

Bill as Introduced

SB 349-FN-LOCAL - AS AMENDED BY THE SENATE

03/03/10 0809s

2010 SESSION

10-2845

10/09

SENATE BILL

349-FN-LOCAL

AN ACT

relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program.

SPONSORS:

Sen. DeVries, Dist 18; Rep. Patten, Carr 4; Rep. Stohl, Coos 1

COMMITTEE:

Public and Municipal Affairs

AMENDED ANALYSIS

This bill clarifies the procedures for appraisal of residential property subject to a housing covenant under the low-income housing tax credit program and repeals a contingent amended version of the statute.

.....

Explanation:

Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Residential Property Subject to Housing Covenant Under the Low-Income Housing Tax Credit
2 Program. Amend the introductory paragraph of RSA 75:1-a to read as follows:

3 75:1-a Residential Property Subject to Housing Covenant Under the Low-income Housing Tax
4 Credit Program. The appraisal for property tax purposes on multifamily residential rental property
5 which ~~[has been allocated federal low income housing tax credits under]~~ **is governed** by section 42 of
6 the Internal Revenue Code and which is subject to a recorded housing subsidy covenant that restricts
7 tenant eligibility and rents shall, upon the affirmative request of the taxpayer, be determined under
8 this section. A copy of the recorded land use restriction required by section 42 of the Internal
9 Revenue Code or other low income rental use restriction covenant required by the New Hampshire
10 housing finance authority, is sufficient proof ~~[of an allocation of federal low income housing tax~~
11 ~~credits]~~ **that the property is eligible for assessment under this section.**

12 2 Election; Applicability. Amend RSA 75:1-a, I to read as follows:

13 I. To make an election for an appraisal of property subject to a housing covenant under the
14 low-income housing tax credit program, the taxpayer shall, by October 1 preceding the tax year for
15 which the election is sought, provide written notice to the municipality of the taxpayer's election to
16 be assessed under this section, using a form prepared by the department of revenue administration.
17 **A property that as of April 1 of the tax year is under construction shall not be eligible to**
18 **apply for assessment under this section.**

19 3 Financial Information. Amend RSA 75:1-a, IV to read as follows:

20 IV. Financial information that is required from the taxpayer under this section shall be the
21 audited financial statements from the prior calendar year as prepared by a third-party certified
22 public accountant. **For properties with financial data for part of the prior calendar year, the**
23 **assessor shall use the partial data and the projected operating budget for the first full year**
24 **of operations as provided by the New Hampshire housing finance authority to extrapolate**
25 **a full year's estimated operation financials.**

26 4 New Subparagraph; Definition; Multifamily Rental Property. Amend RSA 75:1-a, VIII by
27 inserting after subparagraph (h) the following new subparagraph:

28 (i) "Multifamily rental property" means the property described in the recorded land use
29 restriction agreement.

SB 349-FN-LOCAL - AS AMENDED BY THE SENATE

- Page 2 -

1 5 New Paragraph; Rulemaking. Amend RSA 75:1-a by inserting after paragraph VIII the
2 following new paragraph:

3 IX. The commissioner of the department of revenue administration shall adopt rules
4 pursuant to RSA 541-A concerning how capitalization rates shall be established, including a process
5 for receiving public input prior to such establishment.

6 6 Repeal. The following are repealed:

7 I. 2008, 390:9, relative to a contingent version of RSA 75:1-a.

8 II. 2008, 390:10, relative to the contingent effective date.

9 III. 2008, 390:11, II, relative to the effective date.

10 7 Effective Date. This act shall take effect June 30, 2010.

LBAO
10-2845
01/13/10

SB 349-FN-LOCAL - FISCAL NOTE

AN ACT relative to the procedures for appraisal and enforcement of taxation of multifamily residential rental property subject to covenants under the low-income housing tax credit program.

FISCAL IMPACT:

The New Hampshire Municipal Association and the Department of Revenue Administration state this bill may increase local revenue by an indeterminable amount in FY 2011 and each year thereafter. There is no fiscal impact on state and county revenue or on state, county, and local expenditures.

METHODOLOGY:

The New Hampshire Municipal Association states this bill clarifies procedures for assessing local property taxes on residential property subject to a restricted housing covenant under the low income housing federal tax credit program and proposes a change-in-use tax if the property is released from the land use restriction covenant within 15 years of originally recording that covenant, which may lead to an increase in local revenue. The Association states this bill also repeals contingency provisions in Ch. 390, L'08 that required the adoption of rules by the assessing standards board, but this repeal did not have a fiscal impact. The Association does not have information available regarding the assessed valuation of these types of properties or the likelihood that a covenant remains in place for the 15 year period, so it cannot estimate a specific amount of any revenue increase.

The Department of Revenue Administration states this bill will require the Department to develop rules and hold annual public forums before it establishes capitalization rates, but the associated administrative tasks should be absorbed within the existing operating budget. The Department also states the provisions of this bill may increase revenue at the local level, but it cannot reasonably estimate the amount of such an increase.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON SB 349-FN-LOCAL

BILL TITLE: (New Title) relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program.

DATE: March 31, 2010

LOB ROOM: 301 **Time Public Hearing Called to Order:** 1:38 pm

Time Adjourned: 2:30 pm

(please circle if present)

Committee Members: Reps. Cooney, Gagnon, Osborne, L. Brown, Laliberte, Wheeler, Boisvert, Carlson, Lauterborn, Lewis, Schuett, Patten, Boyce, C. Soucy, J. Sullivan, Crisler, Ferrante, Perkins, Sterling and Cunningham

Bill Sponsors: Sen. DeVries, Dist 18; Rep. Patten, Carr 4; Rep. Stohl, Coos 1

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. DeVries, sponsor, introduced the bill. Deals with RSA 75:1-a. Two years ago we passed legislation for a review before the Assessing Standards Board. This is a result of that review. It resulted in a complex formula. I will let the other speakers here explain that. It is an IRS program that allows wealthy people to get tax credits for investing in creating housing programs for low-income. The NH Housing Authority will explain further. This would be all rental properties with restrictions and expectations. Assessors across our state have a real problem properly assessing the properties - it cannot be assessed beyond the restrictions set by the feds based on the rents created by the formula. The Sen. submitted comments to be distributed to the committee.

Rep. Sterling: With workforce housing, by itself is a pretty hard political sell in some communities. With this we will have to sell a lower tax bill for a large complex. Can you address that. **Ans. -** That is exactly what the formula attempted to address. Reps. Patten and Stohl worked hard and agreed with the final formula as fair, so it is not being taxed as a Cadillac when it's clearly not a Cadillac. Once you opt in, you have to stay with the program for ten years, based on the income statements of the occupants.

Rep. Cooney: There were some cities doing this, some not giving the credits and this was to stabilize that. **Ans. -** That's right, we had one property in Concord that was going to have to close it's doors because the rents could not raise enough to cover the assessment.

Rep. Laliberte: Is this something that can be worked out? **Ans. -** They are glad that now they have a website they can go to work out assessments. Not all will follow that, but this would guide that. The Dept. of Rev. can give guidance and has overview. This is a vital program, the infusion of private dollars to help \$20 to \$24 million coming into New Hampshire. They are looking to make sure they are investing in sound investments. These projects are very competitive. If there is something that is uncertain, the investors will go elsewhere. When we first encountered this problem it was because the investors were starting to go away.

Rep. Crisler: This is new to me. How does the current use property tax come into play. **Ans. -** the amended version does not have that in it. I will defer to the experts.

***Ignatius McClellan**, Northern New England Housing Investment Fund. Supports the bill. Before RSA 75:1-a was adopted in 2008, there was no equalized way to deal with these properties. The assessors have come on board with this. The board of tax and land appeals said the legislature needed to come up with this formula. This is just clarification, not a complete revamp. Par. 1 changes some words on lines 5, 10 & 11. Sec. 2, line 17 - this is an income based formula. If you are under construction you are not allowed to be assessed under this section. Lines 22-25 clarifies if in existence for a short time. Par. 4 encompasses the physical real estate used in the north country. Sec. 5 is rulemaking authority for Dept. of Revenue, this can really make a difference whether this works or not. The goal is fair assessments for the communities and clarification for the appellate boards. We reached out to the assessing community throughout the state.

Rep. Crisler: Who owns this. Ans. - You set up a limited partnership with the local developer, a group such as CATCH and the investor. You can't sell or transfer without NH Housing Authority approval and they have the right of first refusal.

Rep. Crisler: There is a problem in Massachusetts that these lose affordability after a period of time. Ans. - You have the restrictions by the IRS, the NH Housing demands a period of 99 years. Once you are no longer subject to those, you are assessed at full value. As to your current use question, once a property has been taken out of current use you would pay those fees, as normal.

Rep. Brown: In the north country, what is the smallest number of units. Ans. - Feds say four units, but usually you are seeing 12 at a minimum or perhaps 3 and 3 to total 6. It would have to be 6.

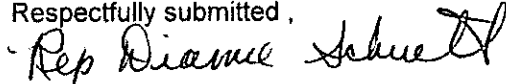
***Michael LaFontaine**, Housing Action New Hampshire. Supports the bill.

Robert Tourigny, Neighbor Works of Greater Manchester. Supports the bill. I am here as a practitioner of these projects. The bill passed last year works and this one will help keep these projects viable. We have worked with assessors to help them understand the regulations. Derry has developed a spreadsheet that works well - so that they can just plug in the numbers and arrive at the figures.

Rep. Sterling: If they choose the actual income, how is a loss treated. Ans. - It would be reflected in our audits for our financial statements that is given to the assessor. We were one of the communities that saw shifting, but it leveled out and gives us predictability.

***Ben Frost**, NH Housing Finance Authority. Supports the bill.

Respectfully submitted,



Rep. Dianne Schuett

Clerk

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Hearing closed at 2:30 p.m.

Respectfully submitted ,

Rep. Dianne Schuett, clerk

Testimony

SB 349

Ignatius MacLellan

VICE PRESIDENT OF EXTERNAL AFFAIRS



**NORTHERN NEW ENGLAND
HOUSING INVESTMENT FUND**

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**NORTHERN NEW ENGLAND
HOUSING INVESTMENT FUND**

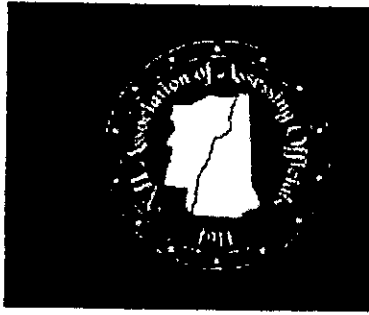
We are a private, nonprofit corporation that promotes housing and community development by providing equity capital, technical assistance and consulting to affordable housing developers throughout Maine and New Hampshire.

We have raised over \$325 million through 2009.

We have invested those funds, via the Federal Low Income Housing Tax Credit Program, in affordable housing developments, resulting in the construction or rehabilitation of rental apartments

- o NH 1860 apartments
- o ME 1480 apartments
- o Total 3340 apartments

We provide comprehensive consulting services for affordable rental housing. Since December 2004, we have worked on 7 developments.



ASSESSOR'S EXCHANGE

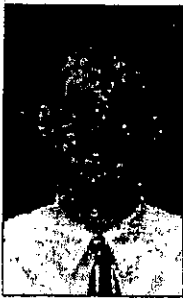
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Summer 2008

New Law Provides an Assessment Method for Affordable Housing Developed Using Low-Income Housing Tax Credits: HB 1442

Ignatius MacLellan



Under RSA 75:1, assessors must value property based on a market-value standard. But what if there are no sales that can be used to calculate or review an assessment? What if a property's use, income and resale are legally restricted by the government to provide a basic need, such as housing for lower-income residents? What is the legislature's role in establishing an objective assessment method? These were the questions the legislature sought to answer when it passed House Bill 1442 (the LIHTC Assessment Bill). HB 1442 amends RSA 75:1 and creates

a new section--RSA 75:1-a--that provides an assessment method for affordable housing developed under the Federal low-income housing tax credit (LIHTC) program.

HB 1442 has two parts: 1) the so-called "farm bill," which enables municipalities to assess farm land and farm building at values less than market value; and 2) the LIHTC housing assessment provisions (originally in Senate 199). This article will only address the LIHTC housing provisions.

The idea behind this bill was originally proposed by Steve Tellier, a former Manchester assessor. Having worked to get HB 1442 passed, I know some assessors agree with and some disagree with the intent and the result of this process. To help address those concerns, we presented the original bill at an assessors' meeting, and we received some recommendations for revising the bill. We also met for many hours with assessors, the DRA and the New Hampshire Municipal Association. Many of those suggestions were incorporated in the final bill. If you compare the bill as originally passed in the Senate with the final bill, you will see significant changes that benefited municipalities. Most importantly, the original bill did not include the following that were added to the final bill: 1) the 10% minimum tax, and 2) other income in the property's income. The final bill also includes significant detail to help assist with implementation and to help avoid disagreement about the bill's meaning. I appreciate the time that the assessors, the DRA and the NH Municipal Association spent working on this bill.

This article will not revisit the debate over the bill's merits. The bill has passed, and it's time to ensure the bill is understood and correctly implemented.

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The LIHTC Assessment Bill Only Applies to Housing Subject to Restrictions under the Low-Income Housing Tax Credit Program

The LIHTC Assessment Bill is a limited bill. It only applies to housing developed under the LIHTC program, an Internal Revenue Service program that is administered by New Hampshire Housing Finance Authority (NH Housing). See IRS Code Section 42. The bill does **not** apply to other types of affordable housing. To qualify for assessment under the bill, the taxpayer must provide the municipality a copy of the "Land Use Restriction Agreement" (the LURA), which is a recorded document between the property owner and NH Housing that spells out the property restrictions.

The LIHTC Program: A Primer

Here are some of the basics of the LIHTC program:

- The tax credit program is the key development program for affordable rental housing in New Hampshire, providing housing to people who make 60 percent of area median income or less.
- The LIHTC program provides a one-time development subsidy; it does **not** provide ongoing rental or operating subsidy. The upfront capital is required because the cost to build such housing exceeds the value supported by the restricted rents.
- Each year in New Hampshire the tax credit program provides approximately \$20 million in equity from private sources to build approximately 200 rent-restricted apartments. Since 1986, the program has produced 130 properties that contain 4,200 apartments in 58 New Hampshire municipalities.
- The Federal government provides the State of New Hampshire an allotment of Federal tax credits, which NH Housing awards to developers based on a competitive process.
- A LIHTC developer can be a nonprofit (majority in NH are nonprofit) or a for-profit organization, but all must comply with the IRS and the NH Housing program requirements.
- Once a developer is awarded credits, the developer sells to an investor the right to claim the future tax credits. The investor's "purchase" of the credits provides the upfront development capital. The investor also becomes a limited partner in a single-purpose entity such as a limited-liability corporation.
- While the investors claim the tax credits over a 10-year period, the IRS requires the investors to be part of the ownership entity for 15 years.
- As a general rule and unlike typical real estate investors, LIHTC investors look for a return based primar-



ily on the tax benefits. LIHTC investors generally are not looking to make money off cash flow or on a property's sale. The developments are structured consistent with these expectations, namely: 1) NH Housing structures LIHTC deals so there is limited cash flow; and 2) the IRS and NH Housing provide for a formulaic sales price usually with an option for a nonprofit to buy the property.

- If a property does not comply with IRS requirements, the tax credits are subject to recapture. Furthermore, foreclosure wipes out the investor's interest and thereby wipes out any future credits and could include recapture of some of the already claimed credits.
- Tax credit properties are subject to recorded, enforceable restrictions that: 1) last up to 99 years; 2) restrict apartments to lower-income residents; 3) limit the maximum rent that can be charged; and 4) restrict transfer, financing and sale of the property. These restrictions ensure the units are available for lower-income people, limit the property's value and protect the public's interest in affordable housing.

It is important to understand these program requirements and the investors' motivations to understand why the value of these LIHTC affordable housing properties cannot be based on typical market-rate rental data. I submit that given the significant long-term restrictions on LIHTC properties, the value is significantly negatively impacted as soon as the restrictions are recorded. HB 1442 is simply a way to estimate value given the valuation challenges.

The LIHTC Assessment Bill Aims to Provide an Objective Assessment Method

The LIHTC Assessment Bill was not designed to simply reduce assessments. LIHTC property owners want to pay their fair share of taxes. The bill was designed to recognize an existing reality: the value of LIHTC properties, even considering any program benefits, is impacted by the long-

term legal restrictions, and New Hampshire law already requires that the impact of the program must be considered by the assessor. *See, e.g., Royal Gardens Co. V. City of Concord*, 114 N.H. 668 (1974) (assessment must consider benefits and burdens of federal housing program).

Before the bill an objective method for determining value did not exist, and a review of a sample of 40 LIHTC properties confirmed the lack of an objective standard. Assessments on a per-unit basis varied from \$31,000 to \$110,000 per unit. These wide ranging differences resulted in wide ranging tax impact. Taxes per unit ranged from \$600 per unit to \$2,200 per unit. Additionally, taxes as a percentage of total rent varied from 7% of total rent being paid as taxes to 28% of total rent being paid as taxes. Even when differences in tax rates were considered, the same conclusion was clear—the assessments varied wildly across the state because assessors and taxpayers lacked a reasoned formula to determine value. HB 1442 strives to provide assessors, taxpayers and any reviewing board or court a workable reliable and objective formula.

The Statutory Formula and the Empowerment of the Assessment Standards Board

Here is the procedural key to understanding this bill. The bill provides a statutory income-approach formula for tax years 2009 and 2010. The bill also empowers the Assessment Standards Board (ASB) to study this issue, and if it chooses, the ASB is empowered to promulgate a formula, which would be followed for later tax years. This means that if the ASB promulgates a new formula: 1) the statutory formula would be wiped out, and 2) the ASB formula would be in effect for tax years after 2011, subject to grandfathering described below. If the ASB does not promulgate a new formula, the statutory formula would remain in effect for the later years. The ASB intends to start its review this fall.

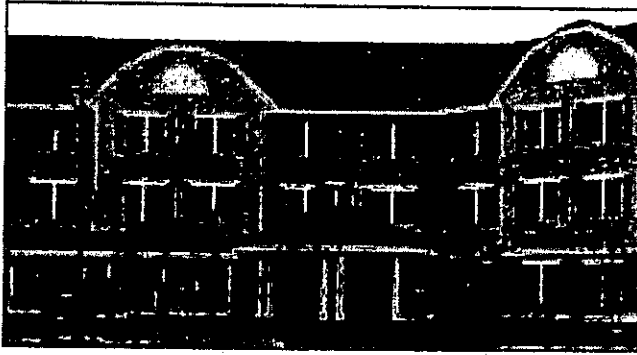
The remainder of this article focuses on the statutory formula that will be used in 2009 and 2010.



The Basics of the Bill

Here are the basics:

- **Taxpayer Election:** The formula in the bill only applies if the taxpayer timely elects to be assessed under the bill by notifying the municipality by October 1, 2008 (for tax year 2009) or by October 1, 2009 (for tax year 2010). If a taxpayer does not so elect, the municipality will assess the property consistent with general New Hampshire assessment law.
- **Data Sources for Income Approach:** The bill provides four data sources:
 - 1) *NH Housing* will publish: a) the maximum allowed LIHTC rents and utilities allowances by location, b) the market vacancy rate by region and c) the capitalization rate;
 - 2) *The taxpayer* will, by each April 15, provide the municipality with: a) the total number of units, b) the breakdown of restricted and unrestricted units, c) the audited financial information on other income and actual expenses and d) a statement of which utilities, if any, are paid by the tenants;
 - 3) *Department of Revenue Administration (DRA)* will determine the capitalization rate based on location (DRA will also provide the forms for the election and for the taxpayer to provide data to the municipality); and
 - 4) *The municipality* will determine market rents for the unrestricted apartments.
- **Amount of Tax:** Taxpayers who elect for assessment under the bill will pay the *greater of*: (1) taxes based on the stated income-approach formula; or (2) 10% of actual rents (the minimum tax). Thus, municipalities will calculate the assessment using the statutory formula and the taxes due and then determine taxes based on 10% of actual rent. The taxpayer would then pay taxes on whichever yields the highest taxes.
- **Income-Approach Formula:** Assessments will be based on the statutory formula, which is described below. This formula will be effective for tax years 2009 and 2010 and will not consider intangibles such as tax credits and other subsidies.
- **Election during first 2 years and Grandfathering:** Owners who elect during the first two years will be assessed under the statutory formula for **10 years** even if the ASB creates a new formula.
- **Election after first 2 years:** If the ASB promulgates rules, then owners who elect after the first 2 years will be assessed using the ASB formula. The length of that election will be determined by the ASB.
- **Exemption:** The bill states that taxpayers "subject to assessment under this section shall not be granted a property tax exemption under RSA 72:23."



The Formula

Given the lack of sales and given that the costs to build LIHTC housing far exceeds the market value, especially when rent restrictions are considered, the legislature concluded that LIHTC properties should be valued using the income approach. HB 1442 provides the formula and the sources of all of the income-approach components, stating: "The assessed value shall be calculated using an income approach whereby the net operating income is divided by the overall capitalization rate and, except when the municipality has updated its assessment values to equate to market values, multiplying that value by the previous year's equalization ratio."

Here are the components (Note: Data used is from the year before the tax year being assessed.):

Potential gross income

- Restricted rental units Maximum allowed rent
- Units w/ project-based subsidies Contract rent
- Unrestricted units Market rent
- Other income Miscellaneous such as laundry and vending
- Other income Nonresidential space
- Other income Interest on restricted reserve funds

Vacancy and collection loss

- Vacancy Market vacancy (NH Housing data)
- Collection loss Actual uncollectible rents

Expenses

- Expenses Actual ordinary expenses, excluding property taxes, debt service and depreciation and including deposits to restricted reserves for replacement

Capitalization Rate

- Capitalization rate Market rate for location (determined by DRA)
- Overall rate Plus municipality's equalized tax rate

Appeals

Taxpayers who elect to be assessed under this bill may still appeal their assessments. While not explicit in the bill, the issue on appeal will likely be limited to whether the municipality correctly applied the formula.

A note concerning pending tax appeals: If you have a case pending before the Board of Tax and Land Appeals or the Superior Court, this bill does not apply retroactively. Thus, municipalities are not bound by the bill's income approach for pending appeals, and taxpayers cannot simply use the formula in pending appeals to challenge the assessment. That said, running the numbers under the bill's income formula could provide a basis for settlement discussions with adjustments as warranted by the municipality and the taxpayer.

Final Comments

HB 1442 was the result of the political process—the art of the possible, not the perfect. Now, the bill goes from the books to the real world. I hope HB 1442 helps municipalities assess LIHTC while providing taxpayer with an objective and predictable assessment. We stand ready to help the implementation go smoothly, and feel free to call me with any questions or comments.

Ignatius MacLellan is Vice President of Public Affairs at the Northern New England Housing Investment Fund, a nonprofit that syndicates low-income housing tax credits in Maine and New Hampshire. Previously, he worked at Fannie Mae, and for over 8 years, he was the attorney member of the New Hampshire Board of Tax and Land Appeals. Phone: (603) 224-3708; email: imaclellan@housinginvestmentfund.org

Notes:

- 1) A training session on this topic will be offered on November 13 at the Local Government Center's annual conference.
- 2) For full text of the Assessment bill go to: <http://www.gencourt.state.nh.us/legislation/2008/HB1442.html>.
- 3) The issue of how to value tax credit housing was brought to fore in the Board of Tax and Land Appeals case of *Epping Senior Housing Associates LP v. Town of Epping* (docket numbers 19135-01PT/19855-02PT/20263-03PT March 8, 2005).

LaFontaine

Housing Action NH

Building Alliances for Low Income Housing Advocacy

Chairwoman Mary Cooney
House Municipal and County Government Committee
LOB 301
Concord, NH 03301

Re: SB 349 Assessment Procedures for Certain Affordable Rental Housing

March 30, 2010

Dear Chairwoman Cooney and Members of the Committee:

I am writing on behalf of Housing Action New Hampshire to indicate our **support for SB 349.**

Housing Action New Hampshire is a coalition whose purpose is to work with federal and state policy makers to increase public investment in the development and preservation of affordable housing. We work with developers, agencies and others who work with the low-income housing tax credit (LIHTC) program, which helps provide housing to lower-income people in New Hampshire.

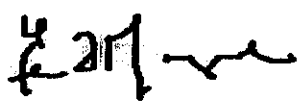
SB 349 is critical to the successful implementation of the Low Income Housing Tax Credit program. The LIHTC program is a key piece of the housing puzzle in New Hampshire, ensuring we are able to produce new rental units for those in need of decent and affordable housing. These properties are subject to long-term restrictions on: 1) tenant income; 2) maximum rent allowed; and 3) resale. **These restrictions impact the property's value, which should be recognized in the property assessment.**

Senate Bill 349 is a clarification bill that reinforces and improves the progress made in 2008 with the enactment of RSA 75:1-a. Before RSA 75:1-a, affordable housing providers had little idea of what their property taxes would be or how the assessment had been determined. This made it difficult for housing providers to budget. Given program requirements and limited resources, tax credit properties operate on very tight budgets. RSA 75:1-a created certainty and fairness, which is essential to any important housing program.

The proposed clarifications will ensure this assessment procedure works better for municipalities and taxpayers, providing a fair assessment method to reflect the value as impacted by the recorded restrictions. Because this approach is critical to the appropriate implementation of federal programs, we would oppose any amendments to this clarification bill.

Based on the need for clarification for RSA 75:1-a , we respectfully request that this Committee vote **Ought to Pass.**

Sincerely,



Elissa Margolin, Director



New Hampshire Housing

Bringing You Home

Frost

Dean J. Christon
Executive Director
e-mail: dchriston@nhhfa.org

March 31, 2010

Honorable Mary R. Cooney, Chairman
Municipal and County Government Committee
New Hampshire House
Concord, NH 03301

RE: SB 349, relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the Low Income Housing Tax Credit Program

Dear Representative Cooney:

New Hampshire Housing strongly supports passage of SB 349. This legislation will affirm the work done by the Legislature in 2008 when it established a fair and consistent process for assessing property taxes on those properties that are developed under the Low Income Housing Tax Credit Program (LIHTC).

The LIHTC provides an effective vehicle for encouraging private investment in new affordable rental housing. Eligible projects receive federal income tax credits over a ten year period, commensurate with the percentage of the units set aside for eligible households. In order to be eligible, a minimum of 20% of the project must be targeted to households earning 50% or less of median area income or 40% of the project must be targeted to households earning 60% or less of median area income. In New Hampshire, sponsors commit to the affordability levels for 99 years.

Typically, the tax credits provide a basis for the syndication of projects to investor limited partners, exchanging project equity for tax credits. The resulting equity leverages loan capital and greatly reduces the need for scarce, direct public subsidies. Tax credit equity has become the cornerstone of almost all affordable rental production in New Hampshire, generating on average, 65% of total project costs. Credits are allocated on a competitive basis one or two times each year.

Although many LIHTC projects are sponsored by non-profit owners, most of these properties are owned by private entities. In fact, the structure of the LIHTC Program requires that a for-profit ownership entity exist even if a community-based non-profit serves as the general partner. The financing available provides subsidies that are designed to reduce the cost of building housing. Few resources are available to support the ongoing operation of projects. Instead, properties are intended to be self-supporting through the collection of rents.

New Hampshire Housing Finance Authority

32 Constitution Drive Bedford, NH 03110 Mailing Address: P.O. Box 5087 Manchester, NH 03108 (603) 472-8623 TDD: (603) 472-2089
Littleton Office: 41 Cottage Street Littleton, NH 03561

www.nhhfa.org

In return for favorable subsidies, the restrictions imposed by the LIHTC Program effectively limit the income that a project can generate regardless of market conditions. These restrictions are established through recorded deed restrictions and covenants that run with the property. The nature of the long-term use restrictions associated with LIHTC properties severely limits the opportunities for them to be sold. Therefore, unlike market rate apartment projects, there are few sales transactions that can be used to develop conclusions about market values.

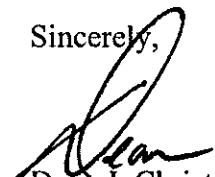
This limitation results, therefore, in a class of properties that differ significantly from conventional market rate apartments. Specifically, LIHTC properties have artificial restrictions on income and it is difficult to determine value based on comparable sales. This has created a challenge to the traditional approach of assessing properties for tax purposes.

Prior to the Legislature acting in 2008 to create an income-based assessing formula, local assessments often failed to recognize the unique characteristics of these properties, resulting in inconsistent and unsupportable values, which were frequently disproportionate to the income generating capacity of projects given the revenue restrictions inherent in financing agreements.

The Legislature's solution to this problem provided statutory guidance to assessors that recognized the unique circumstances of these properties—in particular the income restrictions imposed by the LIHTC Program—and ensured that such properties will pay their fair share of taxes based on a project's actual income producing capacity.

Thank you for your consideration of these issues. We would be pleased to provide additional information that may assist in your deliberation of this bill, which we respectfully ask you to recommend "ought to pass."

Sincerely,



Dean J. Christon
Executive Director

TITLE V TAXATION

CHAPTER 75 APPRAISAL OF TAXABLE PROPERTY

Section 75:1-a

[RSA 75:1-a effective until July 1, 2010 as provided by 2008, 390:10; see also RSA 75:1-a set out below.]

75:1-a Residential Property Subject to Housing Covenant Under the Low-income Housing Tax Credit Program. –

The appraisal for property tax purposes on multifamily residential rental property which has been allocated federal low-income housing tax credits under section 42 of the Internal Revenue Code and which is subject to a recorded housing subsidy covenant that restricts tenant eligibility and rents shall, upon the affirmative request of the taxpayer, be determined under this section. A copy of the recorded land use restriction required by section 42 of the Internal Revenue Code or other low income rental use restriction covenant required by the New Hampshire housing finance authority, is sufficient proof of an allocation of federal low-income housing tax credits.

I. To make an election for an appraisal of property subject to a housing covenant under the low-income housing tax credit program, the taxpayer shall, by October 1 preceding the tax year for which the election is sought, provide written notice to the municipality of the taxpayer's election to be assessed under this section, using a form prepared by the department of revenue administration.

II. When an election is made, the property shall be assessed under this section for the next 10 tax years, provided the property remains subject to the housing covenant under the low-income housing tax credit program. A property subject to assessment under this section shall not be granted property tax exemption under RSA 72:23.

III. A taxpayer who makes an election under this section shall, by April 15 of each applicable tax year, provide the assessor with the relevant information described in this section, using a form prepared by the department of revenue administration.

IV. Financial information that is required from the taxpayer under this section shall be the audited financial statements from the prior calendar year as prepared by a third-party certified public accountant.

V. A taxpayer making an election under this section shall be liable for taxes on the property in an amount that is the greater of:

- (a) The taxes determined using the income approach under this section; or
- (b) The taxes in an amount equal to 10 percent of the actual rental income and other income.

VI. The assessed value shall be calculated using an income approach whereby the net operating income is divided by the overall capitalization rate and, except when the municipality has updated its assessment values to equate to market values, multiplying that value by the previous year's equalization ratio.

VII. The assessed valuation of residential rental property subject to a housing covenant under the low-income housing tax credit program shall not take into consideration the value of intangible assets including, but not limited to, government subsidies or grants, below market rate mortgage financing, and tax credits where such subsidies are used to offset project development expenses in order to allow for restricted rents. The assessed valuation shall not take into consideration the actual cost of acquisition or construction of the project.

VIII. In this section:

(a) ""Capitalization rate" means an overall capitalization rate comprised of:

(1) A market capitalization rate that is typical for the geographic area in which the property is located, as determined annually by March 31 by the commissioner of revenue administration, and as published by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a; and

(2) The municipality's previous year's equalized tax rate.

(b) ""Collection loss" means the amount of actual uncollectible rents.

(c) ""Net operating income" shall be calculated by subtracting from the potential gross income:

(1) The vacancy loss;

(2) The collection loss; and

(3) The operating expenses.

(d) ""Operating expenses" means the actual ordinary and typical yearly expenses that are necessary to keep the property functional, including deposits to restricted reserve accounts required by the housing subsidy covenant or other legal restriction but excluding property taxes, mortgage debt service, and depreciation, incurred with respect to the property. Expenses for capital improvements, meaning improvements with an expected life exceeding 5 years as compared to yearly maintenance or work performed for unit turnover, shall not be considered operating expenses.

(e) ""Other income" means income that is attributable to the real estate and is ordinary and recurring, such as laundry or vending income. Interest on restricted reserve funds shall be considered other income. For properties with nonresidential space that is or can be rented as commercial space to third parties, market rent, considering any legal, market, or covenant restrictions, shall be attributed to such space and shall be considered as other income. Common area space within a property that are used primarily to benefit the property's residents or to provide services to the property's residents shall not be separately assessed and no income shall be imputed to such space.

(f) ""Potential gross income" shall be calculated as follows:

(1) For units receiving assistance under a project-based rental subsidy contract, using the rents specified in the contract.

(2) For all other units subject to a legal restriction, using the maximum restricted rents allowed by the legal restrictions governing the rents of the units for the geographic area in which the property is located. Where multiple legal restrictions apply, the most restrictive shall be used. Maximum restricted rents shall be adjusted as appropriate using utility allowances for the geographic area in which the property is located, and as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

(3) For all non-restricted units in properties where only a portion of the units are subject to a legal restriction, using non-restricted rents as determined by the local market.

(4) Other income shall be included in potential gross income.

(g) ""Restricted reserve funds" means funds that are required by the housing covenant under the low-income housing tax credit program and are restricted to specific uses, which shall be treated as follows:

(1) Actual payments into such funds shall be considered an operating expense; and

(2) Actual interest earned on such funds shall be considered other income.

(h) ""Vacancy loss" means a deduction from the potential gross income that is calculated by multiplying the potential gross income for the rental units by the rental market vacancy rate for the geographic area in which the property is located, as provided by the New Hampshire housing finance authority pursuant to RSA 204-C:8-a.

Source. 2008, 390:5, eff. July 1, 2008.

Voting Sheets

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on SB 349-FN-LCOAL

BILL TITLE: (New Title) relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program.

DATE: April 13, 2010

LOB ROOM: 301

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Brown

Seconded by Rep. Patten

Vote: 18-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: Yes, vv

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Dianne E. Schuett, Clerk

HOUSE COMMITTEE ON MUNICIPAL AND COUNTY GOVERNMENT

EXECUTIVE SESSION on SB 349-FN-LCOAL

BILL TITLE: (New Title) relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program.

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Moved by Rep. *Brown*

Seconded by Rep. *Patten*

Vote: *18-0* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.) *YES*
Cunningham Patten

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Rep. Dianne E. Schuett, Clerk

MUNICIPAL AND COUNTY GOVERNMENT

Bill #: SB 349 Title: re procedure for appraisal of multifamily residential rental property
 PH Date: 3 / 31 / 2010 Exec Session Date: 4 / 13 / 2010

Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
Cooney, Mary R, Chairman	18	
Gagnon, Raymond G, V Chairman	1	
Osborne, Jessie L	2	
Brown, Larry	3	
Laliberte, Suzanne S	4	
Wheeler, Deborah	5	
Boisvert, Ronald R	6	
Carlson, Nancy L	7	
Lauterborn, Elaine M	8	
Lewis, Robert D	9	
Schuett, Dianne E, Clerk	10	
Patten, Betsey L	11	
Boyce, Laurie J	12	
Soucy, Connie M	13	
Sullivan, James M	14	
Crisler, Margaret M <i>absent</i>		
Ferrante, Beverly A	15	
Perkins, Amy Stasia <i>absent</i>		
Sterling, Franklin W	16	
Cunningham, Steven L	17	
TOTAL VOTE:	18	0

Committee Report

CONSENT CALENDAR

April 14, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on MUNICIPAL AND COUNTY GOVERNMENT to which was referred SB349-FN-L, AN ACT (New Title) relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Larry Brown

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	MUNICIPAL AND COUNTY GOVERNMENT
Bill Number:	SB349-FN-L
Title:	(New Title) relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program.
Date:	April 14, 2010
Consent Calendar:	YES
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

In the last biennium the house passed a bill which defined a process by which low-income multifamily rental property subject to covenants to keep the rents low, would be fairly assessed to reflect the fact that rents would not be at market value. This bill clarifies that properties under construction on April first of a tax year are not eligible to participate in the program and that properties with a partial prior calendar year shall have their financials extrapolated using projected first full year operating budget data to determine a full year's operation. It also makes changes to the assessment formula recognizing the thorough review work of the assessing standards board by repealing certain chapter 390 laws of 2008, defines a multifamily rental property and more properly refers to properties as being governed by section 42 of the Internal Revenue Code and eligible for assessment under that section.

Vote 18-0.

Rep. Larry Brown
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

MUNICIPAL AND COUNTY GOVERNMENT

SB349-FN-L, (New Title) relative to the procedures for appraisal of multifamily residential rental property subject to covenants under the low-income housing tax credit program. **OUGHT TO PASS.**

Rep. Larry Brown for MUNICIPAL AND COUNTY GOVERNMENT. In the last biennium the house passed a bill which defined a process by which low-income multifamily rental property subject to covenants to keep the rents low, would be fairly assessed to reflect the fact that rents would not be at market value. This bill clarifies that properties under construction on April first of a tax year are not eligible to participate in the program and that properties with a partial prior calendar year shall have their financials extrapolated using projected first full year operating budget data to determine a full year's operation. It also makes changes to the assessment formula recognizing the thorough review work of the assessing standards board by repealing certain chapter 390 laws of 2008, defines a multifamily rental property and more properly refers to properties as being governed by section 42 of the Internal Revenue Code and eligible for assessment under that section. **Vote 18-0.**

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: MUNICIPAL & COUNTY GOVT

BILL NUMBER: SB 349

TITLE: re the procedures for appraisal of multifamily residential rental property

DATE: 4/13/2010 CONSENT CALENDAR: YES [X] NO []

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

The bill clarifies that properties "under construction" on April 1st of a tax year are ~~to~~ not eligible to participate in the program and that properties with ^a partial prior calendar year shall have their "financials" extrapolated using projected 1st full year operating budget data to determine a full years operating ~~parameters~~. It also makes changes to the assessment formula - recognizing the thorough review work of the Assessing Standards Board (~~Chapter 32, laws of 2008~~) by repealing certain chapter 390 laws of 2008, ~~and~~ defines a "multifamily rental property," and more properly ~~refers~~ refers to properties as being "governed" by section 42 of the Internal Revenue Code and "eligible for assessment" under that section.

COMMITTEE VOTE: 18-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. JERRY BROWN For the Committee

Jerry Brown 4/13/10

SB 349 Committee Report 4-13-2010
Rep. Larry Brown for the committee

In the last biennium the house passed a bill which defined a process by which low-income multifamily rental property subject to covenants to keep the rents low, would be fairly assessed to reflect the fact that rents would not be at market value. This bill clarifies that properties under construction on April first of a tax year are not eligible to participate in the program and that properties with a partial prior calendar year shall have their financials extrapolated using projected first full year operating budget data to determine a full year's operation. It also makes changes to the assessment formula recognizing the thorough review work of the assessing standards board by repealing certain chapter 390 laws of 2008, defines a multifamily rental property and more properly refers to properties as being governed by section 42 of the Internal Revenue Code and eligible for assessment under that section.