

Senate Ways and Means Committee

Sonja Caldwell 271-2117

HB 654-FN, establishing a committee to study the regulation and taxation of vacation rentals and short-term rentals.

Hearing Date: April 5, 2017

Members of the Committee Present: Senators Sanborn, Giuda, Daniels and Feltes

Members of the Committee Absent: Senator D'Allesandro

Bill Analysis: This bill establishes a committee to study the regulation and taxation of vacation rentals and short-term rentals.

Sponsors:

Rep. Ohm
Rep. Seidel
Sen. Birdsell

Rep. Butler
Rep. Azarian

Rep. Twombly
Sen. Fuller Clark

Who supports the bill: Sen. Birdsell, Rep. Abrami, Gina Powers (HomeAway/Expedia), Rep. Butler, Bob Quinn (NH Realtors), Rep. Hunt

Who opposes the bill: Will Anderson, Darryl Perry (Liberty Lobby LLC), Ian Freeman, Annmarie Karayianes

Who is neutral on the bill: Commissioner Beardmore & Carollynn Ward (DRA), Rep. Ohm, Henry Veilleux

Summary of testimony presented:

Rep Ohm

- Short term rentals were previously studied under SB482.
- One of the recommendations from the study was to review the AZ law to see if any sections would be appropriate and applicable to NH. This bill was introduced in response to that recommendation.
- HB654 as introduced proposed that short term rentals can be regulated but not prohibited.
- Regulations can be for health, safety and nuisance but cannot prohibit use as a short term rental.
- If you want to rent your house, you should be able to without a lot of regulations.
- It provided framework for third parties to market, collect rental fees, and pay NH taxes.
- It proposed that the taxable base is the amount received by homeowners, net of service fees.
- The House was concerned about improved privacy protections and ongoing litigation between DRA and lodging marketplace operators going to trial May 4th so they amended it

to a study committee.

- He thinks we should wait for litigation to be resolved.

Rep. Butler

- Stated that he is an inn keeper.
- The issue of short term rentals via Airbnb and HomeAway, etc. are important to him because of the impact they have on the lodging industry.
- He supports the study committee because although we got it close, he doesn't think they got it right.
- Even though the litigation may help resolve one piece, the director of the Conway planning board thinks some definitions still need to be worked on. Further study would still be useful.

Rep. Hunt

- Stated that he has a conflict of interest.
- He makes over \$100,000 a year renting his home.
- He had a lawsuit brought by his neighbors who weren't happy he was renting his home.
- The City of Phoenix allows you to rent your house once a year. AZ decided to have a statewide answer.
- His town passed an ordinance that no one could rent to more than 25 people.
- Having a consistent law across NH makes the most sense.

Commissioner Beardmore – DRA

- Has a proposed amendment that addresses ongoing willful noncompliance with the meals and rooms tax statute.
- RSA 78-A already requires Online Travel Companies (OTCs), room remarketers, and online platforms to become licensed operators and collect and remit the tax if they receive all or any portion of the consideration for a taxable accommodation. However, the Dept. is not aware of any OTC or platform that is a licensed operator, or that is collecting and remitting the M&R Tax to the state.
- NH is currently engaged in litigation with several OTCs. They claim they are not operators, and that only the wholesale rate they pay hotels for the rooms they sell to consumers is subject to the M&R Tax. Since much of what they charge the consumer is designated as a "fee," which they refuse to pay tax on, the state receives significantly less M&R Tax when a consumer rents a room through an OTC than when a consumer rents the identical room for the same price through a hotel or a travel agent.
- Online platforms act as marketplaces for homeowners to rent their property, often collecting the rent on behalf of the owner. These platforms take the position that they are not operators for purposes of the M&R Tax and that the M&R Tax is not applicable to the portion of the rent paid by a consumer to the platform if the platform designates it as a service fee. This is contrary to the spirit and purpose of the M&R Tax which plainly defines rent as including everything the consumer pays in order to obtain the room.
- The state is losing significant tax revenue, in the millions per year.
- Operators who comply are at a competitive disadvantage.

- The proliferation of willful noncompliance threatens to further degrade the M&R tax base if greater numbers of operators designate portions of the consideration they receive as non-taxable fees.
- Even if OTCs prevail in litigation, legislation will be necessary because the position of OTCs and online platforms creates an inherent unfairness. The amendment clarifies the application of the M&R Tax to transactions facilitated by OTCs, room remarketers online platforms and any other third party that is consistent with how all other taxpayers are treated under the M&R tax statute.
- The lead litigant is Priceline. There's a separate but related issue with online platforms. He is not confident that if the state prevails, that the online platforms will comply with the law. It's common knowledge that some have done settlements in other states that narrowly define the tax base to their benefit.
- He thinks they are 18 months out from the court case being decided. Whoever loses will appeal.
- They are taking action based on these entities refusing to pay tax.
- It is in the best interest for the legislature to clarify that these entities are taxable and the full amount paid is taxable. It would level the playing field for compliant taxpayers.

Sen. Giuda asked if it would be in the interest of the state not to study this and to move ahead with significant and aggressive definitions.

Comm. Beardmore said that's his recommendation. There have been two study committees already.

Ian Freeman – opposed.

- The legislature should study how to reduce taxes and regulations. Regulations keep things less competitive. This bill is unnecessary.

Annmarie Karayianes – (NH B&B Assoc./Lakes Region B&B Assoc.)

- Stated that she is an Inn Keeper.
- They are in favor of some sort of bill that would enforce compliance with M&R Tax regulations that they as Inn Keepers are compliant with.
- The bill as written does not go far enough.
- Individuals who rent their homes should have to register to pay M&R Tax.
- The playing field is not even right now.
- They are required to register for M&R Tax. They are also required to register as a business with state as well as to be licensed by the health dept.
- Depending on the town you live in, a business might need occupancy permits and because of that, there are safety regulations they have to comply with. For example, she had to install sprinkler system. They are also required to have business property insurance.
- She made it clear that they want to meet these standards. There is value in regulation. They want guests to be safe. However, they want the playing field to be fair. Others who are not subject to all of the same rules are able to offer lower prices that they can't compete with.
- She does think a study committee would be beneficial.

Sen. Sanborn declared a conflict; still participating.

Sen. Giuda asked if she could follow up with some information.

Ms. Karayianes said she could give a representative number of entities per square mile and how much revenue you could be obtaining.

Gina Powers – HomeAway/Expedia

- HomeAway is an online vacation rental place.
- They supported the bill as introduced, however both companies oppose the DRA language because of ongoing litigation. They feel we should allow the court to make a decision.
- They do support the study committee.

Henry Veilleux – NHLRA

- They are interested in the taxation issue. M&R Tax is essentially a sales tax. It should be equitable no matter who you're getting the room from.
- They would support the language the commissioner brought forward.
- Existing statute was written before these new businesses we have today were developed.

Bob Quinn – NHAR

- He encouraged the committee to look at original provisions of the bill.
- He submitted a proposed amendment that clarifies how a municipality is permitted to enter a private residence that is rented on a short term basis when they believe there is a violation. The amendment raises the bar a bit. It would require probable cause and a 48 hour notice. It only applies when in use for short term rental. It doesn't prohibit them from ever entering the home.
- There is concern that municipalities are entering homes without just cause. A building inspector might knock on door to inspect for building fire code if you've advertised property as short term rental. Owners are often unaware of their rights.
- Towns can get an administrative warrant if you don't allow them in.
- One town imposed a fine of \$1,000 for not letting them in.

Sen. Feltes asked if he would be ok with adding the words "under this chapter" in certain places in his suggested amendment.

Sen. Feltes asked him to confirm that this language is not intended to supersede a police officer or firefighter.

Mr. Quinn said that was correct.

Sen. Feltes asked if he had any comment on the DRA amendment.

Mr. Quinn said he's concerned with the original bill. Realtors often act as operators and collectors of the M&R Tax for their clients. They like that process and have no issues with it.

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Date Hearing Report completed: April 6, 2017