

Bill as Introduced

SB 58-FN-A - AS AMENDED BY THE SENATE

03/16/11 0686s
03/30/11 1181s
03/30/11 1276s

2011 SESSION

11-0999
09/03

SENATE BILL **58-FN-A**

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

SPONSORS: Sen. Odell, Dist 8

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill adds qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. The bill also clarifies that a New Hampshire resident investor in a qualified investment company is only taxable on his or her proportionate share of interest and dividend income earned by the qualified investment company.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

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

1 Purpose. The general court finds:

2 I. The New Hampshire business finance authority has been authorized by the United States
3 Treasury Department to allocate federal New Markets Tax Credits to support economic development
4 in certain eligible low-income areas of the state.

5 II. Under the federal New Markets Tax Credit Program, the business finance authority is
6 required to establish certain "qualified community development entities" for purposes of facilitating
7 investment by third parties to support economic development transactions.

8 III. This act ensures that "qualified community development entities" established by the
9 business finance authority will not be subject to the business profits tax, the business enterprise tax,
10 or the interest and dividends tax. The ultimate recipient of the investment funds, however, will
11 continue to be subject to these taxes.

12 2 Business Profits Tax; Definitions; Qualified Investment Company. Amend RSA 77-A:1, XXI(a)
13 to read as follows:

14 XXI.(a) "Qualified investment company" means:

15 (1) A regulated investment company as defined in section 851 of the United States
16 Internal Revenue Code as defined in RSA 77-A:1, XX;

17 (2) An organization that is an investment company under the Investment Company
18 Act of 1940 as amended; ~~[or]~~

19 (3) An organization that would be an investment company under the Investment
20 Company Act of 1940, as amended, but for the exception from investment company status provided
21 by section 3(c)(1) or 3(c)(7) of said Investment Company Act[-]; *or*

22 (4) *A qualified community development entity as defined in section 45D of*
23 *the United States Internal Revenue Code.*

24 3 Business Enterprise Tax; Definitions; Qualified Investment Company. Amend RSA 77-E:1,
25 XIV(a) to read as follows:

26 XIV.(a) "Qualified investment company" means:

27 (1) A regulated investment company as defined in section 851 of the United States

1 Internal Revenue Code as defined in RSA 77-E:1, XVII;

2 (2) An organization that is an investment company under the Investment Company
3 Act of 1940, as amended; [or]

4 (3) An organization that would be an investment company under the Investment
5 Company Act of 1940, as amended, but for the exception from investment company status provided
6 by section 3(c)(1) or 3(c)(7) of said Investment Company Act[-]; or

7 (4) *A qualified community development entity as defined in section 45D of*
8 *the United States Internal Revenue Code, which entity is owned, controlled, or managed,*
9 *directly or indirectly, by the business finance authority of the state of New Hampshire.*

10 4 Taxation of Income; What Taxable. Amend RSA 77:4, V to read as follows:

11 V. For each holder of an ownership interest in a qualified investment company as defined in
12 RSA 77-A:1, XXI [~~which is not a qualified investment capital company as defined in RSA 77-A:1,~~
13 ~~XXIV~~], which holder is subject to tax under RSA 77, the holder's proportional share of the *interest*
14 *or dividend* income *taxable under this chapter*, less any income attributable to United States
15 government notes or bonds, [of] *received by* such qualified investment company shall be treated as a
16 dividend *taxable under this chapter to the holder*; however, notwithstanding any other provision
17 of RSA 77, no actual distribution made to such holder by such qualified investment company shall be
18 taxable under RSA 77.

19 5 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
20 December 31, 2010. Section 4 of this act shall apply with respect to all taxable periods subject to
21 assessment of the tax and appealed pursuant to RSA 21-J:28-b.

22 6 Effective Date. This act shall take effect upon its passage.

23

LBAO
11-0999
02/01/11

SB 58-FN-A - FISCAL NOTE

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill may decrease state revenue by an indeterminable amount in FY 2011 and each year thereafter. This bill would have no fiscal impact on state, county, and local expenditures, or county and local revenues.

METHODOLOGY:

The Department of Revenue Administration states this bill adds qualified community development entities to the definition of qualified investment company under the business profits tax (BPT), business enterprise tax (BET), and interest and dividends tax (I&D). The Department states it is not known if any current filers of Business tax or I&D tax returns would qualify as being tax exempt under these new provisions as the Department does not have any data to identify who may be affected by this bill. The Department states this bill should identify the applicable taxable periods that are exempt from this change in order to avoid taxpayers currently subject to the tax filing amended tax returns claiming unknown refunds for prior business activity that is only now deemed exempt from taxation. The exact fiscal impact cannot be determined at this time.

LBAO
11-0999
Amended 04/12/11

SB 58 FISCAL NOTE

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FISCAL IMPACT:

The Department of Revenue Administration states this bill, as amended by the Senate (Amendments #2011-1181s and #2011-1276s), may decrease state revenue by an indeterminable amount in FY 2011 and each year thereafter. This bill would have no fiscal impact on state, county, and local expenditures, or county and local revenues.

METHODOLOGY:

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SB 58-FN-A - AS AMENDED BY THE HOUSE

03/16/11 0686s
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4May2011... 1580h

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The bill also adds a special rule to clarify tax treatment of capital gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trusts.

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2 I. The New Hampshire business finance authority has been authorized by the United States
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4 in certain eligible low-income areas of the state.

5 II. Under the federal New Markets Tax Credit Program, the business finance authority is
6 required to establish certain "qualified community development entities" for purposes of facilitating
7 investment by third parties to support economic development transactions.

8 III. This act ensures that "qualified community development entities" established by the
9 business finance authority will not be subject to the business profits tax, the business enterprise tax,
10 or the interest and dividends tax. The ultimate recipient of the investment funds, however, will
11 continue to be subject to these taxes.

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13 to read as follows:

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16 Internal Revenue Code as defined in RSA 77-A:1, XX;

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18 Act of 1940 as amended; [or]

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20 Company Act of 1940, as amended, but for the exception from investment company status provided
21 by section 3(c)(1) or 3(c)(7) of said Investment Company Act[-]; or

22 (4) *A qualified community development entity as defined in section 45D of*
23 *the United States Internal Revenue Code, which entity is owned, controlled, or managed,*
24 *directly or indirectly, by the business finance authority of the state of New Hampshire.*

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2 Internal Revenue Code as defined in RSA 77-E:1, XVII;

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8 (4) *A qualified community development entity as defined in section 45D of*
9 *the United States Internal Revenue Code, which entity is owned, controlled, or managed,*
10 *directly or indirectly, by the business finance authority of the state of New Hampshire.*

11 4 Taxation of Income; What Taxable. RSA 77:4, V is repealed and reenacted to read as follows:

12 V. Amounts reported and taxed federally as dividends or interest to a holder of an ownership
13 interest in a qualified investment company as defined in RSA 77-A:1, XXI, a mutual fund, or a unit
14 investment trust.

15 5 Taxation of Income; Dividends Earned on Certain Mutual Funds and Distributions Received
16 on Unit Investment Trusts Not Taxable. RSA 77:4-d is repealed and reenacted to read as follows:

17 77:4-d Special Rule for Qualified Investment Companies, Mutual Funds, and Unit Investment
18 Trusts. Notwithstanding any other provision of RSA 77:4, the following income items shall not be
19 treated as dividends or interest income taxable under this chapter:

20 I. Amounts accruing to the holder of an ownership interest in a qualified investment
21 company, as defined in RSA 77-A:1, XXI, or a mutual fund or investment income earned or
22 distributions received by the holder of an ownership interest in a unit investment trust, which
23 qualified investment company, mutual fund, or unit investment trust invests solely in
24 New Hampshire tax-exempt tax anticipation notes, bond anticipation notes, and other instruments
25 exempt under New Hampshire law.

26 II. Amounts reported and taxed federally as capital gains to the holder of an ownership
27 interest in a qualified investment company, as defined in RSA 77-A:1, XXI, a mutual fund, or a unit
28 investment trust.

29 6 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
30 December 31, 2010. Sections 4 and 5 of this act shall apply to taxable periods beginning on or after
31 January 1, 2011.

32 7 Effective Date. This act shall take effect upon its passage.

LBAO
11-0999
Amended 04/12/11

SB 58 FISCAL NOTE

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, as amended by the Senate (Amendments #2011-1181s and #2011-1276s), may decrease state revenue by an indeterminable amount in FY 2011 and each year thereafter. This bill would have no fiscal impact on state, county, and local expenditures, or county and local revenues.

METHODOLOGY:

The Department of Revenue Administration states this bill adds qualified community development entities to the definition of qualified investment company under the business profits tax (BPT), business enterprise tax (BET), and interest and dividends tax (I&D). The Department states it is not known if any current filers of Business tax or I&D tax returns would qualify as being tax exempt under these new provisions as the Department does not have any data to identify who may be affected by this bill. The Department states portions of this bill would apply to taxable periods ending on or after December 31, 2010, and a portion would apply with respect to all taxable periods subject to assessment of the tax and appealed pursuant to RSA 21-J:28-b. As a result this bill would have a retroactive application and apply to business activity already conducted in closed tax periods, possibly as far back as three years. The Department states this bill would allow certain businesses to file amended tax returns and receive refunds of their taxes paid, but are unable to determine the amount in refunds which would be requested or paid at this time.

LBAO
11-0999
Amended 05/11/11

SB 58 FISCAL NOTE

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, as amended by the House (Amendment #2011-1580h), may decrease state revenue by an indeterminable amount in FY 2011 and each year thereafter. This bill would have no fiscal impact on state, county, and local expenditures, or county and local revenues.

METHODOLOGY:

The Department of Revenue Administration states sections 1 through 3 of this bill exempts qualified community development entities as defined in 26 U.S.C. Sec. 45D that are owned, controlled, or managed, directly or indirectly, by the Business Finance Authority (BFA) of the State of New Hampshire from taxation under the business profits tax (BPT), business enterprise tax (BET), and interest and dividends tax (I&D). The Department states it is not known if any current BFA entities filed business tax or I&D returns and would qualify as being tax exempt under the provisions of this bill. The Department does not have any data to identify who may be affected by this bill. Sections 4 and 5 of this bill would clarify tax treatment of capital gains earned by holders of ownership interest in qualified investment companies, mutual funds, and unit investment trust. The Department states it is not clear if some taxpayers have paid tax on this income in the past, as the Department does not have any data in that respect. The Department states portions of this bill would apply to taxable periods ending on or after December 31, 2010, and a portion would apply with respect to all taxable periods beginning on or after January 1, 2011. As a result this bill would have a retroactive application and apply to business activity already conducted in closed tax periods. The Department states this bill may allow certain businesses to file amended tax returns and receive refunds of their taxes paid, but are unable to determine the amount in refunds which would be requested or paid at this time.

Amendments

Rep. Major, Rock. 8
April 15, 2011
2011-1447h
09/10

Combined w/ AM 1557 into 1580h

Amendment to SB 58-FN-A

1 Amend RSA 77-A:1, XXI(a)(4) as inserted by section 2 of the bill by replacing it with the following:

2

3

4

5

(4) A qualified community development entity as defined in section 45D of the United States Internal Revenue Code, which entity is owned, controlled, or managed, directly or indirectly, by the business finance authority of the state of New Hampshire.

" NOT ADOPTED "

Rep. Stepanek, Hills. 6
April 25, 2011
2011-1557h
09/01

Combined w/ Am 1447 h into 1580 h

Amendment to SB 58-FN-A

1 Amend the bill by replacing all after section 3 with the following:

2

3 4 Taxation of Income; What Taxable. RSA 77:4, V is repealed and reenacted to read as follows:

4 V. Amounts reported and taxed federally as dividends or interest to a holder of an ownership
5 interest in a qualified investment company as defined in RSA 77-A:1, XXI, a mutual fund, or a unit
6 investment trust.

7 5 Taxation of Income; Dividends Earned on Certain Mutual Funds and Distributions Received
8 on Unit Investment Trusts Not Taxable. RSA 77:4-d is repealed and reenacted to read as follows:

9 77:4-d Special Rule for Qualified Investment Companies, Mutual Funds, and Unit Investment
10 Trusts. Notwithstanding any other provision of RSA 77:4, the following income items shall not be
11 treated as dividends or interest income taxable under this chapter:

12 I. Amounts accruing to the holder of an ownership interest in a qualified investment
13 company, as defined in RSA 77-A:1, XXI, or a mutual fund or investment income earned or
14 distributions received by the holder of an ownership interest in a unit investment trust, which
15 qualified investment company, mutual fund, or unit investment trust invests solely in
16 New Hampshire tax-exempt tax anticipation notes, bond anticipation notes, and other instruments
17 exempt under New Hampshire law.

18 II. Amounts reported and taxed federally as capital gains to the holder of an ownership
19 interest in a qualified investment company, as defined in RSA 77-A:1, XXI, a mutual fund, or a unit
20 investment trust.

21 6 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
22 December 31, 2010. Sections 4 and 5 of this act shall apply to taxable periods beginning on or after
23 January 1, 2011.

24 7 Effective Date. This act shall take effect upon its passage.



2011-1557h

AMENDED ANALYSIS

This bill adds qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. The bill clarifies that a New Hampshire resident investor in a qualified investment company is only taxable on his or her proportionate share of interest and dividend income earned by the qualified investment company.

The bill also adds a special rule to clarify tax treatment of capital gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trusts.

Amendment to SB 58-FN-A

1 Amend RSA 77-A:1, XXI(a)(4) as inserted by section 2 of the bill by replacing it with the following:

2

3 *(4) A qualified community development entity as defined in section 45D of*
4 *the United States Internal Revenue Code, which entity is owned, controlled, or managed,*
5 *directly or indirectly, by the business finance authority of the state of New Hampshire.*

6

7 Amend the bill by replacing all after section 3 with the following:

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16 Trusts. Notwithstanding any other provision of RSA 77:4, the following income items shall not be
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18 I. Amounts accruing to the holder of an ownership interest in a qualified investment
19 company, as defined in RSA 77-A:1, XXI, or a mutual fund or investment income earned or
20 distributions received by the holder of an ownership interest in a unit investment trust, which
21 qualified investment company, mutual fund, or unit investment trust invests solely in
22 New Hampshire tax-exempt tax anticipation notes, bond anticipation notes, and other instruments
23 exempt under New Hampshire law.

24 II. Amounts reported and taxed federally as capital gains to the holder of an ownership
25 interest in a qualified investment company, as defined in RSA 77-A:1, XXI, a mutual fund, or a unit
26 investment trust.

27 6 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
28 December 31, 2010. Sections 4 and 5 of this act shall apply to taxable periods beginning on or after
29 January 1, 2011.

30 7 Effective Date. This act shall take effect upon its passage.

2011-1580h

AMENDED ANALYSIS

This bill adds qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. The bill clarifies that a New Hampshire resident investor in a qualified investment company is only taxable on his or her proportionate share of interest and dividend income earned by the qualified investment company.

The bill also adds a special rule to clarify tax treatment of capital gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trusts.

Rep. L. Ober, Hills. 27
May 11, 2011
2011-1851h
09/10

Amendment to SB 58-FN-A

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

2

3 6 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
4 December 31, 2010. Sections 4 and 5 of this act shall apply to taxable periods beginning on or after
5 January 1, 2011, and also to taxable periods ending before January 1, 2011 if the taxable period is
6 subject to assessment of tax and appealed pursuant to RSA 21-J:28-b.

Rep. L. Ober, Hills. 27
May 11, 2011
2011-1851h
09/10

Adopted

Amendment to SB 58-FN-A

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

2

3 6 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
4 December 31, 2010. Sections 4 and 5 of this act shall apply to taxable periods beginning on or after
5 January 1, 2011, and also to taxable periods ending before January 1, 2011 if the taxable period is
6 subject to assessment of tax and appealed pursuant to RSA 21-J:28-b.

House Finance
May 11, 2011
2011-1859h
10/05

Amendment to SB 58-FN-A

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

2

3 6 Applicability. Sections 1-3 of this act shall apply to taxable periods ending on or after
4 December 31, 2010. Sections 4 and 5 of this act shall apply to taxable periods beginning on or after
5 January 1, 2011, and also to taxable periods ending before January 1, 2011 if the taxable period is
6 subject to assessment of tax and appealed pursuant to RSA 21-J:28-b.

Committee Minutes

HOUSE FINANCE COMMITTEE

Legislative Office Building, Rooms 210-211

Concord, NH

Tuesday, May 10, 2011

SENATE BILL 58-FN-A, AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and business enterprise tax.

TESTIMONY OF:

| | |
|---------------------------------|--------|
| Sen. Bob Odell. | Pg. 1 |
| Rep. Stephen Stepanek | Pg. 4 |
| Jack Donovan. | Pg. 26 |
| Bill Ardinger | Pg. 40 |

CHAIRMAN WEYLER: I'm now going to open the public hearing on Senate Bill 58, and I will recognize Senator Odell to introduce the bill, Senate Bill 58.

BOB ODELL, State Senator, Senate District #08: Thank you, Chairman Weyler, and Members of the Committee. Good morning.

CHAIRMAN WEYLER: Good morning, Senator.

SEN. ODELL: Thank you for the opportunity to introduce Senate Bill 58. The Chair of the House Ways and Means Committee is here and can go into the details and there are others that can explain the details of this bill. But essentially, I want to speak to a new term called New Market Tax Credits and this is a new Federal program that was used. One of the first projects was in Downtown Claremont. We now have in mill buildings that have been vacant for over 50 years a Common Man Restaurant. We have a Common Man Boutique Hotel, both of which are doing very well. We also have an apartment-condominium development

that is on the books and has been approved. And very importantly, we have a company there, Red River Computer, 15 years old, about \$300 million dollars in sales. That company brings 100 young people, average age of the company is about 30 years of age, to Claremont every single day. The project has private money, it has various grants, Community Development Block Grants. But this project has revitalized and changed the City of Claremont and changed its future. And it was only made possible at the last minute because of these New Market Tax Credits. As this is explained to you, you'll understand this is just one of the building blocks to putting together a project in a community like Claremont. And so for the value that we got from this, I'm just here to offer testimony that this works, it's important. The House Ways and Means Committee looked at this in detail. The Senate Ways and Means Committee, which I chair, looked at it in detail. This is a good thing to be doing. It's the right thing for New Hampshire and it's a very responsible thing. And I can tell you, you come to Claremont, I'll give you the tour, and it will open your eyes and make you feel very proud of our state and what we've done. Thank you, Mr. Chairman.

CHAIRMAN WEYLER: Thank you. Any questions for Senator Odell, I'd appreciate it if you'd hold them for Representative Stepanek.

REP. WORSMAN: I can wait.

CHAIRMAN WEYLER: You can wait. All right. Did you want to ask the Senator now?

REP. WORSMAN: I did actually, if I might.

CHAIRMAN WEYLER: Senator, can you answer one question, if it's only one.

SEN. ODELL: Maybe.

REP. WORSMAN: Thank you. The one concern I have that

was raised by some constituents, and certainly we've shared it with some of the other grants or some of the other tax credits that have been allowed that it begins to compete with private businesses and it puts small businesses and private businesses at a disadvantage in trying to compete with other organizations, other companies, that are using these tax credits to build -- to refurbish buildings, to put in affordable housing, to do et cetera. Could you speak to that, please?

SEN. ODELL: I would disagree with that point of view. These projects are uneconomical probably in the long-term and definitely in the short-term, unless we have these opportunities for various sectors of the community to come together. Remember, that these mills were sitting there for 50 years. They were dangerous places. The town base -- the city basically gave them up for a dollar. So this project could not have happened without programs like the New Market Tax Credits, as well as a wide variety of others. This money is available. It comes through the Federal government, and it's an arcane area of finance. But it was important, and I can assure you there were no private lenders coming to the table or investors. We had them, you know, Alex Ray and Rusty McLear and some of the others were there at the table right at the beginning. But at a certain point it took some extra extraneous -- external monies to make the project work.

REP. WORSMAN: Thank you.

CHAIRMAN WEYLER: Thank you. Thank you, Senator.

REP. KEANS: Mr. Chair.

CHAIRMAN WEYLER: Seems like we have one more. Questions trigger questions and they just multiply like rabbits.

SEN. ODELL: You're quite a disciplinarian, Mr.

Chairman.

CHAIRMAN WEYLER: We'll try to hold it these last. One question. Yes, Representative Keans.

REP. KEANS: Senator, we have used these in Rochester, you know, similar credits. I'm just having difficulty figuring out could you give me an example of what a qualified community development entity is? I'm not sure I understand the definition of community development entity.

CHAIRMAN WEYLER: You can pass any of these questions off if you want.

SEN. ODELL: I want to make sure we speak with one voice.

STEPHEN STEPANEK, State Representative, Hillsborough County, District #06: Yeah, I can.

SEN. ODELL: I think Steve can do that. Representative Stepanek.

REP. KEANS: Okay. Thank you.

CHAIRMAN WEYLER: Okay. Next call on Representative Stepanek who had this bill before his Committee.

REP. STEPANEK: Thank you, Mr. Chairman.

CHAIRMAN WEYLER: Welcome to Finance Committee.

REP. STEPANEK: Thank you. It's a pleasure. For the record, my name is Steven Stepanek. I represent Hillsborough County -- Hillsborough District 6, which encompasses the towns of Amherst and Milford.

Before you you have a Senate Bill 58. Sections 1 through 3 actually deal with what we were talking about as far as the tax credits. Essentially just to give you an

House Finance Committee

May 10, 2011

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overview of how these work, you have, for example, in Claremont they had a mill that needed to be rehabbed and revitalized. It was not feasible from a commercial point of view the numbers did not work. It was not an economical feasible project. With these funds, essentially what they do is they get a private investor to come forward and he buys, and I'll just pick some numbers, a million dollars worth of tax -- Federal tax credits for six or \$700,000. I don't know the exact percentage. But they buy them at a discount. They buy Federal tax credits. This money is then invested in the project to reduce the overall cost of the project. And over a period of time, I think it's either 7 or 10 years, the investor who bought these tax credit gets to use these tax credits spread out over a period of time. At the end of that period of time, his -- he walks away from the project. The money that he invested in the project, he no longer has any equity in the project. His payoff was the tax credits. So essentially, what this does is the money that he invested, he gets at a discount Federal tax credits. That money reduces the overall cost of the program, which makes it fiscally viable on a commercial basis. At that point private banks come into the situation and fund the balance of the program that becomes a commercially viable product.

In this case, it's all run through the New Hampshire Housing -- not housing, but the New Hampshire Finance Authority, Jack Donovan's group. And this bill is creating certain entities that the Federal government requires in order for this project to work. And so that is what Sections 1 through 3 are about.

Section 4 was added as an Amendment by the Senate and that has to do with QICs, and QICs are Qualified Investment Companies. And what those are are entities that were set up originally was created in the '90s by a bill that was passed by this Legislature which created QICs which were envisioned as an investment vehicle whereby the investors, the money that this has created that flows through these QICs, which are very large investment companies, and we

were trying to attract them into the state, and they, in fact, money that flows through them, interest dividends and capital gains, flow from the companies to the private investors. And we exempted the companies from any state taxes and the taxes flow directly to the investors. So the interest and the dividends that were paid were then taxed under interest and dividends taxes to the final investors.

What has come about was that our auditors have now gone and started auditing QICs and have said, in fact, not only are we going to tax you on the interest and we are going to tax you on the dividends, we are also going to tax you on the capital gains as dividends, because they're being distributed to you, which was not the intent of the initial law.

We have looked at this very closely in Ways and Means, and we have determined that, in fact, that was not the intent of the original law. That was not why we attracted these entities to the state. Therefore, we went to DRA and said, okay, we want you to be very clear. The policy on this as far as Ways and Means is concerned, is that these QICs are to be treated the way a regular mutual fund would be treated which would be, if any of you have a mutual fund, when you get your statement at the end of the year, they break out this is your long your long-term capital gains, this is your short-term capital gains, this is your interest and this is your dividend and then you report it accordingly to the State. The State actually has in their rules and in their instructions the fact that with a mutual fund your interest is taxed, your dividends are taxed. However, no interest from government bonds or from any kind of capital gains are taxed by the State of New Hampshire.

Therefore, we said we want QICs treated just like a mutual fund. So go back and come up with the language that covers mutual funds and we will adopt that language for QICs just so that there's no misunderstanding as to how these have been -- how these are to be treated.

Now, keep in mind, this is the first time this issue has come up. So there's no tax consequences to this because we've never taxed these entities this way in the past. Well, lo and behold, DRA came back to us and said, guess what, the law does not recognize pass-throughs. And, in fact, we should be taxing capital gains under the law that exists now. Our rules and our instructions for mutual funds do not match the law in New Hampshire. And, in fact, mutual funds under the current law in New Hampshire, mutual funds could -- capital gains and mutual funds could be taxed under our current law. Even though up to this point in time the rules and the instructions from DRA essentially say we don't -- which we don't, we don't tax capital gains.

So we've used this as a template. What we've done is we've taken in this Section 4 and said that for QICs, we are going to put them under the umbrella of a mutual fund. We are going to consider them just like we consider a mutual fund. They will be dealt with just like you deal with a mutual fund. We are now working with DRA to introduce a new bill in the upcoming filing period which will match our law with the rules and instructions that DRA has for mutual funds. So we have to actually change existing law to match current rules and current instructions that say we do not tax capital gains from mutual funds which will then cover QICs because QICs under this bill are going to be considered the same as mutual funds.

The only change that we are requesting on this, in doing all the amendments we inadvertently missed and when DRA worked with us in writing up the language on this, they changed the date from what the Senate had. And we are just asking that that date be changed back. And I have some proposed language to do that, to change it back to the original date that the Senate had. So that's a request that we would put in that we missed in the process. But that essentially describes both sections of the bill, and I'll be more than happy to answer any questions.

CHAIRMAN WEYLER: Okay. Representative McGuire for the first question. Getting the rest of you in order here.

REP. MCGUIRE: Thank you, Mr. Chairman. Thank you, Representative Stepanek. I didn't quite understand your first example where you were saying that a wealthy taxpayer would buy a million dollars worth of tax credits for 600,000. The 600,000 would go into this project. Why would the Federal government do something like that rather than just give a \$600,000 grant to the project and collect the million dollars of tax from the taxpayer?

REP. STEPANEK: You're actually asking me to justify the thinking of Washington D.C.?

REP. MCGUIRE: Yeah, I mean --

REP. STEPANEK: I'm sorry, I don't think -- I have no idea. I mean, this is a program that was developed in Washington. The money was made available to us. Why the logic behind it on how they did it? I have no idea. All we are trying to do is create the vehicle to allow us to access this money while it's available under the Federal guidelines. Why they came up with this program, how they justified it --

REP. MCGUIRE: All right. Thank you.

CHAIRMAN WEYLER: Representative Kurk for a question.

REP. KURK: Thank you, Mr. Chairman. First, are we going to hear from Jack Donovan?

REP. STEPANEK: I don't see him here. I don't know.

REP. KURK: Very important to me that we follow the money and I think Jack is the best source of following the money. Further question, Mr. Chairman?

CHAIRMAN WEYLER: Further question.

REP. KURK: If the Federal government wants to use tax dollars to finance programs that make no economic sense on their own, as you pointed out, that's a Washington problem. But why would the State of New Hampshire want to add insult to injury by exempting these folks from the interest and dividends tax? Why should we suffer? Why should our taxpayers have to pay more in taxes to makeup for a break that we're giving to uneconomic projects?

REP. STEPANEK: You lost me on that one, Representative Kurk. We're not exempting anybody from interest and dividends.

REP. KURK: In other words, these QICs are going to pay --

REP. STEPANEK: QICs has nothing to do with Sections 1 through 3 which is this Federal money. QICs we created. That was an amendment that was added to this bill. QICs.

REP. KURK: Okay. Then I misunderstand. So the only thing we're doing is allowing J. P Morgan and so forth to make a few bucks by selling investment tax credits.

REP. STEPANEK: Correct.

REP. KURK: And that will have no impact on the interest and dividend tax revenues or any other revenues in the state.

REP. STEPANEK: No. No. And the QICs were authorized by the State back in the '90s in order to attract these organizations into the state, in which we exempted them already from all taxes and that the taxes -- what we said was that the interest and dividends that are generated by these investments, these investment firms, will flow directly to the partners or the investors within the firm and they would be responsible for the interest and dividends tax, which they have been paying all along. What

is -- the new wrinkle is that one of our auditors actually read the law and said, oh, I can also tax capital gains under this. Because the law says that I can tax capital gains even though they've never done it in the past, and even though we don't do it for mutual funds, which -- and we specifically say in our instructions, DRA says that capital gains are exempt. And their rules say that capital gains are exempt from mutual funds. QICs have been treated the same way up until an audit was -- -- audits have been now in the process of being performed on these QICs, where they've never been performed before, and they are now saying under the law that exists now we can go after capital gains even though we never did before and even though it was never the intent of this Legislature when we created QICs to have capital gains taxed.

REP. KURK: Follow-up?

CHAIRMAN WEYLER: Follow-up.

REP. KURK: Thank you, Mr. Chairman. Then Representative Stepanek, are you saying that the Fiscal Note is incorrect? Fiscal Note, as I read it, says that the qualified investment companies --

REP. STEPANEK: It's your typical -- will have an indeterminable amount.

REP. KURK: The point is it's only QICs that the Fiscal Note applies to.

REP. STEPANEK: Exactly. And they have never gone after QICs in the past. They've never taxed them in the past. When we questioned the DRA on this Fiscal Note, they said well, maybe some of these QICs, in fact, paid the tax on the capital gains and we're not aware of it. Even though they weren't required to, maybe they made a mistake and inadvertently paid a tax on capital gains. These are some of the most sophisticated investors that are involved in these QICs. I do not believe that any of them made a

mistake and paid a tax that they did not owe. But that was DRA's position. And that's why they said that it's an indeterminable amount because we don't know if they did it, but maybe they did. And to cover ourselves we will assume that somebody made a mistake and inadvertently paid a tax that they weren't owed -- that wasn't due.

REP. KURK: So. Thank you, Mr. Chairman.

CHAIRMAN WEYLER: Follow-up.

REP. KURK: So is it the case that regardless of where the partner as it were lives, California, Texas, Montana, if the investment vehicle is in New Hampshire and investing in something that produces interest and dividends in New Hampshire, that these people are going to pay tax on that as a result of this pass-through, even though they're out-of-state. We're not losing money.

REP. STEPANEK: No. The way this is designed and the way it's been designed since the '90s is if you are a New Hampshire resident, just like with a mutual, think of a mutual fund, if there's a mutual fund it generates interest and dividends, if you live in Massachusetts you pay the taxes in Massachusetts. If you live and you are a resident in New Hampshire and subject to interest and dividends taxes and it's been going on since the '90s, the interest and dividends that is generated by these QICs just like a mutual fund is reported to the State and interest and dividends is charged, is collected, and is being paid. The only difference is we're now saying for those people who owe the interest and dividends, we're also going to say we are going to go after the capital gains and charge that.

REP. KURK: But I'm putting that aside because it looks as though we're allowing a group of people who are currently paying taxes indirectly through the vehicle, the qualified investment --

REP. STEPANEK: Hm-hum.

REP. KURK: -- and the investment development companies to avoid paying those taxes by instead of taxing the entity, allowing the pass-through to occur and having all of the individual investors pay the tax. But since many of them may not -- may not be in New Hampshire, won't the State lose the tax by allowing the pass-through?

REP. STEPANEK: This is the vehicle that was set up by this Legislature back, I believe, in 1993. Okay. And that's been going on since 1993. This has been in place since then when we created the entity QIC.

REP. KURK: I'm talking about the other entity. I'm not talking about the QICs.

REP. STEPANEK: What are you talking about?

REP. KURK: I'm talking about what the bill was originally designed to deal with.

REP. STEPANEK: That bill has nothing to do with interest and dividends. It has nothing to do with taxes. There's no tax implication on the State at all as far as the first three sections.

REP. KURK: So, on Line 22, a qualified community development entity --

REP. STEPANEK: Yes.

REP. KURK: -- is that going -- is that entity or any of its owners through a pass-through going to be paying interest and dividends taxes?

REP. STEPANEK: The only one who can own that entity is New Hampshire Finance Authority. It's a State agency.

REP. KURK: They own the entity.

REP. STEPANEK: They own the entity. There's no private ownership of these entities. These entities are being created in order to adhere to the rules that were put in place by the Federal government.

REP. KURK: If the entity were owned -- I'm sorry. If the entity were private, then they would be subject to the interest and dividends tax.

REP. STEPANEK: Yes, but they're not.

CHAIRMAN WEYLER: I have about eight more people.

REP. KURK: Sorry. I'll ask Mr. Donovan these questions. Thank you.

CHAIRMAN WEYLER: Trying to find him and see if he can appear. Representative Keans for a question.

REP. KEANS: Thank you. I guess I have a problem right back on 22, Line 22 as well. It seems to me most of these firms have been operating quite well, getting -- there's been a lot of development in downtown areas that have sort of been the blighted areas with the new malls being built and all that. Why do we have to have a new entity that can do this?

REP. STEPANEK: This is a new, shall we say, basket of Federal money that has been made available. And it is being moved through to the development through the New Hampshire Business Authority. And if you read under Line 22, the entity is owned, controlled, or managed, directly or indirectly, by the Business Finance Authority of the State of New Hampshire. So there's no opportunity, to answer Representative Kurk's question, there's no opportunity for private ownership or the avoidance of any taxes in this bill. This is put in place in order to adhere to the Federal regulations in order to access this money, which is new -- a new form of financing that the Federal government has enacted and it is actually in place. We have used it in

Claremont, they are using it in, I think, one or two other projects already in the state, and so we need to put this in place in order to be in compliance with Federal regulations for the use of this money.

REP. KEANS: Follow-up?

CHAIRMAN WEYLER: Follow-up.

REP. KEANS: With all due respect, sir, managed and owned mean two different things to me. So I'm -- I'm assuming that Business Finance could manage it for some investors that live in Montana, and they'd be getting the tax advantage, not the Business Finance Authority, because they're only managing it.

REP. STEPANEK: This is very specific in the sense that it is -- there's no private ownership of these entities. That they're simply there in place to pass-through to the -- as a pass-through in order to make this work under Federal regulations.

CHAIRMAN WEYLER: If a mutual fund was created in New Hampshire and people bought shares from all over the world, the mutual fund would be sending out the dividends to those investors and the mutual fund company would not be taxed.

REP. STEPANEK: Correct.

CHAIRMAN WEYLER: So what we are doing is creating a new mutual fund and calling it a qualified investment corporation.

REP. STEPANEK: Well --

CHAIRMAN WEYLER: Or community investment corporation.

REP. STEPANEK: Okay. No. I want you to be clear that we are really talking about two separate bills here. The first bill is the first three sections have to do with the

qualified community development fund. Okay. That has nothing to do with Section 4 which is the qualified investment company which is the mutual fund that I talked about example. So those two are two -- it's basically two separate bills that we're --

CHAIRMAN WEYLER: All right.

REP. STEPANEK: That Section 4 was an Amendment by the Senate which was put onto this bill which really has very little to do with the first three sections.

CHAIRMAN WEYLER: Thank you. Representative Keans, are you finished?

REP. KEANS: I'm all set. Thank you.

CHAIRMAN WEYLER: All right. I think I've got almost everybody on the Committee on here. Representative Barry is next.

REP. BARRY: Thank you, Mr. Chair. And in the interest of trust --

CHAIRMAN WEYLER: Mr. Donovan is due to arrive in about ten minutes.

REP. BARRY: This is really for the Representative Stepanek.

REP. STEPANEK: Thank you.

REP. BARRY: In the interest of trust but verify, would you object to having a one-year review of the scope of the project so that we can find out how much money we talk about after a year?

REP. STEPANEK: Which section of the bill are you talking about?

REP. OBER: All of it.

REP. BARRY: I would like whatever is going to cost us some money to be reviewed.

REP. STEPANEK: Essentially, I have no problem in reviewing it, but I think essentially, you know, as nears as we can tell there's no money -- this is not going to cost the State anything under the QICs. They were not paying on capital gains. The only reason that Fiscal Note is there was because the DRA said maybe somebody by mistake paid a tax on their capital gains, and therefore, maybe that money when they realized that they didn't owe the money they won't pay it in the future. But knowing these organizations, I don't believe anybody by mistake paid a tax that they didn't owe. And I don't think you can qualify and say that we're going to lose money because somebody made a mistake and paid a tax they didn't owe, and therefore, we are going to lose money because they figured out that they made a mistake.

REP. BARRY: Thank you.

CHAIRMAN WEYLER: If you look at any of these things after a year, you may find out that no one's gotten into any of these deals yet. If they have, they're just in the design phase. You might not know for three or four years whether or not any money was generated that could have been taxable and then it's going to be memory to try to -- somebody to go to Performance Audit Oversight or somebody to get that sort of thing. Representative Allan.

REP. ALLAN: Yes. Thank you, Mr. Chairman. Representative, did you consider in your Amendment adding one word on Page 1, Line 22, a qualified investment community, and on Page 2, Line 8, a qualified investment community so the people won't think the towns are doing this and that it's an investment company?

REP. STEPANEK: I would have to review that and see,

you know, with the various parties to determine if that would have any impact on the overall Federal requirements related to this money.

REP. ALLEN: Thank you.

CHAIRMAN WEYLER: It references an IRS code. So obviously, the IRS code includes that description qualified community development. So if we changed it, it might take it out of that --

REP. STEPANEK: We may be in violation of the covenants of the money that we're accessing, the Federal money that we're accessing. And again, this -- the first three sections of this bill are simply us -- the requirements that we are being asked to make in order to meet Federal regulations.

REP. ALLEN: Thank you.

CHAIRMAN WEYLER: Representative Rodeschin, did you want to ask a question?

REP. RODESCHIN: No. Well, I thought maybe I should wait until Donovan gets here.

CHAIRMAN WEYLER: All right. Representative Cebrowski.

REP. CEBROWSKI: Thank you, Mr. Chairman. Thank you, Representative Stepanek.

REP. STEPANEK: You're welcome.

REP. CEBROWSKI: You articulated this pretty well very confidently; but as you said, it's kind of sophisticated. Do you or someone else have a model or a spreadsheet or something that we could follow that could help us all understand this a little bit better? Again, 'cause as you said yourself, it's kind of a sophisticated transaction.

REP. STEPANEK: Now, are you talking the first three sections of the bill? I have to qualify to determine which section of the bill you're talking about.

REP. CEBROWSKI: Just how the whole QIC operates. Think of it, if you will, as a cash flow statement or something like that which --

REP. STEPANEK: Which side of the bill though? I need to -- are we talking the first three sections of the bill that have to do --

REP. CEBROWSKI: Yes.

REP. STEPANEK: I believe that Jack Donovan has already got several projects that are in the works or have been completed.

REP. CEBROWSKI: So he could share that.

REP. STEPANEK: So he has all of the information on exactly how this would work and he can share that with you.

REP. CEBROWSKI: Thank you.

CHAIRMAN WEYLER: Representative Baroody for a question.

REP. BAROODY: Can I wait, Mr. Chairman, for Mr. Donovan?

CHAIRMAN WEYLER: You want to wait? Okay. Representative Rosenwald.

REP. ROSENWALD: Thank you, Mr. Chairman. Thank you. We talked a lot about the I and D tax and the capital gains maybe being double taxation as I think I understand. Could you tell us, please, a little bit about the discussion in Ways and Means on the BPT and the BET, because I see they are referred to in the Fiscal Note as possibly declining in

revenues as well. So I didn't understand whether those would be subject possibly mistakenly to capital gains as well.

REP. STEPANEK: I believe that as far as the BPT and BET, this was an old Fiscal Note before we amended it in such a way as to exclude any private entities from having control. And we specifically added in here that they would be owned, controlled, or managed, directly or indirectly, by the Business Finance Authority of the State of New Hampshire and the State of New Hampshire does not tax itself on BET or BPT. So before we put this Amendment in, there was a question as to whether private entities could, in fact, access and be part of this process. And if they were, in fact, part of the process, and exempted from BET or BPT that could have a potential future impact on revenues. But when we amended it, we amended out any -- this amendment amends out any private entities and only allows the Business Finance Authority which is a state agency, which we do not tax.

REP. ROSENWALD: Follow-up, please?

CHAIRMAN WEYLER: Follow-up.

REP. ROSENWALD: So would it not be possible then to calculate which private companies had been paying BET or BPT, and therefore, how much revenue we would have lost?

REP. STEPANEK: None had because this is a new finance vehicle. This money was just recently made available by the Federal government. And there's only one or two projects that have accessed this money up to this point in time. And that's all been done through the New Hampshire Business Finance Authority. And what we're doing is putting this in place so that we're not in violation of the Federal requirements for the use of this money. So this is not something that's been ongoing for and there's hundreds of projects out there and so on. I believe there's only one or two projects that they have actually used this financing

money for and it's always been through the Business Finance Authority.

REP. ROSENWALD: Thank you.

CHAIRMAN WEYLER: Representative Smith for a question.

REP. SMITH: Thank you, Mr. Chair. I think I'd like to reiterate the last question because it was at the heart of mine and I just want to make sure I understood his answer. On Line 9 of the first page, that we act assured that the qualified community development entity established by the Business Finance Authority, and elsewhere you're saying owned by, but I don't see it in this bill, will not be subject to the Business Profits Tax or the Business Enterprise Tax. Is the reason for that exemption, and then the ultimate recipient would receive those but, of course, the ultimate recipient will not be subject to the Business Profits Tax or Business Enterprise Tax, I don't believe. So is that in there specifically to provide acceptability to the New Markets Tax Credits invented by the Federal government?

REP. STEPANEK: Yes. And if you go down to Line 22, Section 4, we specifically say that the entity is owned, controlled, managed, directly or indirectly, by the Business Finance Authority of the State of New Hampshire. That's where we added that section in so that the exemption we are giving is the exemption to a State agency.

REP. SMITH: So it's managed indirectly and we own the cases.

REP. STEPANEK: Directly or indirectly.

REP. SMITH: Thank you.

CHAIRMAN WEYLER: Representative Benn for a question.

REP. BENN: Thank you, Mr. Chairman. I just want to

make sure I understand this notion of the qualified community development entity. Can you describe what makes it qualified? I understand it's under Section 45D. But what are the criteria that makes this entity? Does this entity actually own assets, real assets?

REP. STEPANEK: No. And I believe when Mr. Donovan comes he has a flow chart that shows you exactly how the money flows in this. I mean, I essentially came here to say we were requesting the change of the date. So I did not come prepared with all of the various flow charts that Jack Donovan has. I assumed that he would be here. I was just requesting that we change the date that we inadvertently changed from the Senate side. So I didn't come with all of my -- my paperwork and flow charts. I assumed that Jack would be here and have that information. So if I could -- if I could refer that to Jack when he arrives here that would be great.

CHAIRMAN WEYLER: Follow-up?

REP. BENN: Follow-up. Maybe this --

REP. STEPANEK: Absolutely.

REP. BENN: The entities owned by the Finance Authority, is that one project? Do you know that or is that a -- that could be multiple projects?

REP. STEPANEK: They've done one project, I believe, and they have another project on the drawing board. And essentially, these are pass-through vehicles that are required under the Federal regulations to access this money.

REP. BENN: I'll wait for Jack. Thank you.

CHAIRMAN WEYLER: All right. Representative Ober for a question.

REP. OBER: Thank you, Mr. Chairman. Thank you for your testimony and while I appreciate you testifying to the policy, and testifying at length to the policy, you've clearly given us enough information to ITL this bill. You have testified as part of this that this is two bills. You have testified, and if I misspeak let me know because this is where my question's going so I want you to know my assumptions, you've testified that the Fiscal Note is old which my assumption is the Fiscal Note applies to Sections 1, 2 and 3, and not to Section 4 which begins on 22, which is where the second bill takes effect; is that correct, Representative Stepanek?

REP. STEPANEK: To the best of my knowledge, yes.

REP. OBER: Okay. Thank you. Then my question is obviously going to apply to the first three questions. This Fiscal Note states this bill would have, not may have, but would have a retroactive application and apply to business activity already conducted in closed tax periods, possibly as far back as three years. The Department states this bill would allow certain businesses to file amended tax returns and receive refunds of their taxes paid. And then, of course, concludes that they can't figure out how much that is. But this Fiscal Note states that the first three sections are going to result in a loss of revenue to the State and a great deal of work going back possibly three years.

Since this Committee looks only at the money, not the policy, and I appreciate your passion for the policy, that alone is enough of a red flag to lead us to ITL this bill. And if I may, secondly, why would we, as a Committee, because we have that right in rules, not vote, takes a majority vote, to ask our Chairman to ask LBA for an updated Fiscal Note that applies to all of the bill? Because according to House rules, a Committee may vote to ask for a new Fiscal Note with a majority vote.

REP. STEPANEK: That is -- that is well within your

rights and I would not object to you doing that.

REP. OBER: Mr. Chairman, if you would allow that, I would move that this Committee vote on whether they wish a new updated Fiscal Note.

REP. KURK: This is 4/12.

CHAIRMAN WEYLER: What? We are still in the discussion -- in the hearing phase. We are not ready to make motions yet.

REP. OBER: Thank you.

CHAIRMAN WEYLER: Mr. Donovan has arrived. Is he ready to perhaps take some questions? I'll continue on with the list I have in front of me of people asking to ask questions. Representative Worsman is next.

REP. WORSMAN: Thank you. And I'm not -- I would guess, Representative Stepanek, you would be able to answer this. But my question is if the State is the owner essentially of the properties, and the credits are given to the investors, then there should never be capital gains generated as capital gains are generally generated on the sale of an asset. So if you could start with that question, please.

REP. STEPANEK: So you're talking about Section 4 of the bill now?

REP. WORSMAN: Correct.

REP. STEPANEK: Okay. So I think the best way to describe it is to consider a QIC as a type of a mutual fund. So in a mutual fund, a mutual fund is investing in various companies.

REP. WORSMAN: Hm-hum.

REP. STEPANEK: And in the course of that they will buy and sell stocks and various companies and generate a capital gains based upon those sales. And when you get your statement from a mutual fund it will indicate the dividends that are paid and passed through to you. It will indicate the interest that's paid and passed through you, and it will indicate the capital gains that were generated by the sale of stocks and that's given to you on a statement. QICs are operated very similar to that. And, essentially, we exempt under our rules and under the instructions from the DRA, we exempt any interest from State or Federal bonds and any gains, any capital gains that are generated, are exempted under the interest and dividends tax laws. Any interest or dividends that are paid, other than those two situations, are taxable under our interest and dividends taxes and that's the way the QICs have been operating up until this point in time. And they have been -- those residents who live in New Hampshire who are owners of a QIC are paying their interest and their dividends taxes as reported.

The wrinkle is that now the DRA has looked at -- an auditor at the DRA has actually looked at the law that exists on the books and has said I can go after capital gains that are being distributed. And when we looked at it in more detail, they can also now start going back and going after everybody's -- even though the instructions and the rules that the DRA has, and of course, if you went to court you'd probably win because the precedent is that the rules in the instructions say that capital gains are exempt. Under our current law, anybody who has had capital gains from a mutual fund could be taxed under our interest and dividends tax law as it exists now. And that's what we are trying to correct. It's not a tax that's ever been collected in the past, whether it be -- unless it's been inadvertently reported by an individual or by a QIC. It's never something that the DRA has gone after or has taxed up until this point in time.

REP. WORSMAN: Follow-up?

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CHAIRMAN WEYLER: Follow-up.

REP. WORSMAN: I understand your explanation. My question is if the State owns it who -- who is selling the actual property? Is it being treated like a real estate investment trust?

REP. STEPANEK: Okay. I want to caution. What I just described was Section 4 of the bill. Section 1, 2, 3 is -- has nothing to do with capital gains or interest and dividends taxes. And I think if we could let Mr. Donovan probably give you a quick overview of how Sections 1, 2, and 3 operate, and then ask some questions after that, I think that would probably help clarify a lot for the Committee.

REP. WORSMAN: May I do one follow-up?

CHAIRMAN WEYLER: All right.

REP. WORSMAN: Thank you. And this is not to necessarily be answered right now, but perhaps if you could answer it in your discussion, is if the State owns this property -- if we don't do this, each community is receiving tax money, real estate tax money from the private entity that owns the property. If the State takes over the investment of this property and the State owns it, or manages it, however you word, my question is then what happens to the real estate taxes that are generated?

REP. STEPANEK: Again, I'm going to defer that to Mr. Donovan and I think if -- after his explanation I think a lot of this will be clarified in your mind.

REP. WORSMAN: Great. Thank you. Thank you, Mr. Chairman.

REP. STEPANEK: Mr. Chairman, if I could suggest, if Mr. Donovan could go give us an overview of exactly the

flow chart on how this is going to work.

CHAIRMAN WEYLER: I think the copies are being prepared for the flow chart. You may want to wait --

JACK DONOVAN, Director, Business Finance Authority: Why don't we wait to have that. That will be great.

CHAIRMAN WEYLER: -- until the flow chart is distributed. Representative Baroody has a question for me.

REP. BAROODY: Yes, I do. Thank you, Mr. Chairman. We have a concern about the Fiscal Note.

REP. OBER: I do have some information when it's my turn to speak.

CHAIRMAN WEYLER: Representative Ober can give you some description on the Fiscal Note.

REP. BAROODY: Okay.

REP. OBER: Maybe this will answer your question.

REP. BAROODY: The only thing I would suggest is can't we when we pass this have it effective on signing or whenever and not retroactive?

CHAIRMAN WEYLER: That was my puzzlement, too. Why we would need to go back and write checks for people who filed years ago under a different understanding of the bill.

REP. BAROODY: I think if we approve this it should be from here forward at time of the signing.

CHAIRMAN WEYLER: I don't think how we could be passing a retroactive law. Same as deciding that something you were exempt from years ago we suddenly decide you owe taxes on. Just as crazy to go back and say something you paid taxes on years ago we have decided you don't owe taxes. So ought

to work both ways. Representative Ober to describe the --

REP. OBER: The DRA, Mr. Kane brought me the worksheet, is in the process of updating the Fiscal Note and they submitted this information on May 6th in response to the fact that we now have two bills lumped into one. However, Section 5 continues to read: This bill would take effect upon its passage. As amended, Sections 1 through 3 of the bill would apply to taxable periods ending on or after December 31st, 2010. Thus, the bill would have a -- and this is bold and underlined -- retroactive application and apply to business activity already conducted in closed tax periods. This bill would allow certain businesses to file amended tax returns and receive refunds of their Business Profits Tax and/or Business Enterprise Tax paid. How much in refunds would be requested and paid cannot be determined. That's the entire section that they submitted on May 6th. So I do think that if this bill is going to be passed we would have to do something such as you suggested, Representative Barody, to make sure we don't lose past revenues. I think we have to ask LBA if your suggestion is the one that would overcome this retroactive situation.

CHAIRMAN WEYLER: That's an unusual interpretation. I could see if the activity had taken place and no profit was declared yet that this bill would apply. But if it's something they have already paid taxes on, it makes no sense. All right. I think everybody now has a copy of the flow chart that Mr. Donovan is going to explain.

MR. DONOVAN: Thank you, Chairman Weyler, and I apologize. As you can see, I wasn't planning on being here today. So I can appreciate --

CHAIRMAN WEYLER: Thank you for coming quickly.

MR. DONOVAN: Let me just explain what we are trying to do here and I hope that the flow chart will help. Let me just start. We were able to -- this is Business Finance Authority, which is an arm of the State. We don't get a

State appropriation, but we have guarantee authority to issue bonds throughout the state. Have a Board that's appointed through the Governor and Council and includes a couple House Members, a couple Senate Members. So we applied for and received an allocation of \$65 million of Federal New Market Tax Credits. This is a special program to encourage investment in low-income areas, redevelopment projects, other types. Okay.

Now the way this works is we have to use a very specific structure in terms of qualifying these credits and the Business Finance Authority is the main entity. It's actually subsidiary we set up to do this. So, ultimately, the discussion about tax liability all comes back to me. Okay. That's why I'm particularly interested in jumping in my car to get up here. Ultimately, we'd be responsible.

Now I'll go through the structure of the transaction but to Representative Ober's point, we don't think we have any taxable liability under this. And we think we should be qualified as a qualified investment company anyway. We went last May to the Department of Revenue Administration and asked for declaratory ruling. See if we could get a one page thing saying, yeah, you guys are right. You don't have this tax because we don't want to get down the road and later find out we have a liability. We were told we can't give you the letter. We are not in a position to do that. So that's why we are pursuing this legislative remedy. We want to clarify we don't. We filed our tax return. We have one project under this we completed to date. I filed a tax return last week. We file for quick election. We don't think we are eligible so there's really no retroactive tax issue here.

REP. OBER: Mr. Donovan, before you came Representative Stepanek testified that this is really two bills tied together. Sections 1 through 3 do not really apply to you. Section 4 applies to you.

MR. DONOVAN: No, 1 to 3 is me.

REP. OBER: Well, your -- DRA has said that there are going to be retroactive refunds.

MR. DONOVAN: Well, one business. Why don't we go through. Anyway, let me just clarify that. The original bill was filed and DRA raised two issues in their original Fiscal Note. They were concerned about retroactivity saying, oh, unlimited businesses forever can apply under this. That was the open -- open-ended thing. We said okay, we are only going to apply to 2010, year ending December 31, 2010, the one project, Sanel Block, right down here down the street here on South Main Street here in Concord the one the retroactive provision apply to. So we clarified that to address their concern. They also said there's unlimited eligible businesses under this. If you look in the statute, the Amendment was made on the Senate side and actually Senator Almy picked up from the State. We clarified the only businesses that would qualify for group status under this are owned or controlled by the New Hampshire Business Finance Authority. So that's how we define that to address those two concerns. We met with them -- two weeks ago?

REP. STEPANEK: Hm-hum.

MR. DONOVAN: Two weeks ago and there were never any issues raised about the impact on revenue or anything else. I'm kind of surprised by the footnote. We thought we addressed all their concerns. Okay.

Let's walk through the sheet here. If you go to Page 1, the cover sheet, and this is why it's not going to cost the State any revenue, it shows what a typical structure would look like in a lending transaction. Okay. So we have the bank making a loan to a business, New Hampshire business, and then principal and interest going back up to the bank. Okay. Now the bank if it's a New Hampshire bank they pay their Business Profits Tax, Business Enterprise Tax on the interest. The business at the bottom pays their

taxes on the business activity. Normal structure. Okay. So that's what a deal normally looks like.

If you go to the third page you can see what the structure looks like under one of these so called New Market Tax Credit structures. We still have the bank in the upper right-hand corner and we have a New Hampshire business down at the bottom. Both of those entities are going to continue to pay taxes like they would under any normal circumstance. But because of the way the program is set up, we have to create these intermediate -- intermediaries here. The investment fund, the so-called NHBFA CDE which we own, an NHBFA CDE subsidy which we control. So we are required to set up these intermediary entities. The money flows -- the interest payments on a normal bank loan transaction have to flow from the New Hampshire business back through these entities. Okay. And we just want to clarify that. I mean, it's the same payment. The bank's going to pay interest -- the tax on their interest income above. The business is going to pay taxes on their interest below. We just want to clarify that these intermediate entities are not going to be subject to business profits and other taxes. If we do that, what we are doing is basically the interest flows backup through the structure. We are going to be taxing putting eight and a half percent Business Profits Tax on the interest at a couple different levels, including and adding -- effectively negating subsidy that the tax credit provides. We are saying nothing really changes. The bank's still going to pay. It's a New Hampshire bank that pay tax on their interest earnings. The New Hampshire business at the bottom who benefits from this is going to pay tax. We're simply clarifying these intermediary entities don't have taxable liability. They are simply pass-throughs. That's all they really are here, and we are required to do them.

Now the other -- the thing that's interesting about this of we weren't a New Hampshire group -- we are obviously 'cause we are part of the State -- if we weren't,

if we were from Massachusetts, we wouldn't have tax liability anyway on these things. We wouldn't have nexus on them. So we are just confirming that we don't have tax liability. We don't think we do. We think we qualify for quick status. We, being the Business Finance Authority, relatively responsible for this Tax. I don't want to get three or five years down the road and find out that we get picked up in an audit or somebody raised a question saying, oh, you guys have to pay taxes on all this pass-through income. So that's what we are doing. So we have to add these entities because of the way the structure is set up.

The program is a good one. It's complicated, but it's a good one. It allows us to raise money to take projects and make projects that don't work otherwise. We have raised equity for them. For example, the project we are working on right now, Newmarket Mills, anybody's familiar with it, the town has owned the complex there for probably 25 years. It's a couple hundred thousand square foot old mill complex sitting in the middle of town. They have not been able to renovate it because the project just isn't cost effective. We are able to use the tax credits to raise money, help lower the cost, subsidizes the reconstruction. We have got a developer to come in. It's going to be redeveloped in conjunction with the town. Town's actually sold it to the developer. Half will be apartments, the other half is going to be all commercial industrial space. So we are going to put that back on the tax rolls to Representative Worsman's question. That's the whole idea is to get increased investment. So money will go into there. Money is going into the biomass plant up in Berlin. We are looking at a new tissue machine, paper machine for sale if the Gorham Paper Mill goes through. Again, this helps us raise money to make these projects work, put people to work. That's what they basically do. The project we have completed to date you can see down on South Main Street is Sanel Block that's going up. They tore down all the junk across from the Capital Center for the Arts, redeveloping that business. It's an office project. It pays taxes. Puts it back on the tax roll. Brings people Downtown to help --

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provide space for the New Hampshire League of Craftsmen, the first floor. That's the whole effort to get more investment, encourage it, and we are simply trying to just, you know, make sure the subsidy gets passed through the deal. And frankly, we just want no harm, no foul. We are glad to sponsor this, but we don't want to get hit with a tax bill down the road. So that's all we are asking for. And I apologize. I should have been here to explain it before. I hope I've helped. I mean -

VICE-CHAIRWOMAN OBER: Well, thank you very much for your explanation. At this point in time Finance should be looking at the financial impact to the State and not really examining the policy. But there are times, as you can see, Mr. Donovan, when we can't seem to get through finance because we don't understand how the policy's going so we really appreciate that. So you do not believe that there would be any retroactive impact. Would you be upset if we put in a sentence indicating that this did not go back retroactively, if we amended this?

MR. DONOVAN: It become effective January 1st or July?

REP. BAROODY: On signing.

VICE-CHAIRWOMAN OBER: Effective only upon signing. Something that would stop the retroactive piece.

MR. DONOVAN: I would have no problem.

VICE-CHAIRWOMAN OBER: Okay. Thank you. We have two people who put off questions before I go onto the list. Representative Rodeschin, you were the first of the two people and if we can try to stay with the money.

REP. RODESCHIN: Thank you. Does this have an effect -- does this have an effect on the TIF programs? Because in Claremont they also had a TIF Program when they did the mill.

MR. DONOVAN: Well, you can buy it with a Tax Increment Financing but it doesn't necessarily have to go together. But you can. Actually, Newmarket is doing a Tax Increment Financing district to do some of the parking for that project.

VICE-CHAIRWOMAN OBER: Do you have a follow-up?

REP. RODESCHIN: Because it hasn't been approved the TIF program in Newport and I wanted to know whether it's going to have an effect on them, should we continue with that.

MR. DONOVAN: Yeah. I mean, you can combine the two, but they don't necessarily have to be. I mean, these are tax paying projects. I mean, they will pay --

REP. KURK: The question is whether this will affect an existing program that's already being undertaken.

MR. DONOVAN: No, no. Sorry.

VICE-CHAIRWOMAN OBER: Thank you for your clarification, Representative Kurk. Representative Baroody, you were the other person on the list before we get down to the other people.

REP. STEPANEK: Excuse me, Madam Chair. Are there any further questions for me, 'cause I've got other hearings. I have to be in front of Rules.

VICE-CHAIRWOMAN OBER: I think, Representative Stepanek, since we are going to be talking now just about the money and we have gotten the policy and you said that you had come to kind of give us the policy and look at a date, we won't have any questions specifically for you. We appreciate your time. If you would like to leave your Amendment with me, I don't know if we will consider it today or not as we are already running late.

REP. STEPANEK: Absolutely. Thank you very much.

VICE-CHAIRWOMAN OBER: Thank you. Okay. We are nine minutes into our next hearing. So if we can try to stay on the topic of the money. Representative Kurk.

REP. KURK: Thank you, Madam Chairman.

REP. BARODY: You recognized me.

VICE-CHAIRWOMAN OBER: I'm sorry. I thought you were done.

REP. BARODY: No, I didn't start.

VICE-CHAIRWOMAN OBER: Please continue.

REP. BARODY: We can start with the money, just the money in the stream of things. We have investors.

MR. DONOVAN: Yes.

REP. BARODY: We have the bank.

MR. DONOVAN: Yes.

REP. BARODY: The project is owned by the New Hampshire Housing Authority.

MR. DONOVAN: No. Well, we control it, but we are not the owner.

REP. BARODY: You control it.

REP. BENN: Don't own title.

REP. BARODY: Was alluded to you were going to own the project.

MR. DONOVAN: Control it.

REP. BAROODY: You're going to control it. Nobody owns the project yet until you get a developer.

MR. DONOVAN: That's right.

REP. BAROODY: The developer, does he invest anything in it?

MR. DONOVAN: The investor puts money in normally like you would with a normal bank loan. What's unique about this, Representative, if you go to the third page, we have this little tiny box off here next to the bank. Tax credit investor. People basically come in putting money in return for the tax credits. So what they do is that money comes in. It effectively subsidizes the project, drives the cost down. So we get a large bank, U.S. Bank or somebody else who simply wants the tax credits. They put money in. It effectively goes in 0% interest so it drives the overall cost of the money down to make the project cost effective.

VICE-CHAIRWOMAN OBER: Do you have a follow on?

REP. BAROODY: Yeah, I'm going down the whole sheet. So we have a bank who's the investor and putting tax credit money up instead of real depositors' money, let's say.

MR. DONOVAN: We also have a bank. We'll have a regular loan, okay. We go to regular loan. The bank -- let me use an example down here, Sanel Block. The project down here the bank, Mascoma Savings Bank, with participation from Merrimack County and another bank made a loan on the project. They do the normal underwriting they would. They require equity from the developer, et cetera. So it's a typical type project. The difference is we got an investor to bring additional money in. Really serves as equity of the deal. There's no interest payments, there's no principal repayment. That's how we get the subsidy in the project to make this work. That's what is unique about this.

REP. BAROODY: Now the developer like taking the loan out is putting money in like a regular construction would be, construction loan. Puts the money in, owns the project, and then comes down and then at the end he winds up owning the project, just repaying the loan.

MR. DONOVAN: Yes.

REP. BAROODY: Simple.

MR. DONOVAN: Yeah. Yep.

VICE-CHAIRWOMAN OBER: Representative Kurk for the second time.

REP. KURK: Thank you, Madam Chairman. Could you explain exactly your tax credit investor and the investment fund in the two black boxes? So we can really understand how the dollars are flowing and why this has to be so God-awful complex.

MR. DONOVAN: I will.

REP. KURK: I understand it's Federal but there's got to be a reason behind this other than to make work for Federal bureaucrats.

MR. DONOVAN: I will explain as best I can. If you go to Page 3, what we do is the money flows in. As we said, it's a regular bank loan from the bank and the tax credit investor money. We put it into an investment fund because what we have to do is we have to combine all the money to qualify it for the Federal tax credit. So the money comes into the investment fund which we set up one for each project. We combine the money from two sources. Okay. That's the point at which we qualify for the money for the 39% tax credit that they get. Comes in over seven years, okay. And the money, again, to qualify for the credit has to -- technically has to be an equity investment. So --

REP. KURK: Thirty-nine percent of what?

MR. DONOVAN: Thirty-nine percent of the total money that goes into the investment fund qualifies. So both the loan and the equity investment coming in qualifies for these Federal tax credits.

REP. KURK: So if it's a \$5 million project for Duprey and it's going to be -- I'm making up the numbers -- a \$2 million tax credit.

MR. DONOVAN: Approximately.

REP. KURK: He's going to put a million of the five. He's going to get two million in tax credit, and the bank is going to put in the other two million. Is that how it works? Four million goes into the investment fund.

MR. DONOVAN: Let's see. Your example, five million comes into the investment fund, right --

REP. KURK: Yes.

MR. DONOVAN: -- to qualify for credits. Okay. You get -- that would qualify for approximately \$2 million in Federal tax credits. They come in over seven years. Okay. It's 5% some years, 6% others. It comes in over seven years. You sell those credits. So you don't get dollar for dollar because they connect it, adjust for risk and present value. You get about 70-cents on the dollar. So the \$2 million in tax credit yields about \$1.4 million. It goes into the project. That 1.4 million is combined with bank loan and any money that the developer is putting in is own equity goes into that \$5 million. So that's how it works.

REP. KURK: And then the next black box.

MR. DONOVAN: So the money comes in the investment fund to qualify for the credits. Then what we have to do is

technically has to be an equity investment. Even though it's a loan up above from the bank, it's structured to look like an equity investment into this NHBFA sub CDE. Okay. Because that's what you have to do to further to qualify for the credits. So we set up in that structure and we set up, again, one of those for each project. We have a unique entity. That group is controlled by -- controlling entity is New Hampshire Business Finance Authority CDE which is off to the left. Both of these two blue boxes are entities that are either owned or controlled by us for the structure. But we have -- I mean, I wish we didn't have to do this. I wish we could use the front box. But this is the Federal government. This is what you've got to do if you want to get the subsidy into the project. There's no other real way to structure these. It's a one-off kind of thing for this project. It's unique and that's why it's hard to fit it within the confines of how the State defines organizations under the law.

REP. KURK: Follow-up?

VICE-CHAIRWOMAN OBER: One more. At 11:30, Representative Kurk, I'm going to recess.

REP. KURK: You're correct. I will speak to Mr. Donovan later. Thank you.

VICE-CHAIRWOMAN OBER: Representative Nordgren.

REP. NORDGREN: My point was maybe half hour ago but you made it was that we should talk about financing and not all the policy.

VICE-CHAIRWOMAN OBER: We are doing that now.

REP. NORDGREN: Yes, I know.

VICE-CHAIRWOMAN OBER: Representative McGuire, do you have a question about money?

REP. MCGUIRE: No, I'm fine.

VICE-CHAIRWOMAN OBER: Representative Lerandeau.

REP. LERANDEAU: No, I'm all set.

VICE-CHAIRWOMAN OBER: You're all set. Representative Benn.

REP. BENN: Thank you, Madam Chair. You, as I understand it, the Business Finance Authority does not own title to the project.

MR. DONOVAN: That's right.

REP. BENN: Would you have any objections if on Line 23 of the bill we struck the word owned? Because I think that causes confusion when you read that.

MR. DONOVAN: Well, we don't own the projects, but we do own NHBFA CDE, the side group over here. I guess why owned is in there. We do not own the projects, okay, which that would be sub CDE groups. We do own the other group, NHBFA CDE, we do own that. That's the entity has control. That's why it's in there, Representative.

REP. BENN: It's essential that it be there?

MR. DONOVAN: Yes. I'm glad to take the retroactive thing out if you want to make it effective immediately.

VICE-CHAIRWOMAN OBER: We are going to take the retroactive thing out. We have one last question before our next speaker and that's Representative Smith.

REP. SMITH: Thank you, Madam Chair. You continually talked about owned or controlled. You've not said anything about managed directly or indirectly. Would you have any objection to taking out the word managed directly or indirectly from Line 23?

MR. DONOVAN: Again, we manage the NHBFA CDE, this group off to the left. That's why it's in there.

REP. SMITH: So it's not necessarily owned or controlled. It's owned, controlled, or managed you meant to say?

MR. DONOVAN: Owned, controlled, or managed. Can I give that some thought and get back to you?

REP. SMITH: My concern is who are the players in these kind of games? And so -- I shouldn't say games. In these kind of structures, and that raises that issue and that's why I'm pressing that point.

VICE-CHAIRWOMAN OBER: Would it be possible for you if we recessed after our next speaker to return at 9:30 tomorrow morning to answer that question and then if we had any additional thought after we've heard so much?

MR. DONOVAN: Yes.

VICE-CHAIRWOMAN OBER: We could recess till 9:30. So we will do that and start with you and Representative Smith's question and then if somebody else has thought of something overnight given what we've heard, and I thank you for coming. We'll see you in the morning.

MR. DONOVAN: And I apologize.

VICE-CHAIRWOMAN OBER: The last speaker before we recess will be Bill Ardinger.

WILLIAM ARDINGER, ESQ., Rath, Young & Pignatelli, Concord, NH: Ardinger, Madam Chair.

VICE-CHAIRWOMAN OBER: Thank you.

MR. ARDINGER: Thank you, Madam Chair, and Members of

the Committee. My name, for the record, is Bill Ardinger. I'm an attorney at Rath, Young and Pignatelli in Concord, New Hampshire. I represent both the Business Finance Authority which is interested in Sections 1 through 3 of the bill, and Frederick Tausch, an individual who's a business person in New Hampshire who's interested in Sections 4 and 5 of the bill. So I have an interest in all parts. I'm not going to take time to go over any policy questions unless the Committee so desires. I'd like to focus my remarks completely on the Fiscal Note question, if that's all right.

VICE-CHAIRWOMAN OBER: That would be terrific because that's what this Committee does. The policy questions have already been answered.

MR. ARDINGER: Thank you. And we did work to great extent with the Senate Ways and Means Committee on this bill, as well as Senate Finance, and with the House Ways and Means Committee on this bill on policy. Let's focus, you've talked with Mr. Donovan about Sections 1 through 3 of the bill. All that's trying to do is clarify that entities that are owned, controlled, or managed to facilitate the use of these tax credit programs, Federal tax credit programs, for the benefit of economic development in New Hampshire, that there's not a weird tax that applies. It doesn't reduce tax, it doesn't increase tax unless the growth generates more dollars, which is the hope. So -- and the DRA agrees with that position in terms of the work that's been done with your other Committee in the House, the Ways and Means Committee and the Senate.

Sections 4 and 5 of the bill deal with a different issue, a very simple issue. Does the interest and dividends tax apply to tax capital gains? There has been no question since the I&D tax was first enacted in 1923 that it has never applied to capital gains. Why? The interest and dividends tax specifically says it doesn't apply to capital gains.

A question came up very recently with one taxpayer, the one I represent, where a Department of Revenue auditor sent a question saying aren't you taxable on your capital gain income that you earned through a qualified investment company that you established to create a business in New Hampshire? The answer was clearly no. The DRA raised the question. My client was upset by it, because since 1993, and I was here back then, I drafted the QIC provision that was intended to allow venture capital funds to form in New Hampshire and create growth. This is not a questionable policy. It's been in place forever. No practitioner ever thought that the I&D tax applies to capital gains. So what 4 and 5 does is make that clear. It clarifies current law as Representative Stepanek said. Not only for QICs, but also for mutual funds because the same question came up. It's never applied to capital gains. There is no tax effect to this change. What this change does is say clearly so no one has any questions, so that the world outside that's planning on locating businesses here has no question that some Department auditor is going to say this applies to capital gain, the Legislature is being asked to clarify this. And there was not one vote against this anywhere through the process.

The Amendment that Chairman Stepanek asked for is something to clarify a mistake that happened in front of his Committee. I think he said that. That this is intended not, Madam Chair, just to apply in years forward, which would imply that for years past capital gain was taxed --

VICE-CHAIRWOMAN OBER: Excuse me.

MR. ARDINGER: Yes, ma'am.

VICE-CHAIRWOMAN OBER: We do not have an Amendment on the floor. Representative Stepanek has not written an Amendment.

MR. ARDINGER: I apologize.

VICE-CHAIRWOMAN OBER: He gave me some notes that we will work on. Maybe you, too, will want to come at 9:30 tomorrow morning because I'm going to try to see if I can get LBA to do something so the Committee can see that.

MR. ARDINGER: I would love -- and thank you and I apologize.

VICE-CHAIRWOMAN OBER: No, no problem. I just didn't know what he was going to give me either but it was not an Amendment.

MR. ARDINGER: I'm sorry for that. I'm sorry I wasn't here at the beginning as well. I apologize to the Committee. So the real question is to send the message in that applicability section that this change, Section 4 and 5, applies to all open periods where a DRA auditor might say the wrong thing, which is capital gains are taxable under I&D. If you say -- if you leave it the way it is, and Ways and Means believes this is a mistake, if you leave it the way it is in the bill as passed through Ways and Means, if you leave it the way it is, what would happen is there'd be an implication that the law applied to capital gains in past years. That could result in a very negative signal to all of the venture capital firms that have located here in reliance on a 1993 policy that's been unchallenged.

So the Fiscal Note in this, the Ways and Means Committee Chair and the people there worked with the Department. The Department has said this bill clarifies current law. It clarifies their mutual fund tax policy. It does not change law so it could not result in additional tax, because it clarifies current law.

Madam Chair, the remarks that I wanted to focus on is that the Fiscal Note here I think has been, you are right, that I don't think this Fiscal Note on the bill you have here reflects this mistake of not having the applicability language. It still -- the applicability language needs to

be fixed. But in that process, I am not aware that the Department objected to the actions of the Ways and Means Committee working with the Department. It was a clarification, Section 4 and 5. Thank you, and I'm sorry to take your time.

VICE-CHAIRWOMAN OBER: That's okay. We are happy to have you. Are there questions for the witness? Seeing none, I am recessing this public hearing until 9:30 tomorrow morning. We will have follow-up responses for Representative Smith's question. Mr. Kane, I'm going to ask you to look at this and see if you can get us an Amendment so that we actually could address this issue. Thank you very much. I appreciate it.

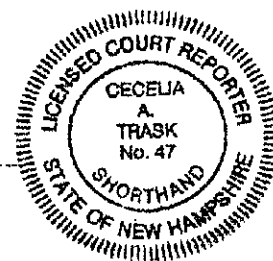
MR. ARDINGER: Thank you.

(Hearing recessed at 11:23 a.m.)

CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

Cecelia A. Trask
Cecelia A. Trask, LSR, RMR, CRR
State of New Hampshire
License No. 47



HOUSE FINANCE COMMITTEE

Legislative Office Building, Room 210-211

Concord, NH

Wednesday, May 11, 2011

SB 58-FN-A, AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

TESTIMONY OF:

Michael Kane. Pg. 1

CHAIRMAN WEYLER: We will come out of recess on the public hearing for Senate Bill 58, and we'll ask Deputy LBA Michael Kane to pass out an Amendment. And after you all get a chance to look at it, we will discuss it.

REP. KEANE: That discussion thing gets us in trouble.

REP. OBER: And you know what, Tom, although it has my name on it, I'm going to have to introduce it, I'm going to let you discuss it with Mr. Kane.

CHAIRMAN WEYLER: Committee, I've had several discussions with some people on the Amendment you're going to be looking forward to and when everybody gets it and reads it I'll explain it to you. All right. Mr. Kane, will explain what has been done.

MICHAEL KANE, Deputy Legislative Budget Assistant, Office of Legislative Budget Assistant: Okay. Good morning. For the record, my name is Michael Kane, Deputy LBA from the Legislative Budget Assistant's Office. Before you, you have Amendment 2011-1851h sponsored by Representative Ober. This is -- Representative Stepanek referred to the applicability section that Ways and Means Committee adopted under 20 to nothing vote. It was brought

to his attention that there was an error in the applicability section. The bill came to Finance and this is what the suggestion was from Representative Stepanek that would correct any problems with the retroactivity of the tax.

If you look, Sections 1 through 3 of this Act shall apply to tax periods ending on or after December 31st, 2010, and that has to do with the qualified community entities. Section 4 and 5 of this Act, this has to do with the capital gains issue that was discussed yesterday, shall apply to taxable periods beginning on or after January 1st, 2011, and also to taxable periods ending before January 1st, 2011, if that taxable period is subject to assessment of tax and appeals pursuant to RSA 21-J:28-b so if it's subject to an audit. This is what the Ways and Means Committee intended to amend the bill and that's what's before you.

CHAIRMAN WEYLER: Any questions for Mr. Kane? All right. I've heard from a tax attorney that the reason for this language is that capital gains have never been taxed under the interest and dividends tax. However, there is an audit in question that is being challenged and the auditor is insisting that he's right, that he can tax capital gains. That's never happened before. By putting this part in there then we will have returned to what as always been the case that taxable gains are not -- capital gains are not taxed under the interest and dividends tax. That tax is designed for what it says, interest and dividends. And we all know if we fill out IRS forms that say capital gains, interest and dividends, those all go in separate columns. The intent of our law was to tax interest and dividends. So now we have to make it clear that is the intent. And I believe it always has been that it's only for interest and dividends. So there is a challenge existing for a qualified investment company to be taxed on capital gains and this will ensure that that is the intent of the Legislature. And I see people here from DRA and I think they're interested in knowing it as well. Representative Twombly.

REP. TWOMBLY: I think there may be a typo on Line 4 where it says Section 4 and 5 or this act. I think that should be of this act.

CHAIRMAN WEYLER: Yes. You see that?

MR. KANE: I do see that. That is something that either Committee can correct or that is something that would be picked up in enrolling.

CHAIRMAN WEYLER: Enrolled bill will pick that up.

REP. TWOMBLY: Thank you.

CHAIRMAN WEYLER: Anything else? Representative Nordgren.

REP. NORDGREN: Thank you, Mr. Chair. We had a gentleman come and testify yesterday and he said he was representing one client. Does this --

CHAIRMAN WEYLER: This is likely the audit in question.

REP. NORDGREN: Is this the one client we are talking about is why we are doing this?

REP. OBER: A piece of this, if you recall, the Fiscal Note said they could go retroactive and issue refunds on taxes that are already done and so this takes care of that. We've never taxed on capital gains. There was a large discussion in Ways and Means about that earlier, and then the audit was filed. I mean, yeah, the audit was filed and started taxing it and it was under discussion. Representative Almy suggested that we should clarify that in this bill that the practice of not taxing capital gains should continue. She and I don't often agree but in this case we happen to agree.

CHAIRMAN WEYLER: It could be only one case, but it

could be millions of dollars.

REP. OBER: It could open the door to many cases.

CHAIRMAN WEYLER: It could be that this same auditor's work is going after other people for capital gains, so. This one particular auditor from what I've heard. And so I guess the agency would be okay if we verify what we always have believed to be the legislative intent. Any other questions? I'll entertain a motion to adopt Amendment one --

REP. OBER: Can we go into executive session?

CHAIRMAN WEYLER: Thank you for reminding me of protocol. Any other questions in the public hearing? Any comments from DRA or BFA? All right. We'll close the public hearing.

(Hearing closed at 9:41 a.m.)

CERTIFICATION

I, Cecelia A. Trask, a Licensed Court Reporter-Shorthand, do hereby certify that the foregoing transcript is a true and accurate transcript from my shorthand notes taken on said date to the best of my ability, skill, knowledge and judgment.

Cecelia A. Trask
Cecelia A. Trask, LSR, RMR, CRR
State of New Hampshire
License No. 47



Speakers

Hearing Minutes

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: April 12, 2011

LOB ROOM: 202 **Time Public Hearing Called to Order:** 10:45 AM

Time Adjourned: 12:03 PM

(please circle if present)

~~Committee Members: Reps. Stepanek, Major, Griffin, Hess, Sapareto, Ulery, Osgood, Ober, Abram, Azarian, Daugherty, McDonnell, Murphy, Ohm, Sanborn, Shuler, Almy, Hamm, Butynski, Hatch and Cooney.~~

Bill Sponsors: Sen. Odell, Dist 8

TESTIMONY

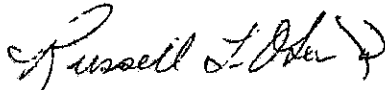
* Use asterisk if written testimony and/or amendments are submitted.

Senator Odell, prime sponsor – supports. He gave examples of how community development entities can increase business in towns needing tax credits.

***Jack Donovan, Business Finance Authority – supports.** See written testimony. He explained "new market tax credit" and mentioned several areas of the state where these projects are planned. All designation of areas is made by the U.S. Government.

Bill Ardinger, Rath, Young, Pignatelli, P.C. – supports. There was discussion of Section 4 of the bill related to interest and dividends taxes in New Hampshire. It has to do with the DRA requesting taxes on capital gains. Should keep the DRA from changing audits positions. There were several comments about keeping the DRA from expanding the tax base to capital gains.

Respectfully submitted,



Representative Russell Ober, Clerk

HOUSE COMMITTEE ON WAYS AND MEANS

PUBLIC HEARING ON SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: 12/12/2011

LOB ROOM: 202 **Time Public Hearing Called to Order:** 10:45

Time Adjourned: 12:03

(please circle if present)

Committee Members: Reps. Stepanek, Major, Griffin, Hess, Sapareto, Ulery, Osgood, Ober, Abrami, Azarian, Daugherty, McDonnell, Murphy, Ohm, Sanborn, Shuler, Almy, Hamm, Butynski, Hatch and Cooney.

Bill Sponsors: Sen. Odell, Dist 8

TESTIMONY

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

Sen Odell - sponsor - gave examples of how community development entities can increase business in towns needing tax credits

Jack Donovan* - Business Finance Authority (BFA) supports bill explained "new market tax credit"

mentioned several areas of the state where these projects are planned all designations of areas is made by U.S. Government

Bill Grodzner Roth, Young, etc - supports bill

discussion of Sec 4 of the bill - related to interest and dividends taxes in N.H. has to do with DRA requesting taxes on capital gains should keep DRA from changing credits position several comments about keeping DRA from expanding tax base to capital gains

HOUSE COMMITTEE ON FINANCE

PUBLIC HEARING ON SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: May 10, 2011

LOB ROOM: 210-211 **Time Public Hearing Called to Order:** 10:00

Time Adjourned:

(please circle if present)

Committee Members: Reps. Weyler, L. Ober, Kurk, Emerton, Rodeschin, Belvin, Elliott, Vaillancourt, Allen, Garcia, B. Barry, Cebrowski, Wm. Smith, Sova, Umberger, Keane, Simard, Twombly, Worsman, Foose, Nordgren, Baroody, Benn, Lerandean and Rosenwald.

Rep. Sandra Keane and Rep. Mike Kappler replaced Rep. Foose and Rep. Emerton, respectively.

Bill Sponsors: Sen. Odell, Dist 8

TESTIMONY

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

Sen. Odell introduced the bill and spoke in support.

Rep. Stepanek, Hills 6, spoke in support of the bill. Requests an amendment, has suggested change. Need to hear from Mr. Donovan, Executive Director, NH Business Finance Authority (BFA).

Rep. Baroody suggests should not be retroactive.

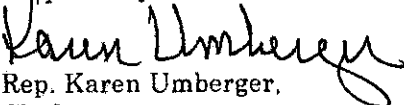
*Mr. Donovan provided a handout. Stop retroactive portion.

Following the next speaker, this public hearing will be recessed until 9:30 on Wednesday, 5/11. LBA was requested to produce an amendment.

Mr. Bill Ardinger, representing BFA and Fred Taush, Founder, NH Steward, spoke in support of the bill.

Numerous questions arose on what is a qualified Investment Company as well as whether or not there was going to be a loss of revenue from Section 4 of the bill.

Respectfully submitted,


Rep. Karen Umberger,
Clerk

HOUSE COMMITTEE ON FINANCE

PUBLIC HEARING ON SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: May 10, 2011

LOB ROOM: 210-211 **Time Public Hearing Called to Order:** 10:00

Time Adjourned:

(please circle if present)

Committee Members: Reps. Weyler, L. Ober, Kurk, Emerton, Rodeschin, Belvin, Elliott, Vaillancourt, Allen, Garcia, R. Barr, Cebrowski, Wm. Smith, Sova, Umberger, Keane, Simard, Twombly, Worsman, Foose, Nordgren, Baroody, Benn, Lerandean and Rosenwald.

Keane

Bill Sponsors: Sen. Odell, Dist 8

TESTIMONY

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

SB58

Small

Rep Stipanovich - requests an amendment
has suggested change

need to hear from Mr. Donovan Business Finance
Rep Barady suggests should Authority
not to be retroactive
oh - move to

Mr. Donovan - provided hand out

stop retro active portion

* Press until after next speaker
9:30 AM on which - requested LBA produce amendment

Bill Ardinger - Solicitor for BFA + Fred Tausch

Numerous questions arise on what is qualified
Investment Company and as well as whether
or not there was going a loss of
revenue from Section 4 of the bill.

May 11

Mike Kane LBA introduced amendment
2011-1851h - sequenced amendment requested
by Wayne and Means

Exec Session

move amend Rep Ober, Rep 1851h passed

Rep Smith had question on pg 1 line 22
Mr. Donnan had suggested amendment for
consideration to answer this question
agreed not required

HOUSE COMMITTEE ON FINANCE

PUBLIC HEARING ON SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: May 11, 2011

LOB ROOM: 210-211 **Time Public Hearing Called to Order:** 9:30

Time Adjourned: 9:45

(please circle if present)

Committee Members: Reps. Weyler, L. Ober, Kurk, Emerton, Rodeschin, Belvin, Elliott, Vaillancourt, Allen, Garcia, R. Barry, Cebrowski, Wm. Smith, Sova, Umberger, Keane, Simard, Twombly, Worsman, Foose, Nordgren, Baroody, Bern, Lerandeau and Rosenwald.

Rep. Keane and Rep. Kappler replaced Rep. Foose and Rep. Emerton, respectively.

Bill Sponsors: Sen. Odell, Dist 8

TESTIMONY

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


This public hearing was recessed on May 10 until today, May 11.

Mike Kane, Legislative Budget Assistant (LBA) introduced (L Ober) amendment #2011-1851h – amendment requested by Ways and Means committee (Rep. Stepanek, Chairman).

Rep. W. Smith had question on page 1, line 22. Mr. Donovan, BFA, had suggested amendment for consideration to answer this question; agreed not required.

Hearing was adjourned.

Respectfully submitted,


Rep. Karen Umberger,
Clerk

HOUSE COMMITTEE ON FINANCE

PUBLIC HEARING ON SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: May 11, 2011

LOB ROOM: 210-211

Time Public Hearing Called to Order: 9:30

Time Adjourned: 9:45

(please circle if present)

Committee Members: Reps. Weyler, A. Ober, Kurk, Emerton, Rodeschin, Belvin, Elliott, Vaillancourt, Allen, Garcia, R. Barry, Cebrowski, Wm. Smith, Sova, Umberger, Keane, Simard, Twombly, Worsman, Foose, Nordgren, Baroody, Benn, Lerandeau and Rosenwald.

Klaus Kappeler

Bill Sponsors: Sen. Odell, Dist 8

TESTIMONY

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

recessed on May 10th until 9:30 May 11

May 11

Mike Kane LBA introduced amendment
2011-1851 h. - requested amendment requested
by Way and Means

— Erie Session

more amend Rep. Ober, Rep 1851 h passed

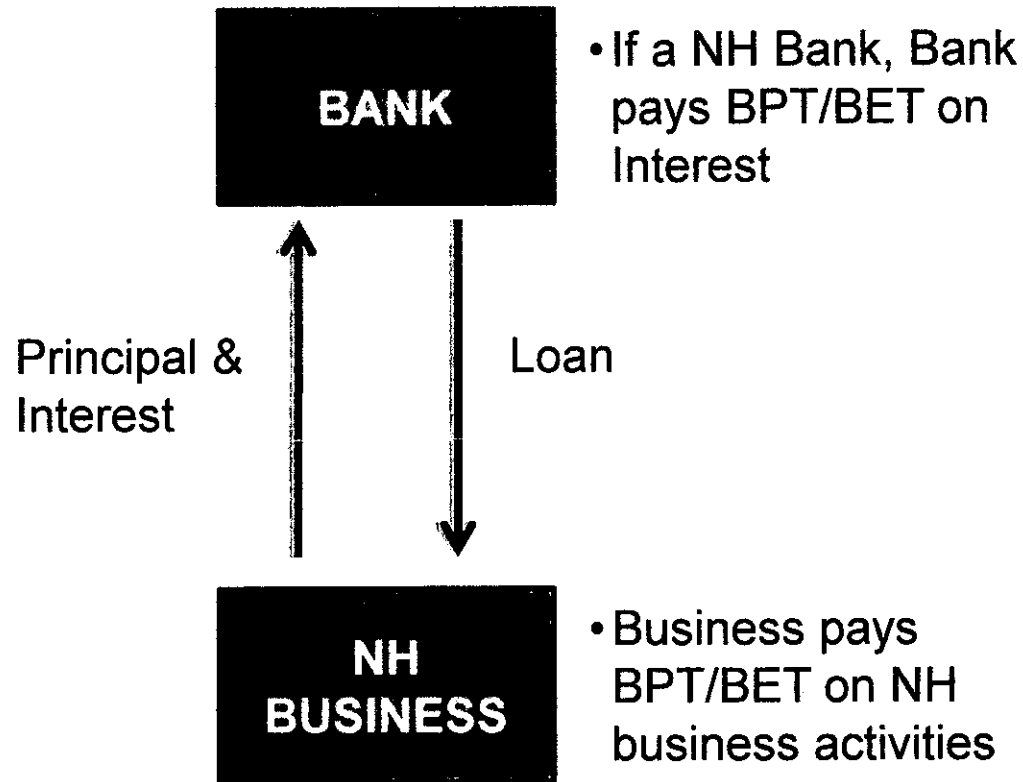
Rep Smith had question on pg 1 line 22

Mr. Donovan had suggested amendment for
consideration to answer this question.
aged not required

Testimony

SB 58 Will Not Lose State Tax Revenues

- Typical Structure of Lending Transaction

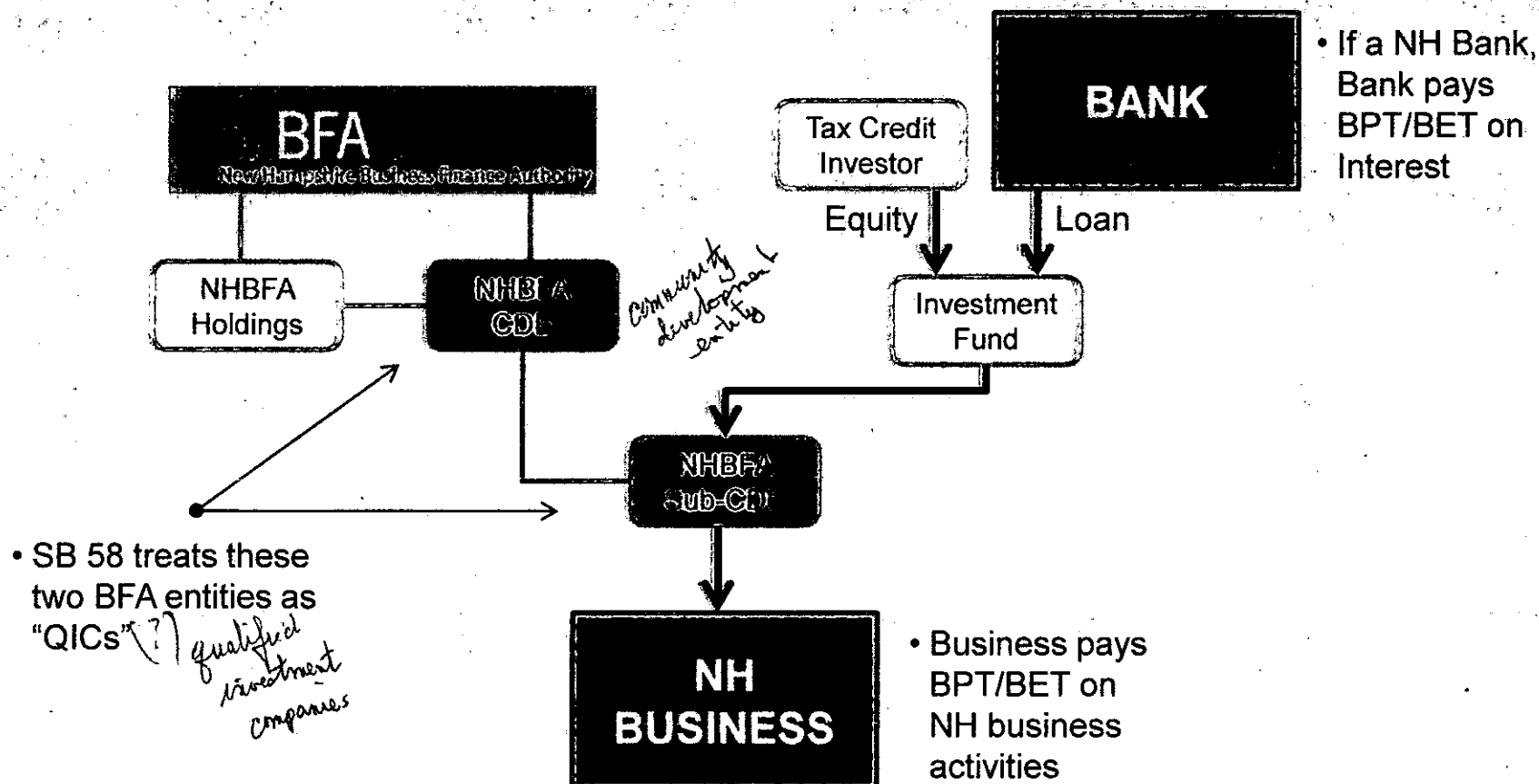


SB 58 Will Not Lose State Tax Revenues

- Reasons for BFA Federal New Markets Tax Credit
 - Attracts new investments in NH Businesses
 - New Markets Tax Credit encourages investment by increasing the after-tax rate of return on the investment
 - Federal NMTC program requires complex structure for maximizing the value of this incentive

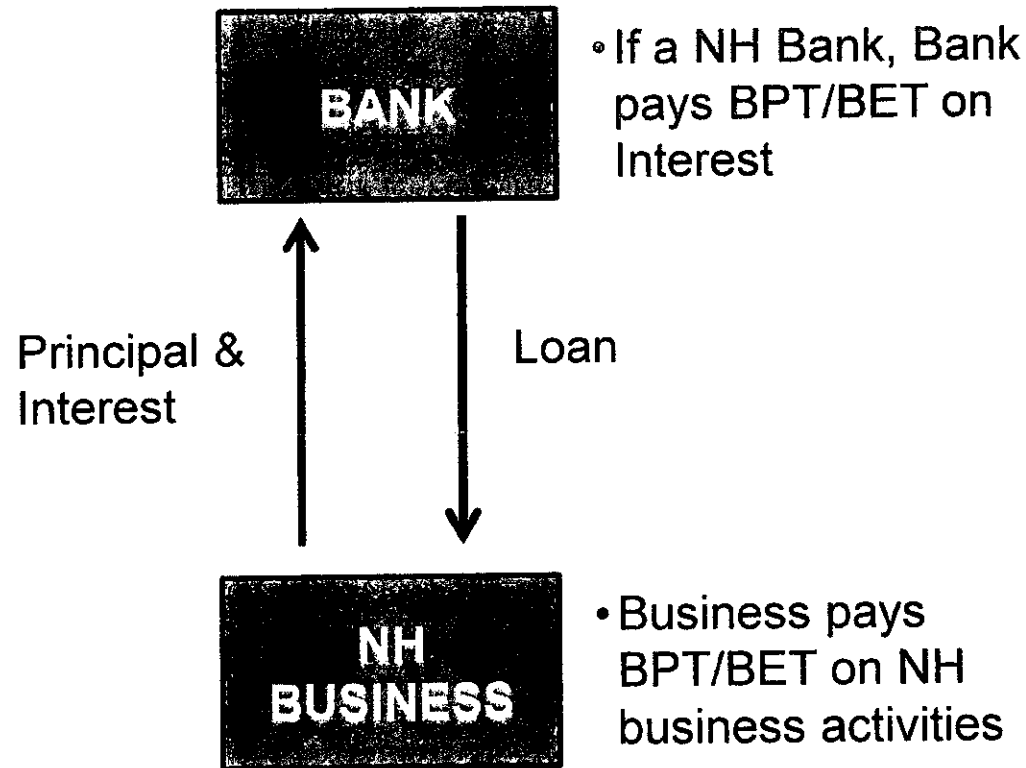
SB 58 Will Not Lose State Tax Revenues

• Typical Structure of NM Tax Credit Transaction



SB 58 Will Not Lose State Tax Revenues

- Typical Structure of Lending Transaction

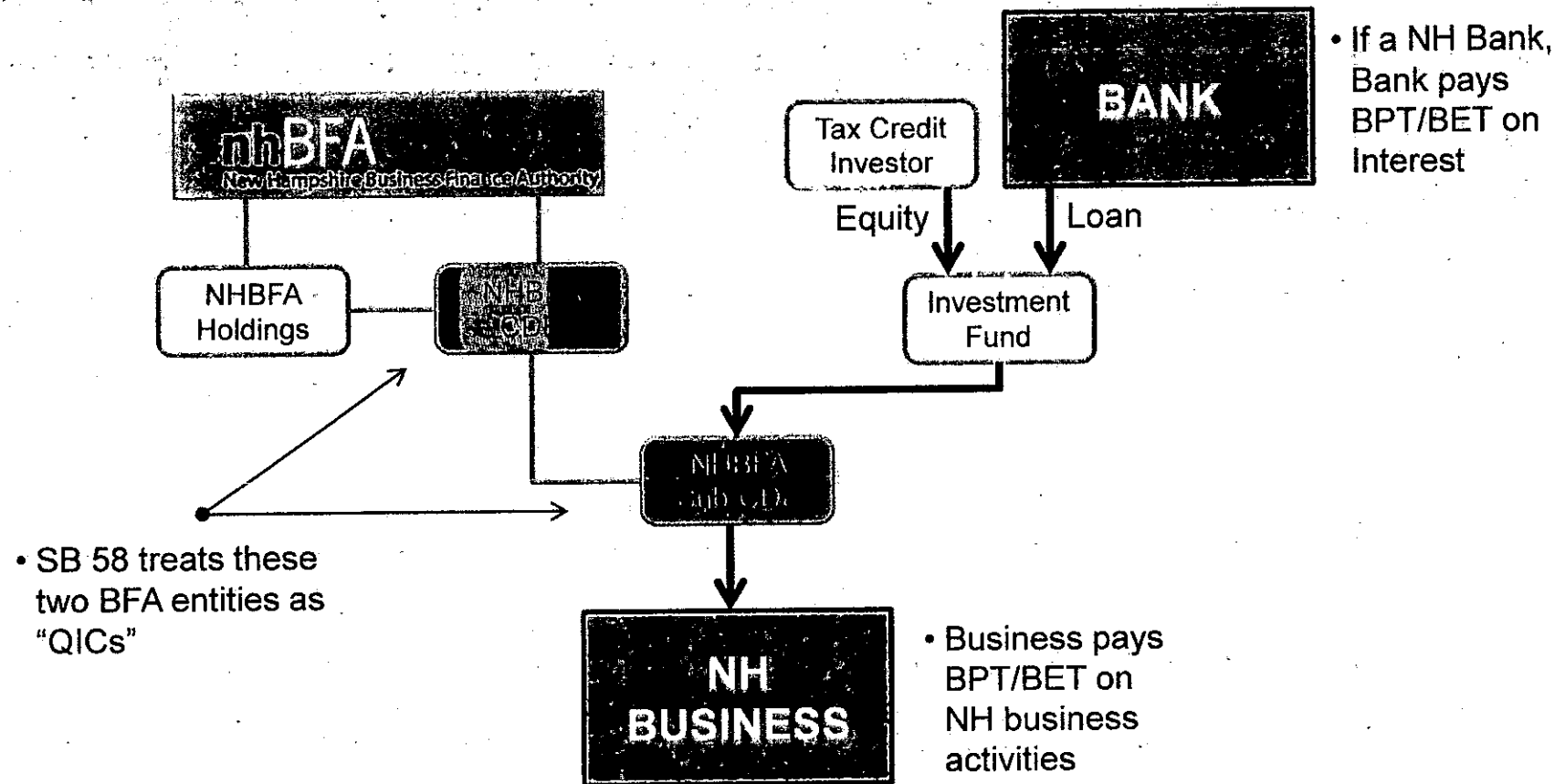


SB 58 Will Not Lose State Tax Revenues

- Reasons for BFA Federal New Markets Tax Credit
 - Attracts new investments in NH Businesses
 - New Markets Tax Credit encourages investment by increasing the after-tax rate of return on the investment
 - Federal NMTC program requires complex structure for maximizing the value of this incentive

SB 58 Will Not Lose State Tax Revenues

• Typical Structure of NM Tax Credit Transaction



SB 58-FN-A

Amend RSA 77-A:1, XXI(a)(4) and RSA 77-E:1, XIV(a) (4) as inserted by sections 2 and 3 of the bill by replacing them with the following:

(4) A qualified community development entity as defined in section 45D of the US Internal Revenue Code, an interest in which entity is owned, controlled, and managed, directly or indirectly, by the business finance authority of the state of New Hampshire

Voting Sheets

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: April 26, 2011

LOB ROOM: 202

Amendments:

Sponsor: Rep. Major OLS Document #: 2011 1447h

Sponsor: Rep. Stepanek OLS Document #: 2011 1557h

Sponsor: Rep. House Ways & Means OLS Document #: 2011 1580h

(Combined 2 above)

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.) AMENDMENT 1447h

Moved by Rep. Major

Seconded by Rep. Ulery

Vote: 20-0 (Please attach record of roll call vote.)

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.) AMENDMENT 1557h

Moved by Rep. Stepanek

Seconded by Rep. Sapareto

Vote: 20-0 (Please attach record of roll call vote.)

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.) COMBINED AM 1580h

Moved by Rep. Azarian

Seconded by Rep. Sapareto

Vote: 20-0 (Please attach record of roll call vote.)

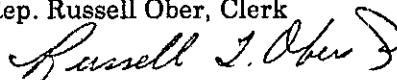
CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Russell Ober, Clerk



HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: 4/26/2011

LOB ROOM: 202

Amendments:

Sponsor: Rep. Major OLS Document #: 2011-1447h
Sponsor: Rep. Stepanek OLS Document #: 2011-1557h
Sponsor: Rep. OLS Document #:

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.) 1447h

Moved by Rep. Major
Seconded by Rep. Ulfrey
Vote: 20-0 (Please attach record of roll call vote.)

Motions: (OTP) OTP/A, ITL, Interim Study (Please circle one.) 1557h

Moved by Rep. Stepanek
Seconded by Rep. Separeta
Vote: 20-0 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Rep. Russell Ober, Clerk

Motions: (OTP/A)
Moved by: Ozarin
Seconded by: Separeta
Vote: 20-0

Combined 17/11

HOUSE COMMITTEE ON WAYS AND MEANS

EXECUTIVE SESSION on SB 58-FN-A

propositional until these report

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: 4/26/2011

LOB ROOM: 202

Amendments:

Sponsor: Rep. Major / Utery

OLS Document #: 2011-1447h 20-0

Sponsor: Rep. Stepanek / Sapareto

OLS Document #: 2011-1557h 20-0

Sponsor: Rep.

OLS Document #:

Combining these 2 amendments into 1.

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

③

Moved by Rep. Azarian

Seconded by Rep. Sapareto

Vote: 20-0 (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.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Russell Ober, Clerk

WAYS AND MEANS

Bill #: SB58-FN-A Title: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.
 PH Date: 4/12/2011 Exec Session Date: 4/26/2011

Motion: OTD/A Amendment #: Combined

| MEMBER | YEAS | NAYS |
|-------------------------------|--------------|------|
| Stepanek, Stephen B, Chairman | ✓ | |
| Major, Norman L, V Chairman | ✓ | |
| Griffin, Mary E | ✓ | |
| Hess, David W | ✓ | |
| Sapareto, Frank V | ✓ | |
| Ulery, Jordan G | ✓ | |
| Osgood, Joe <i>Flanagan</i> | ✓ | |
| Ober, Russell T, Clerk | ✓ | |
| Abrami, Patrick F | ✓ | |
| Azarian, Gary S | ✓ | |
| Daugherty, Duffy | ✓ | |
| McDonnell, John J | ✓ | |
| Murphy, Keith | ✓ | |
| Ohm, Bill | ✓ | |
| Sanborn, Laurie J | ✓ | |
| Shuler , Wyman E | ✓ | |
| Almy, Susan W | ✓ | |
| Hamm, Christine C | ✓ | |
| Butynski, William | ✓ | |
| Hatch, William A | ✓ | |
| Cooney, Mary R | ✓ | |

20-6

HOUSE COMMITTEE ON FINANCE

EXECUTIVE SESSION on SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: May 11, 2011

LOB ROOM: 210-211

Amendments:

| | | | |
|-----------------------------|-----------------|------|-------|
| Sponsor: Rep. L. Ober | OLS Document #: | 2011 | 1851h |
| Sponsor: Rep. House Finance | OLS Document #: | 2011 | 1859h |
| Sponsor: Rep. | OLS Document #: | | |

Please note: Amendment #2011-1859h (the final amendment) was created to change the sponsor from L. Ober to House Finance and is otherwise identical to #2011-1851h.

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

Moved by Rep. L. Ober

Seconded by Rep. Baroody

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

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

Moved by Rep. L. Ober

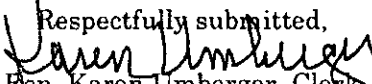
Seconded by Rep. Baroody

Vote: 25-0 (Please attach record of roll call vote.)

REGULAR or CONSENT CALENDAR (Please circle one.)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Karen Umberger, Clerk

HOUSE COMMITTEE ON FINANCE

EXECUTIVE SESSION on SB 58-FN-A

BILL TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: {Type DATE}

LOB ROOM: 210-211

Amendments:

Sponsor: Rep. *Dier 2011-1851h* OLS Document #:
(1859h)
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

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

Moved by Rep. *Dier*

Seconded by Rep. *Baroody*

Vote: *25-0* (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

REGULAR or CONSENT CALENDAR (Please circle one.)

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Karen Umberger, Clerk

FINANCE

Bill #: SB58Title: adding qualified community development entities to the designation of "qualified investment company" under the business profits tax and business enterprise taxPH Date: 5/10/11/2011 Exec Session Date: 5/11/11Motion: OTPAAmendment #: 2011-1851h

| MEMBER | YEAS | NAYS |
|-------------------------------|--------|------|
| Weyler, Kenneth L, Chairman | 25 | |
| Ober, Lynne M, V Chairman | 24 | |
| Kurk, Neal M | 1 | |
| Emerton, Larry <i>Kappler</i> | 2 | |
| Rodeschin, Beverly T | 3 | |
| Belvin, William S | 4 | |
| Elliott, Robert J | 5 | |
| Vaillancourt, Steve | 6 | |
| Allen, Mary M | 7 | |
| Garcia, Marilinda J | 8 | |
| Barry, Richard W | 9 | |
| Cebrowski, John W | 10 | |
| Sova, Charles E | 11 | |
| Smith, William B | 12 | |
| Umberger, Karen C, Clerk | 13 | |
| Keane, Thomas E | 14 | |
| McGuire, Dan | 15 | |
| Simard, Paul H | 16 | |
| Twombly, Timothy L | 17 | |
| Worsman, Colette | 18 | |
| Foose, Robert A <i>Keans</i> | 19 | |
| Nordgren, Sharon | 20 | |
| Baroody, Benjamin C | 21 | |
| Benn, Bernard L | 22 | |
| Lerandeau, Alfred C | absent | |
| Rosenwald, Cindy | 23 | |
| | | |
| TOTAL VOTE: | 25 | 0 |

Committee Report

REGULAR CALENDAR

May 4, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on WAYS AND MEANS to which was referred SB58-FN-A,

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Gary S Azarian

FOR THE COMMITTEE

COMMITTEE REPORT

| | |
|-------------------|---|
| Committee: | WAYS AND MEANS |
| Bill Number: | SB58-FN-A |
| Title: | adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. |
| Date: | April 26, 2011 |
| Consent Calendar: | NO |
| Recommendation: | OUGHT TO PASS WITH AMENDMENT |

STATEMENT OF INTENT

This bill adds qualified community development entities to the definition of "qualified investment company" under the BPT and BET. The bill clarifies that a New Hampshire resident investor in a qualified investment company is only taxed on his or her proportionate share of interest and dividend income earned by the qualified investment company. The bill also clarifies tax treatment of capital gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trust. More importantly the bill will entice greater investment into New Hampshire by offering tax credits on projects in distressed areas through federal new market tax credits, these credits keep d own the cost of projects especially in distressed areas and are implemented by the Business Finance Authority.

Vote 20-0.

Rep. Gary S Azarian
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

WAYS AND MEANS

SB58-FN-A, adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Gary S Azarian for **WAYS AND MEANS**. This bill adds qualified community development entities to the definition of "qualified investment company" under the BPT and BET. The bill clarifies that a New Hampshire resident investor in a qualified investment company is only taxed on his or her proportionate share of interest and dividend income earned by the qualified investment company. The bill also clarifies tax treatment of capital gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trust. More importantly the bill will entice greater investment into New Hampshire by offering tax credits on projects in distressed areas through federal new market tax credits, these credits keep down the cost of projects especially in distressed areas and are implemented by the Business Finance Authority.
Vote 20-0.

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Ways & Means

BILL NUMBER: SB 58-FN-A

TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: 4/26/11 CONSENT CALENDAR: YES NO

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

Amendment No.
1447 / 1557 / 1580A

Combined
2 Am.

STATEMENT OF INTENT:

This bill adds qualified community development entities to the definition of "qualified investment company" under the BPT and BET. The bill clarifies that a NH resident investor in qualified investment company is only taxed on his or her proportionate share of interest and dividend income earned by the qualified investment company. The bill also clarifies tax treatment of Capital Gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trust. More importantly the bill will entice greater investment into NH by offering tax credits on projects in distressed areas through Federal New Market Tax credits, these credits keep down the cost of projects especially in distressed areas and are implemented by The Business Finance Authority.

COMMITTEE VOTE: 20-0

OK
SMB

RESPECTFULLY SUBMITTED,

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

Rep. GARY S. AZARIAN
For the Committee

This bill adds qualified community development entities to the definition of "qualified investment company" under the BPT and BET. The bill clarifies that a New Hampshire resident investor in a qualified investment company is only taxed on his or her proportionate share of interest and dividend income earned by the qualified investment company. The bill also clarifies tax treatment of capital gains earned by holders of ownership interests in qualified investment companies, mutual funds, and unit investment trust. More importantly the bill will entice greater investment into New Hampshire by offering tax credits on projects in distressed areas through federal new market tax credits, these credits keep down the cost of projects especially in distressed areas and are implemented by the Business Finance Authority.

OTC
5/20/07

REGULAR CALENDAR

May 11, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on FINANCE to which was referred SB58-FN-A,

AN ACT adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Lynne M Ober

FOR THE COMMITTEE

COMMITTEE REPORT

| | |
|-------------------|---|
| Committee: | FINANCE |
| Bill Number: | SB58-FN-A |
| Title: | adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. |
| Date: | May 11, 2011 |
| Consent Calendar: | NO |
| Recommendation: | OUGHT TO PASS WITH AMENDMENT |

STATEMENT OF INTENT

House Finance was the second committee on this bill. While examining the fiscal impact to the state, it was discovered that the policy, as previously passed, would open the door for the filing of amended tax returns and possibly receiving a retroactive tax refund. The committee amended the bill to ensure that it only applied to the current and future tax years thus prohibiting the possibility of retroactive tax refunds. The committee felt that it was important to emphasize that the interest and dividends tax was never intended to include capital gains.

Vote 25-0.

Rep. Lynne M Ober
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

FINANCE

SB58-FN-A, adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Lynne M Ober for FINANCE. House Finance was the second committee on this bill. While examining the fiscal impact to the state, it was discovered that the policy, as previously passed, would open the door for the filing of amended tax returns and possibly receiving a retroactive tax refund. The committee amended the bill to ensure that it only applied to the current and future tax years thus prohibiting the possibility of retroactive tax refunds. The committee felt that it was important to emphasize that the interest and dividends tax was never intended to include capital gains. Vote 25-0.

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Finance

BILL NUMBER: SB58FN w/ amendment 2011-1857h

TITLE: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

DATE: 5-11-11 CONSENT CALENDAR: YES NO

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

| |
|---|
| Amendment No. <u>2011-1857h</u> 1859h |
|---|

STATEMENT OF INTENT:

House Finance was the second committee on this bill. While examining the fiscal impact to the state, it was discovered that the policy, as previously passed, would open the door for the filing of retroactive top returns and possibly retroactive amended retroactive top refund. The committee amended the bill to ensure that it only applied to the current and future top years thus ^{preventing} the possibility of retroactive top refunds.

COMMITTEE VOTE: 25-0

RESPECTFULLY SUBMITTED,

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

Rep. Lynne Ober
For the Committee

KAN

5-11-11

Add to FA 5F Blurb
at the end:

The committee felt that it was
important to emphasize that the
interest and dividends tax was never
intended to include capital gains

KLM

New Hampshire General Court - Bill Status System

Docket of SB58

Docket Abbreviations

Bill Title: adding qualified community development entities to the definition of "qualified investment company" under the business profits tax and the business enterprise tax.

Official Docket of SB58:

| Date | Body | Description |
|-------------|-------------|--|
| 2/3/2011 | S | Introduced and Referred to Ways & Means, SJ 5 , Pg.44 |
| 2/17/2011 | S | Hearing: 2/23/11, Room 100, State House, 1:30 p.m.; SC12 |
| 3/8/2011 | S | Committee Report: Ought to Pass with Amendment #2011-0686s , 3/16/11; SC15 |
| 3/16/2011 | S | Committee Amendment 0686s, AA, VV |
| 3/16/2011 | S | Ought to Pass with Amendment 0686s, MA, VV; Refer to Finance Rule 4-3 |
| 3/24/2011 | S | Committee Report: Ought to Pass with Amendment #2011-1181s , 3/30/11; SC17 |
| 3/30/2011 | S | Committee Amendment 1181s, AA, VV; SJ 11 , Pg.223 |
| 3/30/2011 | S | Sen. Odell Floor Amendment #2011-1276s , AA, VV; SJ 11 , Pg.223 |
| 3/30/2011 | S | Ought to Pass with Amendment 1181s, 1276s, MA, VV; OT3rdg; SJ 11 , Pg.223 |
| 3/30/2011 | S | Passed by Third Reading Resolution; SJ 11 , Pg.239 |
| 3/31/2011 | H | Introduced and Referred to Ways and Means; HJ 35 , PG.1240 |
| 4/6/2011 | H | Public Hearing: 4/12/2011 10:45 AM LOB 202 |
| 4/13/2011 | H | Executive Session: 4/21/2011 12:30 PM LOB 202 |
| 4/19/2011 | H | Continued Executive Session: 4/26/2011 10:00 AM LOB 202 If Needed |
| 4/27/2011 | H | Committee Report: Ought to Pass with Amendment #1580h for May 4 (Vote 20-0; RC); HC 36 , PG.1251 |
| 4/27/2011 | H | Proposed Committee Amendment #2011-1580h ; HC 36 , PG.1275 |
| 5/4/2011 | H | Amendment #1580h Adopted, VV; HJ 42 , PG.1479-1480 |
| 5/4/2011 | H | Ought to Pass with Amendment #1580h: MA RC 281-47 ; HJ 42 , PG.1479-1482 |
| 5/4/2011 | H | Referred to Finance; HJ 42 , PG.1482 |
| 5/5/2011 | H | Public Hearing: 5/10/2011 10:00 AM LOB 210-211 ==RECESSED== |
| 5/10/2011 | H | Continued Public Hearing: 5/11/2011 9:30 AM LOB 210-211 |
| 5/11/2011 | H | Committee Report: Ought to Pass with Amendment #1859h for May 18 (Vote 25-0; RC); HC 39 , PG.1324 |
| 5/11/2011 | H | Proposed Committee Amendment #2011-1859h ; HC 39 , PG.1341 |
| 5/18/2011 | H | Amendment #1859h Adopted, VV; HJ 44 , PG.1547 |
| 5/18/2011 | H | Ought to Pass with Amendment #1859h: MA VV; HJ 44 , PG.1547 |
| 6/1/2011 | S | Sen. Odell Concurs with House Amendment #1580h, #1859h, MA, VV; SJ 19 , Pg.536 |
| 6/8/2011 | H | Enrolled; HJ 51 , PG.1726 |
| 6/8/2011 | S | Enrolled |
| 6/14/2011 | S | Signed by the Governor on 06/14/2011; Effective 06/14/2011; Chapter 0181 |

NH House

NH Senate