HB 1632-FN-A-LOCAL - AS AMENDED BY THE HOUSE
19Feb2020... 0485h

2020 SESSION
20-2414
05/10

HOUSE BILL 1632-FN-A-LOCAL

AN ACT relative to financial investments and incentives for affordable housing development.


COMMITTEE: Municipal and County Government

ANALYSIS

This bill:

I. Permits municipal economic development and revitalization districts in RSA 162-K to be used to increase workforce housing and other residential development within the municipality.

II. Increases the community revitalization tax relief incentive period for eligible housing projects under RSA 79-E.

III. Establishes a business profits tax deduction for income derived from qualifying housing development.

IV. Temporarily reduces the real estate transfer tax for qualifying first time home buyers and requires the department of revenue administration to report on the usage of the reduced rate.

V. Establishes the New Hampshire housing champion certification program in the office of strategic initiatives and authorizes business profits tax revenue sharing with New Hampshire housing champion municipalities.

VI. Enables the business finance authority to issue New Hampshire advantage bonds for the purpose of financing economic development projects in municipalities that have achieved the New Hampshire housing champion certification.

Explanation: Matter added to current law appears in **bold italics.**
Matter removed from current law appears [in brackets and struckthrough.]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
AN ACT relative to financial investments and incentives for affordable housing development.

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

1 Municipal Economic Development and Revitalization Districts; Definition of Public Use. Amend RSA 162-K:2, IX-a to read as follows:

   IX-a. "Public use" means:

   (a)(1) The possession, occupation, and enjoyment of real property by the general public or governmental entities.[1]

   (2) The acquisition of any interest in real property necessary to the function of a public or private utility or common carrier either through deed of sale or lease.[2]

   (3) The acquisition of real property to remove structures beyond repair, public nuisances, structures unfit for human habitation or use, and abandoned property when such structures or property constitute a menace to health and safety.[3]

   (4) Private use that occupies an incidental area within a public use; provided, that no real property shall be condemned solely for the purpose of facilitating such incidental private use.

   (5) The acquisition of real property to construct housing units which meet the definition of workforce housing contained in RSA 674:58, IV, whether or not such construction results from private development or private commercial enterprise.

   (b) Except as provided in subparagraphs (a)(2), [and] (4), and (5) of this paragraph, public use shall not include the public benefits resulting from private economic development and private commercial enterprise, including increased tax revenues and increased employment opportunities.

2 Municipal Economic Development and Revitalization Districts; District Establishment and Development Programs; Authority to Acquire, Construct, and Promote Residential Development and Housing Stock. Amend RSA 162-K:6, III(h) and (i) to read as follows:

   (h) Lease all or portions of basements, ground and second floors of the public buildings constructed in the district; [and]

   (i) Negotiate the sale or lease of property for private development if the development is consistent with the development program for the district; and

   (j) Acquire, construct, reconstruct, improve, alter, extend, operate, maintain or promote residential developments aimed at increasing the available housing stock within the municipality.
Community Revitalization Tax Relief; Duration of Tax Relief Period. Amend RSA 79-E:5, II to read as follows:

II. The governing body may, in its discretion, add up to an additional 2 years of tax relief for a project that results in new residential units and up to an additional 4 years for a project that includes affordable housing that meets the definition of workforce housing in RSA 674:58, IV, and an additional 8 years for a project that includes residential units located on the second story or higher of a downtown building. For purposes of this paragraph, the term downtown shall be defined by the governing body.

New Paragraph; Business Profits Tax; Additions and Deductions; Deduction from Gross Business Profits for Workforce Housing. Amend RSA 77-A:4 by inserting after paragraph XIX the following new paragraph:

XX. A deduction of one quarter of such amount of gross business profits as is attributable to income derived from housing units which both qualify as workforce housing, as that term is defined in RSA 674:58, IV, and are constructed after July 1, 2020.

Tax on Transfer of Real Property; Rate; Exception Added. Amend RSA 78-B:1, I(b) to read as follows:

(b) Except as provided in RSA 78-B:1-b, the rate of the tax is $.75 per $100, or fractional part thereof, of the price or consideration for such sale, grant, or transfer; except that where the price or consideration is $4,000 or less there shall be a minimum tax of $20. The tax imposed shall be computed to the nearest whole dollar.

New Section; Rate of Transfer Tax for First-time Home Buyers. Amend RSA 78-B by inserting after section 1-a the following new section:

78-B:1-b Rate of Transfer Tax for First Time Home Buyers. Notwithstanding RSA 78-B:1, I(b), beginning January 1, 2021 the rate of the tax is $.50 per $100, or fractional part thereof, of the price or consideration for such sale, grant, or transfer applicable to the buyer for the purchase of a qualifying first home, as follows:

I. The rate of tax provided for in this section shall be applied to the amount of tax owed by and actually paid by the buyer pursuant to RSA 78-B:1 and shall not apply to any amounts paid by the buyer on behalf of the seller.

II. For purposes of this section, the term:

(a) "Qualifying first home" shall mean:

(1) The purchase of residential real estate, the price of which does not exceed $300,000;

(2) That will be utilized as the buyer's principal residence as defined in Internal Revenue Code Section 121 and related Treasury Regulations; and

(3) That is the buyer's first purchase of residential real estate.
(b) "Buyer" shall mean the purchaser, grantee, assignee, or transferee of any real estate or any interest in real estate.

III. This section shall apply only if the deed by which the property is conveyed states the amount of consideration paid for the real estate.

7 Applicability Date. RSA 78-B:1-b, as inserted by section 6 of this act, shall apply to transfers occurring on and after January 1, 2021.

8 Payment of Tax; Exception Added. Amend RSA 78-B:4, III to read as follows:

III. **Except as provided in RSA 78-B:1-b**, the rate of tax established in RSA 78-B:1 shall apply to both the purchaser, grantee, assignee or transferee and the seller, grantor, assignor or transferor.

9 Prospective Repeal. RSA 78-B:1-b, relative to a transfer tax rate for first-time home buyers, is repealed.

10 Exception Deleted. Amend RSA 78-B:1, I(b) to read as follows:

(b) **[Except as provided in RSA 78-B:1-b.]** The rate of the tax is $.75 per $100, or fractional part thereof, of the price or consideration for such sale, grant, or transfer; except that where the price or consideration is $4,000 or less there shall be a minimum tax of $20. The tax imposed shall be computed to the nearest whole dollar.

11 Exception Deleted. Amend RSA 78-B:4, III to read as follows:

III. **[Except as provided in RSA 78-B:1-b.]** The rate of tax established in RSA 78-B:1 shall apply to both the purchaser, grantee, assignee or transferee and the seller, grantor, assignor or transferor.

12 Report Required; Department of Revenue Administration. On or before January 1, 2021 and on or before January 1, 2022, the commissioner of revenue administration shall report to the speaker of the house of representatives, the senate president, and the governor on the number of first-time home buyers using the lower transfer tax rate provided in RSA 78-B:1-b and the department’s assessment of whether the number of first-time home buyers increased or decreased as a result of the reduced tax rate.

13 New Subdivision; Office of Strategic Initiatives; New Hampshire Housing Champion Certification. Amend RSA 4-C by inserting after section 37 the following new subdivision:

    New Hampshire Housing Champion Certification

    4-C:38 New Hampshire Housing Champion Certification.

I. The office of strategic initiatives shall develop a New Hampshire housing champion certification program for all qualifying municipalities. The office of strategic initiatives shall adopt rules to establish qualifications and procedures for a municipality to earn the New Hampshire housing champion certification. The procedure for a municipality to earn the New Hampshire housing champion certification shall be based on a scoring system.
II. The New Hampshire housing champion certification program shall be voluntary. Each municipality shall have the option, in its sole discretion, to apply to the office of strategic initiatives to receive the New Hampshire housing champion certification. In exchange for housing champion certification, a municipality shall receive preferential access to state resources including, but not limited to, business profits tax revenue sharing, pursuant to RSA 77-A:24; the New Hampshire Advantage bond program, pursuant to RSA 162-I:17; and discretionary state infrastructure funds, as available.

III. Qualifications to receive the New Hampshire housing champion certification shall include, but are not limited to:

(a) Adoption of such land use regulations and ordinances which the office of strategic initiatives determines to be necessary to promote the development of workforce housing, as that term is defined in RSA 674:58, and other types of housing necessary for the economic development of the state. In this paragraph, "land use regulations and ordinances" shall include, but are not limited to, innovative land use controls described in RSA 674:21.

(b) Adoption of financial tools that incentivize the development of workforce housing, including adoption of the community revitalization tax relief incentive program under RSA 79-E and establishment of municipal economic development and revitalization districts under RSA 162-K.

(c) Training of planning board and zoning board of adjustment members.

(d) Adoption of energy efficiency residential building standards, pursuant to RSA 674:51, or adoption of an energy efficiency and clean energy district, pursuant to RSA 53-F.

IV. A New Hampshire housing champion certification shall be valid for 3 years from the date such certification is awarded. A municipality may renew its housing champion certification for subsequent 3-year periods. The office of strategic initiatives may include in the criteria for renewal such performance metrics including, but not limited to, the qualifications listed in paragraph III, total housing production, and production of workforce housing in a municipality during the period since a municipality last received New Hampshire housing champion certification.

V. There is hereby established the New Hampshire housing champion certification program advisory board. The advisory board shall review and comment on proposed rules and qualifications used by the office of strategic initiatives to evaluate applications for housing champion certification and shall advise the office regarding ongoing program administration. The advisory board shall consist of:

(a) One member of the senate, appointed by the senate president.

(b) Two members of the house of representatives, at least one of whom shall be a member of the municipal and county government committee, appointed by the speaker of the house of representatives.

(c) The commissioner of the department of business and economic affairs, or designee.

(d) One member appointed by each of the following entities:
(1) The New Hampshire housing finance authority.
(2) The New Hampshire community development finance authority.
(4) The New Hampshire Association of Regional Planning Commissions.
(5) Housing Action New Hampshire.
(6) Clean Energy New Hampshire.
(10) Plan New Hampshire.

VI. Members of the advisory board shall serve without compensation, except that legislative
members of the board shall receive mileage at the legislative rate when attending to the duties of the
board.

VII. The office of strategic initiatives shall adopt rules pursuant to RSA 541-A to implement
the provisions of this section no later than January 1, 2021. During the rulemaking process, the
office of strategic initiatives shall consult with the relevant state agencies and entities who
administer the programs and funds identified in paragraph II to ensure the rules for the New
Hampshire housing champion certification program are not in conflict with the rules of these state
agencies and entities.

14 New Section; Business Profits Tax; Revenue Sharing with New Hampshire Housing
Champion Municipalities. Amend RSA 77-A by inserting after section 23 the following new section:

77-A:24 Distribution of Certain Housing Development Revenue.

I. Beginning with the first fiscal year after the final adoption of rules under RSA 4-C:38 and
for each fiscal year thereafter, the department shall calculate, pursuant to the provisions of this
section, the total of all revenue received under this chapter that is derived from housing
developments that are both (a) constructed in municipalities that have received the New Hampshire
housing champion certification through the program established in RSA 4-C:38 and (b) constructed
after the date upon which the municipality received the New Hampshire housing champion
certification through the program established in RSA 4-C:38. The department shall further calculate
the amount of such revenue received on a municipality-by-municipality basis.

II. To facilitate the calculations required under paragraph I, the department shall require
each business organization to indicate on its return the portion of its gross business profits derived
from housing developments that are both (a) constructed in municipalities that have received the
New Hampshire housing champion certification through the program established in RSA 4-C:38 and
(b) constructed after the date upon which the municipality received the New Hampshire housing
champion certification through the program established in RSA 4-C:38.
III. The department shall provide the amount of revenue calculated pursuant to paragraph I to the municipality and shall give such municipality at least 30 days to contest such calculation. If a municipality contests such calculation, then the department shall work with the municipality to conduct a review of the relevant information received by the department. Upon completion of such review, the department may revise its calculation based on any identified errors.

IV. On or before December 1 of each year, the department shall notify the state treasurer of the amount of revenue received for each municipality, as calculated pursuant to paragraph I, by a report certified by the department as to correctness. After receipt of such report, the state treasurer shall distribute to each municipality one half of the revenue which the report designates to the municipality.

V. The department may adopt rules, pursuant to the requirements of RSA 541-A, to implement the provisions of this section.

15 New Section; Business Finance Authority Revenue Bonds; New Hampshire Advantage Bond Program. Amend RSA 162-I by inserting after section 16 the following new section:

162-I:17 New Hampshire Advantage Bond Program.

I. There is hereby established the New Hampshire advantage bond program for the purpose of financing economic development projects in municipalities who have achieved the New Hampshire housing champion certification pursuant to RSA 4-C:38. The authority shall develop guidelines for the New Hampshire advantage bond program that are consistent with the provisions of this section and RSA 4-C:38.

II. Notwithstanding other limitations of this chapter, for purposes of this section the authority may issue bonds hereby deemed “New Hampshire advantage bonds” which shall be limited obligations of the authority and not general obligations of the state, except as provided in RSA 162-I:9-b and RSA 162-I:17, II. Such bonds may be issued from time to time consistent with the purposes and provisions of this chapter, for any costs incurred in undertaking any project authorized by this chapter, or for paying or refunding any bonds issued pursuant to this section or interest thereon.

III. New Hampshire advantage bonds may only be issued for projects undertaken within the borders of municipalities who have achieved the New Hampshire housing champion certification pursuant to RSA 4-C:38. The authority may begin issuing New Hampshire advantage bonds one year from the date of the final adoption of rules for the New Hampshire housing champion program established in RSA 4-C:38.

IV. The principal on all New Hampshire advantage bonds shall be payable solely by the authority in accordance with the provisions of this chapter. The premium, if any, and interest on all New Hampshire advantage bonds shall be payable solely by the state of New Hampshire.

V. The provisions of paragraph III notwithstanding, the authority shall seek, through negotiations and other consideration, to obtain the maximum amount of public benefit from each project financed using a New Hampshire advantage bond. After paying required fees and expenses
of the authority proceeds from such recoupment for each project shall be made available to the
municipality wherein the project is located, according to guidelines developed by the authority
pursuant to paragraph I.

VI. New Hampshire advantage bonds shall be issued by the authority in such amounts
consistent with the purposes and provisions of this chapter, not exceeding in the aggregate
$100,000,000.

16 New Paragraph; Business Finance Authority Revenue Bonds. Amend RSA 162-I:1 by
inserting after paragraph IX the following new paragraph:

X. It is hereby declared that there is a need for the development, acquisition, construction,
expansion, and replacement of commercial facilities in the state in order to maintain and improve
the social or economic prosperity of the state and its political subdivisions, and promote the general
welfare of the state’s citizens. It is further declared that investments in local communities in a
manner which simultaneously advances the needs of employers, local municipalities, and the state of
New Hampshire is deemed of strategic importance to the general welfare of the state’s citizens.

17 Business Finance Authority Revenue Bonds; Definition of Project Costs. Amend RSA 162-I:2,
IX(h) and (i) to read as follows:

(h) Working capital related to a project; and

(i) Creating reserves; and

(j) Payment or payments made to support local state or municipal
infrastructure and/or other complementary investments or expenditures as determined by
the authority that facilitate the relocation or expansion of an employer in a given region
consistent with 162-I:17.

18 Business Finance Authority Revenue Bonds; Obligations of the State. Amend RSA 162-I:10,
I(b) to read as follows:

(b) As permitted by RSA 162-I:9, RSA 162-I:9-a, or RSA 162-I:9-b, or RSA 162-I:17; or

19 Effective Date.

I. Sections 9-11 shall take effect January 1, 2026.

II. The remainder of this act shall take effect July 1, 2020.
AN ACT relative to financial investments and incentives for affordable housing development.

FISCAL IMPACT: [ X ] State [ X ] County [ X ] Local [ ] None

<table>
<thead>
<tr>
<th></th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Appropriation</td>
<td>$0</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
</tbody>
</table>

Funding Source: [ X ] General [ X ] Education [ ] Highway [ ] Other

COUNTY:

<table>
<thead>
<tr>
<th></th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
</tbody>
</table>

LOCAL:

<table>
<thead>
<tr>
<th></th>
<th>Estimated Increase / (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>FY 2020</td>
</tr>
<tr>
<td>Revenue</td>
<td>$0</td>
</tr>
<tr>
<td>Expenditures</td>
<td>$0</td>
</tr>
</tbody>
</table>

METHODOLOGY:

This bill makes numerous changes to enhance the availability of workforce and available housing, including:

- Authorizes municipalities to establish municipal economic development and revitalization districts to construct workforce housing or generally increase the available housing stock.
- Extends the maximum duration of the community revitalization tax relief incentive period under RSA 79-E for certain housing projects, based on type of project.
- Establishes a Business Profits Tax (BPT) deduction of one-quarter of such amount of gross business profits attributable to income derived from workforce housing constructed after July 1, 2020.
- Reduces the rate of the Real Estate Transfer Tax (RETT) for first-time home buyers from $0.75 to $0.50 per $100 of the price or consideration. The reduced rate is applicable to the amount of tax owed and actually paid by the buyer and not an amount paid by the
buyer on behalf of the seller. The reduced rate will apply to transfers occurring on or after January 1, 2021 and repealed effective January 1, 2026.

- Establishes a voluntary housing champion certification program for qualifying municipalities to promote the development of workforce housing and other types of housing necessary for the economic development of the state. Certification is valid for 3 years and may be renewed for another 3 year period. The program is to be administered by the Office of Strategic Initiatives.

- Authorizes the sharing of BPT revenue with municipalities that have received a NH housing champion certification beginning in FY 2022.

- Establishes the NH advantage bond program for financing economic development projects in municipalities that have received a NH housing champion certification. The Business Finance Authority may issue "New Hampshire advantage bonds" for such projects in amounts not exceeding $100,000,000 in the aggregate.

The Department of Revenue Administration (DRA) indicates there could be an indeterminable increase in municipal revenues provided that (1) the assessed value of a development district exceeds the original assessed value and (2) a portion of such excess value is greater than the tax increment amount used to pay costs and administrative expenses incurred in developing the district. Such excess portion must be returned to the tax lists beginning in FY 2021. The impact on overall expenditures for this purpose is indeterminable and based on the impact of tax increment financing on bonds and notes, operations, maintenance and improvement relating to the district. Local revenues would also increase by an indeterminable amount beginning after FY 2023 if the municipality or governing body encourages new residential units by granting the additional tax relief. The department does not know whether this change would increase local expenditures.

DRA states the reduction in RETT would negatively impact state and county revenues by an indeterminable amount. The county receives 4% of the tax collected at the registry of deeds. DRA does not have information to estimate the number of qualifying first-time home buyers or how the change may affect the cost of administering the change at the county level. DRA could administer the change at the state level with no additional expenditure.

DRA states the BPT deduction of one-quarter of such amount of gross BPT as is attributable to income derived from workforce housing constructed after July 1, 2020 will decrease BPT revenue to the General Fund and Education Trust Fund by an indeterminable amount.

DRA states the decrease to BPT revenue and increase to local revenue due to revenue sharing is indeterminable. Assuming this begins in FY 2022, the Department does not have information to
estimate the number of taxpayers who would derive gross business profits from housing developments that apply and qualify for such certification or the amount of such gross business profits. DRA estimates it will incur $40,000 in additional expenditures to update its revenue management system for the additional reporting requirements. There would likely be no fiscal impact on local expenditures.

Based on the proposed legislation, it is unclear to the State Treasury: 1) whether the State of New Hampshire interest repayment obligation prescribed in RSA 162-I:17,IV is intended to constitute a general obligation of the state, subject to a pledge of the full faith and credit of the state, and; 2) what the revenue source is for such repayment. If general fund unrestricted revenues are the intended repayment funding source, these obligations will be included in the annual calculation of debt affordability pursuant to RSA 6-C:2. Treasury seeks clarification of this matter, as RSA 162-I:17,II prescribes that the New Hampshire advantage bonds are not general obligations of the state. Treasury also does not understand the use of the term “premium” in RSA 162-I:17,IV. Whenever there is a premium associated with a bond issue, the premium is paid to the issuer, not by the issuer.

Subject to the clarification of the matters noted in the preceding paragraph, it appears the State of New Hampshire would be responsible for the premium, if any, and the interest on the New Hampshire advantage bonds (revenue bonds) issued by the Authority after January 2022 (one year after OSI adopts the required rules). Based on the authorized amount of $100 million, State expenditures could increase by $47.5 million over the life of the bond issue. Using the assumptions described below, expenditures would increase by $2.5 million in fiscal year 2022, and $2.8 million in fiscal year 2023. The following assumptions were used:

1) Bonds ($100 million) would be issued in the fall of 2021.
2) Fixed coupon of 5% coupon will be applied, and
3) Amortization over 20 years with the debt service payments structured to accommodate the first principal payment in the spring of the year following the debt issuance, paying 60% of the bonded principal amount in the first 10 years and 40% during the remaining 10 years.

The legislation, however, does not specify whether the debt service appropriation would be made to the State Treasury.

The proposed legislation also indicates that the New Hampshire advantage bonds would be subject to the state guarantee provisions pursuant to RSA 162-I:9-b whereby the full faith and credit of the state is pledged, subject to the Authority unified contingent credit limit of $115
million plus interest, in the aggregate, under RSA 162-A:22. Treasury notes that any State guarantee sought by the Authority for New Hampshire advantage bonds, pursuant to RSA 162-I:9-b, do not appear to impact the RSA 6-C:2 debt affordability limit certified annually by the State Treasurer which accounts for contingent (state-guaranteed) debt.

The Office of Strategic Initiatives states the proposed certification program for municipalities is to be administered by the Department, but the uncertain nature of a voluntary program and its cyclical nature makes it difficult to reliably anticipate associated staffing needs.

The Business Finance Authority (BFA) states that it is a self-funding organization that does not receive money from the State of New Hampshire, therefore any additional costs for operations to the BFA as a result of the bill would not have any fiscal impact to the State. BFA indicates the NH advantage bonds would allow BFA to partner with local governments on economic development projects. A portion of the proceeds generated from those projects would be shared with municipalities. BFA does not expect any meaningful increase in operational costs due to the bill.

AGENCIES CONTACTED:
Department of Revenue Administration, State Treasury, Office of Strategic Initiatives, and Business Finance Authority