issuance of the bonds or
28 the contract.

29 XV. At the request of one or more participating institutions, combine and pledge revenues
30 of 2 or more projects to the repayment of one or more series of bonds issued under this chapter.

31 XVI. Purchase bonds issued by or on behalf of, or held by, any participating institution, any
32 unit of government or a political subdivision, department, or authority thereof, such purchased
33 bonds to be held by the authority or sold, in whole or in part, separately or together with other
34 bonds issued by the authority. Notwithstanding anything in this chapter or in the laws of the state
35 to the contrary, none of the earnings of the authority shall inure or be permitted by the authority to
36 inure to the benefit of any private person.

37 162-S:5 Issuance of Bonds; Exemption from Taxation.

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I. The authority shall not issue bonds unless the issuance thereof shall have first been authorized by a bond resolution approved by the authority. Bonds issued pursuant to this chapter shall be designated and captioned as bonds of the national finance authority. Bonds may be issued under this chapter without obtaining the consent of the governor and council or of any department, division, commission, board, body, bureau, or agency of the state; and without any other proceedings or the happening of any conditions or things except those proceedings or the occurrence of those conditions or things that are specifically required by this chapter and by the provisions of the resolution authorizing the issuance of such bonds or the trust agreement securing the same. A bond issued under this section shall meet all of the following requirements:

(a) The face of the bond shall include the date of issuance and the date of maturity.

(b) The bond shall include the statements required under RSA 162-S:9, III and RSA 162-S:10, V.

(c) The bond shall bear a rate of interest, either fixed or variable, except that any variable rate of interest shall be made subject to a maximum rate.

(d) The bond shall specify when interest and principal shall be paid.

(e) Bonds shall be executed in the manner provided in the resolution therefor and may be executed by one designated member, provided that such execution may be by facsimile so long as the bond is signed by an authentication agent appointed by the authority.

(f) Bonds in a single issue may comprise a single denomination or 2 or more denominations.

II. Notwithstanding paragraph I, as an alternative to specifying the matters required to be specified in the bond resolution pursuant to paragraph I, the resolution may specify designated members or officers or employees of the authority by name or position, to whom the authority delegates authority to determine which of the matters specified under paragraph I, and any other matters that the authority deems appropriate, for inclusion in the trust agreement, indenture, or other agreement providing for issuance of the bonds as finally executed, provided that a resolution approved by the authority under this section shall in all cases specify each of the following:

(a) The maximum principal amount of bonds to be issued.

(b) The maximum term of the bonds.

III. A bond issued under this section may include, or be subject to, any of the following:

(a) Mandatory, special, or optional redemption, or purchase in lieu of redemption, or tender, as provided in the resolution, and any notice of redemption with respect to any bond may be conditioned on the occurrence of such events as are specified by the authority in such notice.

(b) A provision providing a right to tender.

(c) A trust agreement or indenture containing any terms, conditions, and covenants that the authority determines to be necessary or appropriate, but such terms, conditions, and covenants may not be in conflict with the resolution.

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1 IV. The authority may purchase any bond issued under this section. Subject to the terms of
2 any agreement with the bondholders, the authority may hold, pledge, resell, or cancel any bond
3 purchased under this paragraph, except that a purchase under this paragraph will not cause the
4 extinguishment of such bond unless the authority cancels the bond or otherwise certifies its
5 intention that the bond be extinguished.

6 V. The proceeds of a bond issued under this chapter may be used to finance or refinance one
7 or more projects located outside of the state.

8 VI. The exercise of the powers granted by this chapter shall be in all respects for the benefit
9 of the people of the state, for the increase of their commerce, welfare, and prosperity, and for the
10 improvement of their health and living conditions, and shall constitute the performance of an
11 essential governmental function, and the authority shall not be required to pay any taxes or
12 assessment upon or in respect of a project or any property acquired or used by the authority or
13 under the jurisdiction, control, possession, or supervision of the same or upon the activities of the
14 authority in the operation or maintenance of any project under the provisions of this chapter, or
15 upon income or other revenues received therefrom, and any bonds of the authority issued under the
16 provisions of this chapter, their transfer and the income therefrom, including any profit made on
17 the sale thereof, as well as the income and property of the corporation, are at all times exempt from
18 taxation of every kind by the state and by the municipalities and all other political subdivisions of
19 the state.

20 162-S:6 Sale of Bonds.

21 I. The sale of bonds under this section shall be conducted as provided in the resolution
22 therefor or as directed by the person or persons to whom a delegation of authority has been made
23 pursuant to RSA 162-S:5, II.

24 II. A sale of bonds may be public or private, and bonds may be sold at the price or prices,
25 and upon the conditions, determined by the authority, and the authority shall give due
26 consideration to the recommendations of the participating institution with respect to the project
27 when determining the conditions of sale of bonds with respect thereto.

28 III. If at the time of sale definitive bonds are not available, the authority may issue interim
29 certificates exchangeable for definitive bonds.

30 162-S:7 Bond Security.

31 I. The authority may secure bonds by a trust agreement or indenture or other agreement by
32 and between the authority and one or more corporate trustees. Such trust agreement, indenture or
33 other agreement may contain provisions for pledging properties, revenues and other collateral;
34 holding and disbursing funds; protecting and enforcing the rights and remedies of bondholders;
35 restricting individual rights of action by bondholders; and amendments, and any other provisions
36 the authority determines to be reasonable and proper for the security of holders of bonds issued
37 under this chapter or contracts entered into under this paragraph in connection with the bonds.

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1 II. A pledge of property, revenues, or other collateral by the authority to secure the
2 payment of the principal or redemption price of, or interest on, any bonds, or any reimbursement or
3 similar agreement with any provider of credit enhancement for bonds, or any swap or other
4 agreement entered into in connection with bonds, is binding on the parties and on any successors.
5 The collateral shall immediately be subject to the pledge, and the pledge shall constitute a lien and
6 security interest which shall attach immediately to the collateral and be effective, binding, and
7 enforceable against the pledgor, its successors, purchasers of the collateral, creditors, and all others,
8 to the extent set forth, and in accordance with, the pledge document, irrespective of whether those
9 parties have notice of the pledge and without the need for any physical delivery, recordation, filing,
10 or further act.

11 162-S:8 No Personal Liability. No designated member, director, officer, employee, or agent of
12 the authority, the business finance authority, or a business entity created under RSA 162-S:4, III
13 shall be liable personally on the bonds or any contract entered into by the authority or such
14 business entity or subject to any personal liability or accountability by reason of the issuance of the
15 bonds, unless the personal liability or accountability is the result of willful misconduct.

16 162-S:9 Bonds not Public Debt.

17 I. Unless otherwise expressly provided in the resolution therefor, bonds of the authority
18 shall be limited obligations of the authority payable solely from amounts received by or on behalf of
19 the authority from revenues derived from the project to be financed or refinanced thereby, or from
20 any contract entered into or investment made in connection with the bonds and pledged to the
21 payment of the bonds.

22 II. The state and the political subdivisions of the state are not and shall not be liable on
23 bonds issued or any other contract entered into under this chapter, or for any other debt, obligation,
24 or liability of the authority, whether in tort, contract, or otherwise.

25 III. Bonds issued under this chapter are not a debt of the state or the political subdivisions
26 of the state. No bond issued under this chapter shall obligate the state, or any political subdivision
27 approving a financing under RSA 162-S:10 to levy any tax or make any appropriation for payment
28 thereof or with respect thereto. All bonds issued by the authority under this chapter are payable
29 solely from the funds pledged for their payment in accordance with the trust agreement, indenture,
30 or other agreement providing for their issuance. All bonds shall contain, on their face, a statement
31 regarding the obligations of the state, the political subdivisions of the state, and the authority as set
32 forth in this section.

33 162-S:10 Limitations.

34 I. To the extent required by section 147(f) of the Internal Revenue Code of 1986, as
35 amended, or by any applicable successor provision of federal tax law, the authority may not issue
36 bonds to finance a project in any state or territory of the United States unless the governor, or his
37 or her designee in compliance with applicable federal law, of the state of New Hampshire has

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1 approved the financing of the project following a hearing held by the authority and unless the state
2 or a political subdivision within whose boundaries the project is to be located has approved the
3 financing of the project; provided that an approval by a political subdivision under this paragraph
4 may be made by the governing body of the political subdivision or by the highest ranking executive
5 or administrator of the political subdivision.

6 II. This chapter provides a complete alternative method, to all other methods provided by
7 law, to exercise the powers authorized in this chapter, including the issuance of bonds, the entering
8 into of contracts related to those bonds, and the financing or refinancing of projects.

9 III. A project may be located outside of the United States and outside a territory of the
10 United States, and the authority may issue bonds to finance or refinance such project, if at the time
11 of issuance of such bonds the participating institution with respect thereto is incorporated and has
12 its principal place of business within the United States or a territory of the United States.

13 IV. Any action brought to challenge the validity of the issuance of a bond under this
14 chapter, or the enforceability of a contract entered into under this chapter, must be commenced in a
15 court of competent jurisdiction in the state within 30 days of adoption by the authority of the
16 resolution authorizing the issuance of the bond or the execution of the contract.

17 V. Bonds issued under this chapter shall not be invalid for any irregularity or defect in the
18 proceedings for their sale or issuance. All bonds shall contain, on their face, a statement that they
19 have been authorized and issued pursuant to the laws of the state, and such statement shall be
20 conclusive evidence of the validity of the bonds.

21 162-S:11 State Pledge. The state does hereby pledge to and agree with the holders of bonds
22 issued under this chapter that the state shall not limit or alter the rights hereby vested in the
23 authority to fulfill the terms of any agreements made with the holders of such bonds or in any way
24 impair the rights and remedies of such holders until such bonds, together with the interest on them,
25 with the interest on any unpaid installments of interest, and all costs and expenses in connection
26 with any action or proceeding by or on behalf of such holders, are fully met and discharged. The
27 authority is authorized to include this pledge and agreement of the state in any agreement with the
28 holders of such bonds.

29 162-S:12 Selection of Authority Bond Program Administrator. Within 3 months after the initial
30 designated members shall have been appointed pursuant to RSA 162-S:3, II, the business finance
31 authority shall select a qualified firm to assist in the carrying out of the powers of the authority and
32 the administration of the business of the authority conferred by this chapter. Such firm shall serve
33 for a minimum term of 3 years. The selection of such firm shall be pursuant to a process approved
34 by the board of directors of the business finance authority and such firm shall serve on such
35 financial terms as shall be approved by board of directors of the business finance authority. At the
36 conclusion of the initial term of service of such firm, the business finance authority shall determine
37 whether, and on what terms, to engage any firm to provide any such services.

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1 162-S:13 Rulemaking.

2 I. The authority shall be exempt from the rules of any department, commission, board,
3 bureau, or agency of the state except as otherwise provided in this chapter.

4 II. The authority shall be exempt from the provisions of RSA 541-A and may adopt rules in
5 accordance with its own procedures to facilitate, implement, and carry out the powers, duties, and
6 purposes of the authority enumerated in this chapter and such other and additional powers and
7 purposes as shall be conferred upon it by the legislature. The authority shall file in the office of
8 legislative services a copy of all existing rules adopted by the authority. Any rule adopted after the
9 effective date of this section or any amendment or repeal of any existing rule shall be filed in the
10 office of legislative services within 7 days of such adoption, amendment, or repeal.

11
12 Amend the bill by replacing all after section 13 with the following:

13
14 14 New Hampshire Housing Finance Authority; Authority to Issue Bonds. Amend RSA 204-
15 C:8, XXVI-a and XXVI-b to read as follows:

16 XXVI-a. Finance, on such terms and conditions as the authority may determine, by the
17 issuance of bonds or otherwise, homes for persons with disabilities without regard to any other
18 requirement of this chapter relating to the making or purchasing of loans or mortgage loans or to
19 the requirements of RSA 204-C:11 if the authority finds that such financing would result in a public
20 benefit;[~~and~~]

21 XXVI-b. Make loans, on such terms and conditions as the authority may determine, by
22 issuance of bonds or otherwise, secured by homes owned by the elderly without regard to any other
23 requirements of this chapter relating to the making or purchasing of loans or mortgage loans if the
24 authority finds that such financing would result in a public benefit; [~~and~~]

25 ***XXVI-c. Issue bonds, without regard to any other requirements of this chapter, for***
26 ***housing, housing projects, or any other facility located outside of the state that could be***
27 ***financed by the authority if it were located within the state, if the authority finds that***
28 ***such financing would result in a public benefit to the state or its citizens, provided that no***
29 ***such bonds shall be considered an obligation or pledge of the faith and credit of the state;***
30 ***and***

31 15 New Subparagraph; Administrative Procedure Act; Exceptions; Business Finance Authority.
32 Amend RSA 541-A:21, I by inserting after subparagraph (ii) the following new subparagraph:

33 (jj) RSA 162-S, relative to the extraterritorial financing powers of the business finance
34 authority.

35 16 Effective Date. This act shall take effect upon its passage.

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2018-1107s

AMENDED ANALYSIS

This bill confers extraterritorial financing powers on the business finance authority. The bill establishes the national business authority as a component of the business finance authority and authorizes it to issue bonds and undertake development projects outside the state of New Hampshire.