

HB 644-FN-A-LOCAL - AS INTRODUCED

2017 SESSION

17-0624

10/03

HOUSE BILL

***644-FN-A-LOCAL***

AN ACT

extending the interest and dividends tax to capital gains, increasing exemptions from the tax, and providing for retirement system contributions on behalf of employers other than the state.

SPONSORS:

Rep. Ames, Ches. 9; Rep. Almy, Graf. 13; Rep. Berch, Ches. 1; Rep. Luneau, Merr. 10; Rep. Wallner, Merr. 10; Rep. Heath, Hills. 14; Rep. Myler, Merr. 10; Rep. LeBrun, Hills. 32; Sen. Feltes, Dist 15; Sen. Fuller Clark, Dist 21

COMMITTEE:

Ways and Means

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ANALYSIS

This bill extends the interest and dividends tax to capital gains, increases exemptions for the tax, and makes state contributions to retirement system costs for employers other than the state.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    extending the interest and dividends tax to capital gains, increasing exemptions from the tax, and providing for retirement system contributions on behalf of employers other than the state.

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

1            1 Interest and Dividends Tax; Exemptions Increased; Capital Gains. Amend RSA 77:3, I to  
2 read as follows:

3            I. Taxable income is that ***interest, dividend, and capital gain*** income, ***as defined in***  
4 ***RSA 77:4***, received [~~from interest and dividends~~] during the tax year prior to the assessment date  
5 by:

6                    (a) Individuals who are inhabitants or residents of this state for any part of the taxable  
7 year whose [~~gross~~] interest [~~and~~], dividend income [~~from all sources~~], ***and capital gain income, as***  
8 ***defined in RSA 77:4***, including income from a qualified investment company pursuant to  
9 RSA 77:4, V, exceeds [~~\$2,400~~] ***\$7,500*** during that taxable period.

10                   (b) Partnerships, limited liability companies, and associations, the beneficial interest in  
11 which is not represented by transferable shares, whose [~~gross~~] interest [~~and~~], dividend, [~~income~~  
12 ~~from all sources~~] ***and capital gain income, as defined in RSA 77:4***, exceeds [~~\$2,400~~] ***\$7,500***  
13 during the taxable year, but not including a qualified investment company as defined in RSA 77-  
14 A:1, XXI, or a trust comprising a part of an employee benefit plan, as defined in the Employee  
15 Retirement Income Security Act of 1974, section 3.

16                   (c) Executors deriving their appointment from a court of this state whose [~~gross~~]  
17 interest [~~and~~], dividend, [~~income from all sources~~] ***and capital gain income, as defined in***  
18 ***RSA 77:4***, exceeds [~~\$2,400~~] ***\$7,500*** during the taxable year.

19            2 Taxation of Incomes; What Taxable. Amend RSA 77:4, IV and V to read as follows:

20                   IV. [~~Dividends, other than that portion of a dividend declared by corporations to be a return~~  
21 ~~of capital and considered by the federal internal revenue service to be such, the exemption of which~~  
22 ~~is permitted by RSA 77:7.] ***The capital gain reported on the taxpayer's federal income tax***  
23 ***return which shall be the amount, if any, that is equal to the positive sum of the net short-***  
24 ***term capital gain or loss and the net long-term capital gain or loss reported on that***  
25 ***return.***~~

26                   V. Amounts reported and taxed federally as [~~dividends or interest~~] ***interest, dividends, or***  
27 ***capital gain income*** to a holder of an ownership interest in a qualified investment company as  
28 defined in RSA 77-A:1, XXI, a mutual fund, or a unit investment trust.

29            3 Taxation of Incomes; Exclusion of Certain Income; Employee Benefit Plans. Amend

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1 RSA 77:4-b to read as follows:

2 77:4-b [~~Interest and Dividend~~] Income of Employee Benefit Plans and Tax Deferred  
3 Investments Not Taxable. Notwithstanding any provisions of RSA 77:4 to the contrary, [~~interest~~  
4 ~~and dividend income~~] **interest, dividend, and capital gain income, as defined in RSA 77:4,**  
5 received by an employee benefit plan as defined by the Employee Retirement Income Security Act of  
6 1974, section 3, or any successor act enacted for the purpose of regulating employee benefit plans, or  
7 an individual retirement arrangement, Keogh plan or any other arrangement pursuant to which  
8 payment of federal tax on the income thereof and of the plan sponsors, participants and  
9 beneficiaries is deferred, shall at no time be considered taxable income under RSA 77:4, either to  
10 the plan or arrangement or to its sponsors, participants or beneficiaries, irrespective of when or  
11 whether all or any portion of such income is accumulated or expended for the benefit of, or  
12 distributed in any form or manner to, such sponsors, participants or beneficiaries.

13 4 Taxation of Incomes; Exclusion of Certain Income; Qualified Investment Companies, Mutual  
14 Funds, and Unit Investment Trusts. Amend the introductory paragraph of RSA 77:4-d to read as  
15 follows:

16 77:4-d Special Rule for Qualified Investment Companies, Mutual Funds, and Unit Investment  
17 Trusts. Notwithstanding any other provision of RSA 77:4, the following income items shall not be  
18 treated as [~~dividends or interest~~] income taxable under this chapter:

19 5 Taxation of Incomes; Exclusion of Certain Income; College Tuition Savings Plans. Amend  
20 RSA 77:4-e to read as follows:

21 77:4-e [~~Interest and Dividends~~] **Income** From Funds Invested in College Tuition Savings Plan  
22 Not Taxable. Notwithstanding any provision of RSA 77:4, income and distributions from any  
23 qualified tuition program as defined in the Internal Revenue Code of 1986, as amended, shall not be  
24 taxable under this chapter to the plan or to its sponsors, participants, or beneficiaries to the extent  
25 that the same is exempt from federal income taxation under section 529 of the Internal Revenue  
26 Code of 1986, as amended, as that section was in effect on July 1, 2003.

27 6 Taxation of Incomes; Excess Compensation. Amend RSA 77:4-g to read as follows:

28 77:4-g [~~Dividend~~] **Excess Compensation**. Excess compensation determined by audit of the  
29 department shall not be considered [~~a dividend~~] **taxable income** under this chapter unless such  
30 determination is accepted by the Internal Revenue Service.

31 7 Exemptions Increased. Amend RSA 77:5 to read as follows:

32 77:5 Exemptions. Each taxpayer shall have the following exemptions:

33 I. Income of [~~\$2,400~~] **\$7,500**.

34 II. An additional [~~\$1,200~~] **\$5,000** if either or both taxpayers are 65 years of age or older on  
35 the last day of the tax year.

36 III. An additional [~~\$1,200~~] **\$5,000** if either or both taxpayers are blind.

37 IV. An additional [~~\$1,200~~] **\$5,000** if either or both taxpayers are disabled, unable to work,  
38 and have not yet reached their sixty-fifth birthday.

8 Taxation of Incomes; Married Taxpayers; Joint Returns. Amend RSA 77:5-a to read as follows:

77:5-a Married Taxpayers; Joint Returns. A married taxpayer may claim the exemptions provided in RSA 77:5 for both self and spouse, regardless of the ownership of the ~~[income from interest or dividends,]~~ **interest, dividend, or capital gain income, as defined in RSA 77:4**, provided that both ~~[husband and wife]~~ **spouses** file a joint return.

9 Taxation of Incomes; Decedents Estates. Amend RSA 77:9 to read as follows:

77:9 Decedents' Estates. The estates of deceased persons who last dwelt in this state shall be subject to the taxes imposed by this chapter upon all taxable income received by such persons during their lifetime, which has not already been taxed. The ~~[income]~~ **interest, dividend, or capital gain income, as defined in RSA 77:4**, received by such estates during administration shall be taxable to the estate, except such proportion thereof as equals the proportion of the estate to be distributed to non-taxable persons or organizations. The commissioner of revenue administration and executors and administrators of estates may effect a settlement by compromise of any question of doubt or dispute arising under this section.

10 Taxation of Incomes; Income From Trusts. Amend RSA 77:10 to read as follows:

77:10 Income From Trusts. ~~[Interest and dividend income]~~ **The interest, dividend, and capital gain income**, received by estates held by trustees treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their grantor, to the extent that the grantor is an inhabitant or resident of this state. Income reported by, and taxed federally as interest ~~[or dividends to]~~, **dividend, or capital gain income to** a trust beneficiary who is an individual inhabitant or resident of this state with respect to distributions from a trust that is not treated as a grantor trust under section 671 of the United States Internal Revenue Code shall be included as interest ~~[or dividends]~~, **dividend, or capital gain income** in the return of such beneficiary and subject to taxation in accordance with the provisions of this chapter.

11 Taxation of Incomes; Returns and Declaration. Amend RSA 77:18, IV(a) and (b) to read as follows:

(a) Every individual whose total ~~[interest and dividend income]~~ **interest, dividend, or capital gain income, as defined in RSA 77:4**, is less than ~~[\$2,400]~~ **\$7,500** for a taxable period.

(b) For joint filers whose total ~~[interest and dividend income]~~ **interest, dividend, or capital gain income, as defined in RSA 77:4**, is less than ~~[\$4,800]~~ **\$15,000** for a taxable period.

12 Repeal. The following are repealed:

I. RSA 77:4-c, relative to sale or exchange of transferable shares not taxable.

II. RSA 77:7, relative to capital distribution.

13 Estimated Tax Payments. Any taxpayer under RSA 77 who has reported capital gain, as defined in RSA 77:4, on the taxpayer's federal return for the tax payer's last tax period ending on or before December 31, 2016, and who makes estimated tax payments under RSA 77:18, shall make estimated tax payments for 2017 based upon the taxpayer's tax liability for such capital gain income

1 that would have been incurred under RSA 77 in the taxpayers last tax period ending on or before  
2 December 31, 2017, if the provisions of RSA 77 regarding the taxation of capital gain income had  
3 been in effect for that period. The provisions of RSA 21-J:32 regarding payment of a penalty for  
4 underpayment of estimated tax shall apply to estimated tax payments required by this section.

5 14 New Subdivision; Capital Gains Reserve Fund. Amend RSA 9 by inserting after section 13-g  
6 the following new subdivision:

7 Capital Gains Reserve Fund

8 9:13-h Capital Gains Reserve Fund.

9 I. There is hereby established within the general fund general ledger a special nonlapsing  
10 capital gains reserve fund account. The state treasurer shall invest funds in this account as  
11 authorized by RSA 6:8. The interest so earned shall be deposited as unrestricted general fund  
12 revenue.

13 II. On or before December 31, 2017 and each December 31 thereafter, the department of  
14 revenue administration shall make 2 calculations:

15 (a) The amount of revenue collected during the most recently completed fiscal year,  
16 from the tax on capital gain income, as defined and applied pursuant to the provisions of RSA 77.  
17 For the purposes of this calculation, the department shall assume that \$110,000,000 of revenue  
18 would have been collected in fiscal year 2017 if said tax had been in effect for the duration of that  
19 fiscal year.

20 (b) The average annual amount of revenue collected during the 3 fiscal years  
21 immediately prior to the most recently completed fiscal year, from the tax on capital gain income, as  
22 defined and applied pursuant to the provisions of RSA 77. For the purposes of this calculation, the  
23 department shall assume that \$110,000,000 of revenue would have been the average amount  
24 collected in the 3 fiscal years prior to fiscal year 2017 if said tax had been in effect for the duration  
25 of those fiscal years.

26 III. The department shall notify the governor, the treasurer, the comptroller, the speaker of  
27 the house of representatives, and the senate president of the results of such calculations.

28 IV. Every biennial budget adopted by the general court shall include a provision specifying  
29 the amount of revenue estimated to be collected from the tax on capital gain income, as defined and  
30 applied pursuant to the provisions of RSA 77. In no instance shall such amounts exceed for each  
31 fiscal year of the biennium the 3-year average most recently calculated under subparagraph II(b),  
32 provided that said 3-year average shall be assumed to be \$110 million for purposes of the biennial  
33 budget ending June 30, 2019.

34 V. If the total amount of revenue collected during the most recently concluded fiscal year  
35 from the tax on capital gain income, as defined and applied pursuant to the provisions of RSA 77,  
36 exceeds the total amount specified in the budget for that year, the comptroller shall, upon receipt of  
37 the notification specified in paragraph II, transfer the excess from the general fund to the capital  
38 gains reserve fund.

VI. If the total amount of revenue collected during the most recently concluded fiscal year from the tax on capital gain income, as defined and applied pursuant to the provisions of RSA 77, is less than the total amount specified in the budget for that year, the comptroller shall, upon receipt of the notification specified in paragraph II(b), transfer no later than December 31 the difference from the capital gains reserve fund to the general fund, provided that a sufficient balance is available in the capital gains reserve fund. If the balance is insufficient, then the full balance of the capital gains reserve fund shall be transferred to the general fund. Transfers shall not be made from the capital gains reserve fund unless the conditions in this paragraph are met.

VII. If, after the requirements of paragraphs I-VI have been met and the balance remaining in the capital gains reserve fund is in excess of an amount equal to 100 percent of the actual capital gain tax revenue for the most recently completed 3-year average annual amount reported pursuant to paragraph II, then such excess shall be transferred, without further action, to the revenue stabilization reserve account established pursuant to RSA 9:13-e.

15 New Subparagraph; Treasury; Accounts. Amend RSA 6:12, I(b) by inserting after subparagraph (333) the following new subparagraph:

(334) Moneys deposited in the capital gains reserve fund under RSA 9:13-h.

16 New Paragraph; Business Profits Tax; Exclusion Added. Amend RSA 77-A:4 by inserting the following new paragraph:

XIX. A deduction equal to any capital gain income subject to taxation under RSA 77.

17 Retirement System; State Contributions. Amend RSA 100-A:16, II(c-1) to read as follows:

(c-1) ~~[For state fiscal year 2012]~~ ***Beginning with state fiscal 2018 and for each state fiscal year thereafter***, the contributions of each employer for benefits under the retirement system on account of group II and group I ~~[teacher]~~ members of employers other than the state shall be calculated as provided in subparagraphs (b) and (c) provided that the state shall pay ~~[\$3,500,000]~~ ***\$45,000,000*** of such total contributions.

18 Effective Date. This act shall take effect on July 1, 2017, and shall be applicable to tax periods ending on and after December 31, 2017.

**HB 644-FN-A-LOCAL- FISCAL NOTE**  
**AS INTRODUCED**

AN ACT extending the interest and dividends tax to capital gains, increasing exemptions from the tax, and providing for retirement system contributions on behalf of employers other than the state.

**FISCAL IMPACT:**    ☒ State                    ☒ County                    ☒ Local                    ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2018	FY 2019	FY 2020	FY 2021
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	Indeterminable	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

**METHODOLOGY:**

This bill makes changes to the interest and dividends tax by including capital gains as taxable income and increasing the tax exemptions for the tax; creates the capital gains reserve fund; and reinstates the state contribution to political subdivisions for employer contributions for group I and group II members.

The Department of Revenue Administration states the bill increases the thresholds and exemptions for the Interest and Dividend (I&D) tax from \$2,400 to \$7,500 for individuals, partnerships, limited liability companies, associations and executors and from \$4,800 to \$15,000 for joint filers. The exemptions are increased from \$1,200 to \$5,000 for a taxpayer who is older than 65, blind and or disabled. The Department also states the capital gain reported on the taxpayer's federal income tax return that is equal to the positive sum of the net short-term capital gain or loss and the net long-term capital gain or loss reported shall be subject to the I&D Tax. Any capital gain income subject to taxation under the I&D Tax shall be deducted under the RSA 77-A Business Profits Tax (BPT).

The Department is required to make two calculations for I&D Taxes paid on capital gains on or before December 31 each year starting December 31, 2017. The State Comptroller shall use the calculations provided by the Department to transfer any excess revenue collected from capital gains during the most recent fiscal year from the State general fund into the Capital Gains Reserve Fund. If there is a deficit the Comptroller shall transfer the difference from the Capital Gains Reserve Fund to the State general fund, provided there are sufficient funds. When the balance in the Capital Gains Reserve Fund is in excess of an amount equal to 100 percent of the actual capital gain tax revenue for the most recently completed 3-year average annual period, the excess shall be transferred into the revenue stabilization reserve account. The State Treasurer is required to invest amounts deposited into the newly created Capital Gains Reserve Fund with any interest earned deposited into the State general fund.

The Department used the following information to calculate an estimated impact of this bill: Tax Year 2014 data for the I&D Tax as of January 26, 2017, Tax Year 2014 data for capital gains reported on the NH Business Tax return, and IRS return data for Tax Year 2014 for the Capital Gains reported to the IRS. The Department estimates a decrease in state revenues of \$16,143.382 attributable to the proposed increases to the filing thresholds, deductions, and exemption amounts.

The Department, based on the assumption the capital gain income from NH residents would be similar to what is reported by the IRS on the NH Statement of Income and applying a reduction of \$7,500 for any capital gains income of \$10,000 or more, estimates an increase in state revenues as a result of the inclusion of capital gains in the I&D Tax of \$102,955,200. The proposed legislation would provide a deduction from the BPT for capital gains taxed under the I&D statute. As a result, some portion of capital gains currently taxed at the BPT rate of 8.5% will now be taxed at the I&D tax rate of 5%. The I&D Tax is paid by NH residents and the BPT tax is paid by entities with business activity in New Hampshire. The Department is unable to determine which BPT taxpayers would be considered New Hampshire residents for purposes of the I&D Tax. As a result, the Department is unable to estimate the fiscal impact of NH residents paying the 5% I&D Tax on capital gains instead of the 8.5% BPT. However, due to the lower tax rate paid by I&D taxpayers, any transition of capital gain income from the BPT to the I&D would decrease the revenue increase associated with taxing capital gains under the I&D Tax.

The Department notes there are some limitations to the data it uses to estimate revenue impact of including capital gains as taxable under the I&D Tax. These limitations include:

- The Department is unable to limit the net capital gain income of \$2,958,504,000 to those who would meet the filing thresholds and cannot determine what, if any,



exemptions would be used to offset tax owed.

- NH Statement of Income data includes capital gain flow through income from non-NH partnerships that do not file an I&D Tax return in NH.
- NH Statement of Income data includes capital gain flow through income from S-corps. S-corps are not taxable under the I&D tax law; however, distributions from S-corps to NH inhabitants are subject to the I&D Tax.
- NH Statement of Income data for capital gains is a net figure. For federal tax purposes, capital gains can offset capital losses. If in any one year, the maximum capital loss is in excess of \$3,000, the balance of any additional loss over \$3,000 can be applied to subsequent years. Alternatively, this proposed legislation would tax a positive net gain on the taxpayer's capital dispositions and does not provide a deduction if an individual or partner has a capital loss for that specified year.
- NH Statement of Income data does not appear to capture capital gains received from non-NH taxpayers.

The New Hampshire Retirement System states this bill directs the State pay \$45,000,000 of political subdivision employer contribution costs for group I and group II members beginning in FY 2018 and each year thereafter. There is no impact on the System, however state general fund expenditures will increase and county and local expenditures will decrease.

**AGENCIES CONTACTED:**

Department of Revenue Administration and New Hampshire Retirement System