

Bill as
Introduced

HB 600-FN - AS AMENDED BY THE HOUSE

19Mar2019... 0887h

2019 SESSION

19-0647

10/05

HOUSE BILL

600-FN

AN ACT

adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

SPONSORS:

Rep. Williams, Hills. 4

COMMITTEE:

Ways and Means

AMENDED ANALYSIS

This bill excepts from the real estate transfer tax certain transfers of interest in low-income housing subject to federal restrictions or other requirements where the property remains subject to land use restriction and affordability covenants.

Explanation:

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

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

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

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

1 1 New Paragraph; Real Estate Transfer Tax; Exception Added; Federally Rent Restricted
2 Properties. Amend RSA 78-B:2 by inserting after paragraph XXII the following new paragraphs:

3 XXIII.(a) To a direct or indirect transfer of an interest in real property, provided that the
4 real estate transfer tax was paid by the buyer or seller, or an affiliate of either, when the real
5 property title was acquired, unless otherwise exempt pursuant to this section, and the transfer is
6 made in connection with the commencement, syndication, development, re-syndication, or
7 conclusion of investment financing related to any of the following:

8 (1)(A)(i) A federal low-income housing tax credit project, as defined in Section 42 of
9 the Internal Revenue Code of 1986, as amended; or

10 (ii) A project funded with federal grants made to states for low-income
11 housing projects in lieu of low-income housing tax credits under Section 1602 of the American
12 Recovery and Reinvestment Act of 2009;

13 (B) Provided that the project under subparagraph (A)(i) or (A)(ii) remains
14 subject to an extended low-income housing commitment in accordance with the provisions of Section
15 42(h)(6) of the Internal Revenue Code of 1986, as amended.

16 (2) A Rental Assistance Demonstration (RAD) public housing conversion under the
17 federal Consolidated and Further Continuing Appropriations Act of 2012, as amended.

18 (3) Such other federal, state, or local financing program requiring that the real
19 estate remains subject to land use restriction and rental housing affordability covenants which limit
20 allowable rents charged to individuals or families, consistent with (i) RSA 674:58, IV, pertaining to
21 workforce housing; or (ii) as otherwise required under the applicable federal, state, or local
22 program.

23 (b) For purposes of this paragraph, "affiliate" means any entity which controls or is
24 controlled by, or is under common control with, another entity. For purposes of this definition, an
25 entity controls another entity when the first entity possesses or exercises directly, or indirectly
26 through one or more other affiliates or related entities, the power to direct the management and
27 policies of the other entity, whether through the ownership of voting rights, membership, or the
28 power to appoint members, trustees, or directors, by contract or otherwise.

29 2 Effective Date. This act shall take effect July 1, 2019.

HB 600-FN- FISCAL NOTE
AS AMENDED BY THE HOUSE (AMENDMENT #2019-0887h)

AN ACT adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	\$0	\$0	\$0
Funding Source:	<input checked="" type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill adds an exception to the real estate transfer tax for certain transfers by an investment trust if the tax was paid when the real property title was acquired. The Department states this bill will decrease General Fund and Education Trust Fund revenue by an indeterminable amount. The Department does not have the data on what percentage of real estate transfer tax revenue is currently attributable to transfers by NH investment trusts or how many transfers of real estate by NH investment trusts may occur in subsequent years or the price or consideration of these transfers to estimate the impact on revenue.

AGENCIES CONTACTED:

Department of Revenue Administration

**HB 600-FN FISCAL NOTE
 AS AMENDED BY THE HOUSE (AMENDMENT #2019-0887h)**

AN ACT adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

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AGENCIES CONTACTED:

Department of Revenue Administration

CHAPTER 136
HB 600-FN - FINAL VERSION

19Mar2019... 0887h

2019 SESSION

19-0647
10/05

HOUSE BILL **600-FN**

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SPONSORS: Rep. Williams, Hills. 4

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill excepts from the real estate transfer tax certain transfers of interest in low-income housing subject to federal restrictions or other requirements where the property remains subject to land use restriction and affordability covenants.

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CHAPTER 136
HB 600-FN - FINAL VERSION

19Mar2019... 0887h

19-0647
10/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

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25 through one or more other affiliates or related entities, the power to direct the management and
26 policies of the other entity, whether through the ownership of voting rights, membership, or the
27 power to appoint members, trustees, or directors, by contract or otherwise.

28 136:2 Effective Date. This act shall take effect July 1, 2019.

Approved: June 25, 2019

CHAPTER 136
HB 600-FN - FINAL VERSION
- Page 2 -

Effective Date: July 01, 2019

Committee Minutes

**AMENDED TIME CHANGE
SENATE CALENDAR NOTICE
Ways and Means**

Sen Dan Feltes, Chair
Sen Lou D'Allesandro, Vice Chair
Sen Jeanne Dietsch, Member
Sen Chuck Morse, Member
Sen Bob Giuda, Member

Date: April 19, 2019

HEARINGS

	Wednesday	04/24/2019
	(Day)	(Date)
Ways and Means		SH 100
(Name of Committee)		9:00 a.m. (Time)
9:00 a.m. HB 480-FN		relative to sports betting.
9:45 a.m. HB 458-FN		repealing certain inactive dedicated funds.
10:00 a.m. HB 595-FN		relative to the administration of the tobacco tax.
10:15 a.m. HB 600-FN		adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.
10:30 a.m. HB 292-FN		relative to including brokers fees in the calculation of the insurance premium tax.
10:45 a.m. HB 407-FN		clarifying the non taxability of certain telecommunications devices and equipment.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 480-FN

Rep. Lang
Rep. Aldrich
Rep. Soucy

Rep. Chirichiello
Rep. Janvrin

Rep. Morrison
Rep. Potucek

Rep. Horn
Rep. Goley

HB 458-FN

Rep. Major

Rep. Almy

Sen. Giuda

HB 595-FN

Rep. Ames

Rep. Abrami

HB 600-FN

Rep. Williams
HB 292-FN
Rep. Butler
HB 407-FN
Rep. Belanger

Sonja Caldwell 271-2117

Dan Feltes
Chairman

Senate Ways and Means Committee

Sonja Caldwell 271-2117

HB 600-FN, adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

Hearing Date: April 24, 2019

Members of the Committee Present: Senators Feltes, D'Allesandro, Dietsch, Morse and Giuda

Members of the Committee Absent : None

Bill Analysis: This bill excepts from the real estate transfer tax certain transfers of interest in low-income housing subject to federal restrictions or other requirements where the property remains subject to land use restriction and affordability covenants.

Sponsors:
Rep. Williams

Who supports the bill: Rep. Susan Almy, Cathy Stacey (NH Deeds Assoc.), Elissa Margolin (Housing Action NH), Robert Tourigny (NeighborWorks), Ben Frost (NH Housing)

Who opposes the bill: No one

Who is neutral on the bill: No one

Summary of testimony presented:

Rep. Almy

- This bill was designed to help NeighborWorks and takes into account all eventualities.
- In the 1970s, the law exempted them from the RETT when they had to transfer property for purposes of financial arrangements. What happens now is that most subsidized housing comes from federal grants that provide a tax privilege for a certain number of years for the person that lent the money to build it. At the end of that time period, they want out; they are the nominal holder of the lease but a trust has been managing the property. When that period ends and they have to transfer ownership, the housing authority is responsible for both the buyer and sellers RETT. For NeighborWorks they were facing \$80,000. For a housing trust, they do not have a lot of cash. They need it for down payments and emergency repairs. It is a significant amount of money to them. The bill is

meant to encompass all the ways subsidized housing authorities finance in the state.

Robert Tourigny (NeighborWorks) and Ben Frost (NH Housing)

Mr. Tourigny supports the bill because of the multiple times they incur the RETT based on the way they finance their housing. The primary vehicle for financing affordable housing is using federal tax credits. The owner needs to have tax liability so they have to rely on an investor. In NH, in the limited partnership they form, when there is a change in the partnership it triggers the RETT. He gave an example of triggering the RETT 3 or 4 times on the same property that they have owned for many years because of how they finance. The intent of the bill was to allow them to pay the RETT once when they acquire the property and then not have to pay it again when they change investors.

Mr. Frost said it is important for developers subject to long term affordability restrictions. They are subject to 99 years of affordability. They are long terms, they are not at risk of going to the market. They will remain affordable housing for a long time. Four different types of affordable housing options are covered in the bill.

Sen. Giuda asked if these affordable projects pay local property tax. They responded that they do, for the most part.

sc

Date Hearing Report completed: April 25, 2019

Speakers

Testimony



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March 24, 2019

Senator Dan Feltes, Chair
Ways & Means Committee
New Hampshire Senate
107 N Main St.
Concord, NH 03301

RE: HB 600 Exception to Real Estate Transfer Taxes for certain transfers

Dear Chairman Feltes:

NeighborWorks Southern New Hampshire is a private non-profit community development corporation with a focus on providing affordable workforce housing. We have developed over 450 affordable units over the past 26 years throughout the region and continue to focus on helping communities meet their housing needs.

We are in support of HB600 as these measures will help to reduce the cost of providing and preserving affordable housing in New Hampshire by eliminating the multiple payments of Real Estate Transfer Taxes that are occurring on these properties.

Nearly all of the affordable rental housing developed by NeighborWorks Southern New Hampshire was developed using federal low income housing tax credits and are "owned" or held by Limited Partnerships. The Limited Partnership is the entity that holds the deed to the property. However, the membership of that Limited Partnership is always structured such that a NeighborWorks subsidiary maintains 100% of the responsibility for operating and maintaining the property as the managing General Partner while holding less than a 1% financial interest in the Partnership. The investor who brings capital and equity to the project maintains a 99%+ Limited Partner interest in the entity, but has no actual ownership responsibility associated with the real estate. As a Limited Partner, they are in the ownership structure only for the purposes of providing the equivalent of financing (through the federal tax credit).

This program has been the most successful means of creating affordable rental housing in the country since its creation in 1986. New Hampshire is unusual, however, in the way it treats these Limited Partnerships and taxes them as though a real estate transfer is occurring whenever a change occurs within the Partnership membership. This bill seeks to exempt these types of properties from the subsequent real estate transfer taxes that are occurring when we refinance, change investors, and recapitalize to make repairs and improvements to the property.

When we develop affordable housing using federal tax credits, the properties are encumbered by a 99 year Land Use Regulatory Agreement that is administered by New Hampshire Housing Finance Authority, assuring that the property remains affordable during that entire time period. Our Limited Partner investors are motivated by the federal tax credit, not a conventional cash flow stream or property appreciation associated with a typical real estate transaction. The federal tax credit requirements

TRUSTEES

Carolyn Benthien
Ron Boufford
Barry Brensinger
Richard M. Bunker
Dean Christon
Ellie G. Cochran
Robert Dastin, Esq.
Sylvio Dupuis
Matthew Kfoury
Mike Lopez
Claira P. Monier
Joseph B. Reilly
Dennis Ryan
Arthur Sullivan



stipulate that the Limited Partner investor remain in the Partnership for only 15 years. At the end of that period the investor goes away and the general partner, a NeighborWorks subsidiary, assumes the Limited Partner's interest. The real estate is still owned by the same Limited Partnership entity that has owned it all along, the only difference is that NeighborWorks maintains 100% of both member's interest. When the investor Limited Partner exits or a new investor comes in, New Hampshire treats this as a real estate transfer which triggers a tax even though the real estate is still controlled by NeighborWorks. Typically, after 15-20 years the property is in need of capital improvements and may need to be refinanced to restructure debt and pay for repairs and improvements. This re-syndication often involves tax credits and the Partnership changes again to bring in the new investor which triggers yet another transfer tax.

In the following example, the first five properties developed by NeighborWorks Southern New Hampshire all paid transfer taxes when the land and buildings were originally purchased some 18-25 years ago. As each Limited partner exited the project over the years, each property incurred another transfer tax. When we recapitalized the properties to pay for much needed improvements, we paid transfer taxes yet again. In an effort to preserve 98 affordable rental units which NeighborWorks has maintained and controlled over the past 15-20 years, we've had to pay the state transfer taxes three times totaling \$116,600. Despite the change in the Limited Partner member, the real estate has remained in the same hands with the same General Partner throughout the years.

NeighborWorks has developed 14 tax credit properties to date with a 15th set to close in June. All of the transaction pay the real estate transfer tax upon the initial acquisition of the real estate. Half of our portfolio, however has reached the age where our investors have exited the project due to the expiration of their tax credit benefit. As a result of these exits, we have paid nearly \$200,000 in subsequent transfer taxes since the initial acquisition and first transfer tax was paid. As time goes on, housing development costs increase and these taxes are growing exponentially and creating additional costs in our effort to preserve affordable housing.

This bill is aimed to alleviate some of the tax burden placed on affordable housing in New Hampshire, particularly at a time when it is so greatly needed. This is not an attempt to get anyone out of paying their fair share. When properties are bought and sold, transfer taxes are and will continue to be paid. The exemption is sought to treat these Limited Partner tax credit investors as they are, a source of capital much in the same way as a lender. There is also another set of transfer taxes that occur behind the scene unbeknown to the General Partner. There are also instances when transfer taxes are incurred within the Limited Partner entity itself. The Limited Partner "syndicator" may initially place the investment with a bank. After some period ranging from a few months to a few years, the syndicator may move that investment to a different bank. This is similar to the way that a residential mortgage lender sells home loans on the secondary market. These transfers also trigger the transfer tax.

Much in the way that exceptions exist for transfer taxes on affordable housing properties wholly owned by a 501 (c)3 or a land trust, we believe the types or properties specified in HB600 should be treated the same way.

Thank you very much for your consideration of this bill and I encourage you to support this exception from Real Estate Transfer Taxes.

Sincerely,



Robert Tourigny
Executive Director

Voting Sheets

Senate Ways & Means Committee
EXECUTIVE SESSION RECORD
2019-2020 Session

Bill # **HB600**

Hearing date: 4.24.19

Executive Session date: _____

Motion of: OTF Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Feltes, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro, VC	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Dietsch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Morse	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Feltes, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Dietsch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Morse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Feltes, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro, VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Dietsch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Morse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Giuda	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Dietsch

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, May 8, 2019

THE COMMITTEE ON Ways and Means

to which was referred **HB 600-FN**

AN ACT

adding an exception to the real estate transfer tax
for transfers of interest in certain low-income
housing.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Jeanne Dietsch
For the Committee

Sonja Caldwell 271-2117

WAYS AND MEANS

HB 600-FN, adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

Ought to Pass, Vote 5-0.

Senator Jeanne Dietsch for the committee.

Docket of HB600

Docket Abbreviations

Bill Title: (New Title) adding an exception to the real estate transfer tax for transfers of interest in certain low-income housing.

Official Docket of HB600.:

Date	Body	Description
1/15/2019	H	Introduced 01/03/2019 and referred to Ways and Means HJ 3 P. 21
1/23/2019	H	Public Hearing: 01/30/2019 02:00 pm LOB 202
2/14/2019	H	Subcommittee Work Session: 02/20/2019 02:30 pm LOB 203
2/27/2019	H	Subcommittee Work Session: 03/06/2019 01:00 pm LOB 202
3/8/2019	H	Subcommittee Work Session: 03/13/2019 09:55 am LOB 202
2/27/2019	H	Executive Session: 03/13/2019 10:00 am LOB 202
3/13/2019	H	Committee Report: Ought to Pass with Amendment #2019-0887h (NT) for 03/19/2019 (Vote 19-0; RC) HC 16 P. 16
3/19/2019	H	Amendment #2019-0887h (NT): AA VV 03/19/2019 HJ 10 P. 45
3/19/2019	H	Ought to Pass with Amendment 2019-0887h (NT): MA VV 03/19/2019 HJ 10 P. 45
4/1/2019	S	Introduced 03/28/2019 and Referred to Ways and Means; SJ 12
4/4/2019	S	==TIME CHANGE== Hearing: 04/24/2019, Room 100, SH, 10:15 am; SC 19A
5/8/2019	S	Committee Report: Ought to Pass, 05/15/2019; SC 22
5/15/2019	S	Ought to Pass: MA, VV; OT3rdg; 05/15/2019; SJ 16
5/31/2019	S	Enrolled (In recess 05/30/2019); SJ 19
5/31/2019	H	Enrolled 05/23/2019 HJ 16 P. 51
6/27/2019	H	Signed by Governor Sununu 06/25/2019; Chapter 136; Eff: 07/01/2019

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 600-FN

Senate Committee: WTM

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide

Date

Senate Clerk's Office JM

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

19-0647

HB 600, *adding an exception to the real estate transfer tax for certain transfers of interest in certain low-income housing.*

Senate Ways & Means

The proposed legislation amends RSA 78-B:2 of the Real Estate Transfer Tax (RETT) to add a new exception for transfers that occur for purposes of (1) a federal low-income housing project, (2) a Rental Assistance Demonstration (RAD) public housing conversion, or (3) "such other federal, state, or local financing program requiring that the real estate remains subject to land use restriction and rental housing affordability covenants which limit allowable rents charged to individuals or families,, but only if the RETT was paid when the real property title was acquired. It would take effect July 1, 2019.

The fiscal impact is indeterminable, but the bill would likely decrease revenues to the General and Education Trust Fund in FY 2020 and beyond because it adds an exception to the RETT. We have no way of knowing the number or the price or consideration of any such transfers that may occur.