

H.627

An act relating to the Vermont Economic Development Authority

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. chapter 12 is amended to read:

CHAPTER 12. VERMONT ECONOMIC DEVELOPMENT AUTHORITY

Subchapter 1. General Provisions

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§ 212. DEFINITIONS

As used in this chapter:

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(6) “Eligible facility” or “eligible project” means any industrial, commercial, or agricultural enterprise or endeavor approved by the Authority that meets the criteria established in the Vermont Sustainable Jobs Strategy adopted by the Governor under section 280b of this title, including land and rights in land, air, or water; buildings; structures; machinery; and equipment of such eligible facilities or eligible projects, except that an eligible facility or project shall not include the portion of an enterprise or endeavor relating to the sale of goods at retail where such goods are manufactured primarily out of ~~state~~ State, and except further that an eligible facility or project shall not include the portion of an enterprise or endeavor relating to housing unless otherwise authorized in this chapter. Such enterprises or endeavors may include:

(A) Quarrying; mining; manufacturing; processing, including the further processing of agricultural products; assembling; or warehousing of goods or materials for sale or distribution or the maintenance of safety standards in connection therewith, and including Vermont-based manufacturers that are adversely impacted by the State's regulation or ban of products as they transition from the manufacture of the regulated or banned products to the design and manufacture of environmentally sound substitutes.

(B) The conduct of research and development activities, including research and development of computer software and telecommunications equipment.

(C) Use as the national or regional headquarters for a multistate business enterprise or ~~for purposes of subchapter 4 of this chapter only~~, use as the national headquarters of a nonprofit organization whose purpose is the promotion of business, industry, or agriculture, including the registry of animal breeds.

(D) Collecting or processing any kind of waste material for reuse or disposal.

(E) Reducing, mitigating, or eliminating pollution of land, air, or water by substances, heat, or sound.

(F) For the purposes of subchapter 4 of this chapter only, in addition to the foregoing, the conduct of any trade or business that is eligible for tax-exempt financing under the U.S. Internal Revenue Code.

(G) For purposes of subchapter 4 of this chapter only, transporting of goods, materials, or agricultural products for sale or distribution or the maintenance of safety standards in connection therewith, including railroad terminals, trucking terminals, and airport facilities.

(H) Use as a small business incubator facility.

(I) Processing or converting post-consumer materials into industrial feed stocks, or manufacturing products from these feed stocks, or both, excluding the converting of recyclable materials into a fuel or fuel product. As used in this subdivision, “post-consumer materials” means only those products generated by a business or a consumer that have served their intended end uses, and that have been separated or diverted from solid waste.

(J) Travel and tourism projects and enterprises, and related recreational activities, provided that the project or enterprise will maintain a reasonable level of full-time employment throughout the year consistent with the size and nature of the business and general business custom in the industry.

(K) The business of information technology, or the collection, processing, or management of data, documents, or records.

(L) A captive or commercial insurance underwriter; a mortgage, commercial, or consumer credit provider; or an entity engaged in underwriting or brokering services.

(M) A renewable energy plant, as defined in 30 V.S.A. § 8002, if the construction of the plant requires a certificate of public good under 30 V.S.A. § 248 and all or part of the electricity generated by the plant will be under contract to a Vermont electric distribution utility.

(N) Industrial park planning, development, or improvement.

(O) For purposes of subchapter 5 of this chapter, a telecommunications plant, as defined in 24 V.S.A. § 1911(2), owned by a municipality individually or in concert with one or more other municipalities as a communications union district established under 30 V.S.A. chapter 82.

(P) Any combination of the ~~foregoing~~ activities, uses, or purposes specified in this subdivision (6). An eligible facility may include structures, appurtenances incidental to ~~the foregoing~~ an eligible project, such as utility lines, storage accommodations, offices, dependent care facilities, or transportation facilities.

(Q) Businesses providing intangible products and services, excluding the following:

(i) businesses engaged in pyramid sale distribution plans, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants;

(ii) businesses deriving more than one-third of their gross annual revenue from legal gambling activities;

(iii) private clubs and businesses that limit the number of memberships for reasons other than capacity; and

(iv) businesses principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting.

(R) Mixed-use properties, provided that not less than 50 percent of the total square footage is dedicated for commercial use.

(S) After consultation with and deference to the Vermont Housing Finance Agency on applications that are eligible for financing from both the Authority and the Agency, financing for one or more of the following types of long-term care facilities licensed by the State pursuant to 33 V.S.A. chapter 71 and other applicable law, and any independent living facility, as defined in 32 V.S.A. § 9202(18), associated with the licensed facility:

(i) an assisted living residence;

(ii) a home for the terminally ill;

(iii) a nursing home;

(iv) a residential care home; and

(v) a therapeutic community residence.

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(18) “Project” or “eligible facility” means the creation, establishment, acquisition, construction, expansion, improvement, reclamation, or renovation of an eligible facility.

(19) “Project costs” means any costs or expenses reasonably incidental to a project and may without limitation include the costs of:

(A) issuing bonds under subchapter 4 of this chapter 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 reserves in connection with the issue of bonds under subchapter 4 of this chapter; and

(I) acquiring or committing to acquire any federally guaranteed security and pledging the proceeds thereof to secure the payment of bonds.

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(28) "Loan," for the purposes of subchapters 5, 7, and 10 of this chapter, means a loan, or a financing lease, provided that such lease transfers the ownership of the leased property to the lessee following the payment of all required lease payments as specified in the lease agreement.

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#### Subchapter 5. Direct Mortgage Loans

##### § 261. ADDITIONAL POWERS

In addition to powers enumerated elsewhere in this chapter, the Authority may:

(1) Make loans secured by mortgages, which may be subordinate to one or more prior mortgages, upon application by the proposed mortgagor, who may be a private corporation, nonprofit organization, partnership, person, or municipality financing an eligible project described in subdivision 212(6) of this title, upon such terms as the Authority may prescribe, for the purpose of financing the establishment or expansion of eligible facilities. Such loans shall be made from the Vermont Jobs Fund established under subchapter 3 of this chapter. The Authority may provide for the repayment and redeposit of such loans ~~in the manner provided hereinafter~~ as provided in this subchapter.

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§ 262. FINDINGS

Before making any loan, the Authority shall receive from an applicant a loan application in such form as the Authority may by regulation prescribe, and the Authority, or the Authority's loan officer pursuant to the provisions of subdivision 216(15) of this title, shall determine and incorporate findings in its minutes that:

- (1) The project is within the scope of this chapter and will increase or maintain employment and expand the economy of the State.
- (2) The project plans comply with all applicable environmental, zoning, planning, and sanitary laws and regulations of the municipality where it is to be located and of the State of Vermont.
- (3) The making of the loan will be of public use and benefit.
- (4) The proposed loan will be adequately secured by a mortgage on real property or equipment, or both.
- (5) The principal obligation of the Authority's mortgage does not exceed ~~\$1,500,000.00~~ \$5,000,000.00, which may be secured by land and buildings or by machinery and equipment, or both; unless:
  - (A) an integral element of the project consists of the generation of heat or electricity employing biomass, geothermal, methane, solar, or wind energy resources to be primarily consumed at the project, in which case the



principal obligation of the Authority's mortgage does not exceed ~~\$2,000,000.00~~ \$6,000,000.00, which may be secured by land and by buildings, or machinery and equipment, or both; such principal obligation does not exceed 40 percent of the cost of the project; and the mortgagor is able to obtain financing for the balance of the cost of the project from other sources as provided in the following section; or

(B) a single loan for which the principal amount of the Authority's mortgage does not exceed \$3,000,000.00 for an eligible facility consisting of a municipal telecommunications plant, as defined in 24 V.S.A. § 1911(2).

(6) The mortgagor is responsible and able to manage its responsibilities as mortgagor and owner of the project.

(7) The mortgage has a satisfactory maturity date, in no case later than 20 years from the date of the mortgage.

(8) The mortgagor is unable to finance the project upon reasonable terms without the assistance of the requested loan from the Authority, or in the alternative, the granting of the loan will serve as a substantial inducement for the establishment or expansion of an eligible project within the State.

(9) The mortgagor has made adequate provision for insurance protection of the project while the loan is outstanding.

(10) The loan will be without unreasonable risk of loss to the Authority. Such findings when adopted by the Authority shall be conclusive.

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Sec. 2. EFFECTIVE DATE

This act shall take effect on passage.