Vermont Legislative Joint Fiscal Office

One Baldwin Street • Montpelier, VT 05633-5701 • (802) 828-2295 • Fax: (802) 828-2483

FISCAL NOTE

Date: March 20, 2019
Prepared by: Graham Campbell

S.161 An act relating to housing investments

https://legislature.vermont.gov/Documents/2020/Docs/BILLS/S-0161/S-0161%20As%20Introduced.pdf

Bill Summary

This bill proposes to make new investments in housing by authorizing a new housing bond. It also expands the scope of the property transfer tax to transfers of controlling interests in a property or business and expands the First Time Homebuyer and Downtown and Village Tax Center tax credits. The bill increases meals and rooms tax collections by expanding the definition of operators to online travel companies and short-term rental platforms.

Fiscal Impact

This bill generates new revenue through two new sources but shifts new and existing resources between different funds during Fiscal Year (FY) 2020 and future fiscal years. JFO estimates that after all resources are shifted, the bill has a net FY2020 fiscal impact of -$430,000 on the General Fund, $930,000 on the Education Fund, and $55,000 on various special funds.

The bill generates two new sources of revenue: expanding the property transfer tax to transfers of controlling interest (Section 2-8) and applying the rooms tax to online travel agents and short-term rental platforms and their associated commissions (Sections 19-20). These new sources generate the following revenues in FY20:

- $3.25 million for the General Fund, of which:
    - $470,000 is from the new controlling interest provisions
    - $2.78 million is from online travel agents
- $930,000 for the Education Fund, all of which is from online travel agents.
- $1.27 million for various special funds created by the controlling interest provisions, of which:
    - $30,000 is for the Department of Taxes Property Valuation and Review Fund
    - $240,000 is for the Municipal and Regional Planning Fund
    - $230,000 is for the Clean Water Fund (via the Clean Water Surcharge)
    - $710,000 is for the Housing and Conservation Trust Fund
    - $55,000 is generated by additional local options rooms tax for the PILOT Fund.

In FY20, the majority of the additional generated revenue from these two sources is reallocated to create a reserve fund for a new housing bond[1]. The total revenue reallocated in FY20 for the reserve fund is $4.46 million.

In subsequent fiscal years, the new revenues from these two sources flow to their respective statutory funds, resulting in new revenues for General Fund, the Education Fund, and various special funds (see Table 1).

However, once the reserve fund is created in FY20, Section 11 of the bill stipulates that the first $4 million in Property Transfer Tax revenue will be allocated to pay principal and interest on future housing bonds. As such, this results in a net revenue loss to the General Fund of $4 million in FY21, FY22 and future fiscal years until the bonds are paid off. This $4 million is partially offset by new revenues from Sections 2-8 and Sections 19-20.

The bill also expands the Downtown Tax Credit cap by $300,000 from $2.4 million to $2.7 million. It also expands the First Time Homebuyer Tax Credit by $125,000. The total cost of these expansions is $425,000 in FY20, $550,000 in FY21, and $675,000 in FY21.

[1] All new revenues except the $930,000 for the Education Fund and the $190,000 for the PILOT Fund

Table 1: Revenue Impacts of S.161				
General Fund				
Section	**Provision**	FY20	FY21	FY22
2-8	Changes to Property Transfer Tax to include controlling interest transfers	$0.47	$0.71	$0.82
9	Directs VHCB to use proceeds of bonds for housing or blighted areas			
10	Annual Report by VHCB			
11	Allocation of Property Transfer Tax revenues to fund bonds		-$4.00	-$4.00
12-13	Grants VHFA power to issue new bonds backed by revenues from Sec. 11			
14	Allocates revenues generated by the new changes in property transfer tax and rooms tax to create bondi	-$3.25		
15	Repeals the bond and associated dedicated revenues by July 1, 2040			
16	Directs VHFA to study affordable housing development costs			
17	Increases the First Time Homebuyer credit and extends program to FY2026	-$0.13	-$0.25	-$0.38
18	Increases Downtown and Village Center Tax credit cap by $300,000	-$0.30	-$0.30	-$0.30
19-20	Online Travel Agencies (OTAs) required to remit rooms tax on commissions	$2.78	$3.10	$3.18
21	Effective dates			
Subtotal General Fund		**-$0.43**	**-$0.74**	**-$0.68**
Education Fund				
19-20	Online Travel Agencies (OTAs) required to remit rooms tax on commissions	$0.93	$1.03	$1.06
Subtotal Education Fund		**$0.93**	**$1.03**	**$1.06**

Non-Housing Special Funds				
19-20	Online Travel Agencies (OTAs) required to remit rooms tax on commissions (PILOT Fund)	$0.06	$0.06	$0.06
2-8	Controlling Interest: Department of Taxes, Property Valuation and Review Fund	$0.03	$0.04	$0.05
2-8	Controlling Interest: Municipal and Regional Planning Fund	$0.24	$0.36	$0.42
2-8	Controlling Interest: Clean Water Fund	$0.23	$0.30	$0.40
14	Allocates revenues generated by the new changes in property transfer tax and rooms tax to create bondi	-$0.50		
Subtotal Non-Housing Special Funds		**$0.05**	**$0.76**	**$0.93**
Housing Conservation Trust Fund/Bond Reserve Fund				
2-8	Controlling Interest: Housing and Conservation Trust Fund	$0.71	$1.10	$1.20
14	Allocates revenues generated by the new changes in property transfer tax and rooms tax to create bonding reserve (Housing and Conservation Trust Fund)	$3.75		
14	Allocates new money into a Bond Reserve Fund	-$4.46		
Subtotal Housing Conservation Trust Fund/Bond Reserve Fund		**$0.00**	**$1.10**	**$1.20**

Explanation/Methodology

<u>Sections 2 to 8: Controlling Interest Changes to the Property Transfer Tax</u>

This estimate represents baseline revenues for typical year-to-year controlling interest transfers. However, this revenue could be very volatile due to large one-time controlling interest transfers in any given year. The additional revenue generated by these sections could be significantly higher in any single year due to these large one-time events.

The Joint Fiscal Office estimates that this section will generate an additional $1.6 million in baseline property transfer tax revenue in FY20 and growing in future years. The property transfer tax contains two components[2]:

- Property transfer tax revenues themselves which are allocated in the following fashion:
    - The first 2% are these revenues are retained for the Department of Taxes for administration costs
    - The remaining 98% are dedicated as follows:
        - 33% to the General Fund
        - 50% to the Housing and Conservation Trust Fund
        - 17% to the Municipal and Regional Planning Fund
- The Clean Water Surcharge (0.2%), the revenues of which are dedicated to the Clean Water Fund

Table 2: Revenue Estimates from Sections 8-14 (in millions)			
Fiscal Year	**FY2020**	**FY2021**	**FY2022**
Total Revenue	**$1.68**	**$2.56**	**$2.90**
Of which: Department of Taxes Property Valuation and Review Fund	$0.03	$0.04	$0.05
Of which: Housing and Conservation Fund	$0.71	$1.1	$1.2
Of which: General Fund	$0.47	$0.71	$0.82
Of which: Municipal and Regional Planning Fund	$0.24	$0.36	$0.42
Of which: Clean Water Fund	**$0.23**	**$0.35**	**$0.41**

This estimate is based upon data from other states that have similar controlling interest provisions within their property transfer taxes. Based upon these other state experiences, revenues from controlling interest transfers tend to increase year over year for the first two to three years as practitioners become more adept at applying the law to controlling interest transfers. This explains the ramp up in revenues in succeeding fiscal years.

[2] In previous fiscal years, the Legislative budget and the Administration's proposed budgets have allocated a certain amount of property transfer tax revenue to these funds. The remaining property transfer tax revenues are then distributed to the General Fund, notwithstanding the statute on the allocation of the various funds.

Administrative costs for the section of the bill are expected to be minimal for the Department of Taxes. However, it is possible additional resources may be needed in the future should the Department discover future needs to ensure compliance.
Sources:

This estimate relied upon data from the Connecticut and Maine Departments of Revenue, the Department of Taxes 2018 Property Valuation and Review Annual Report[3] and the January 2018 Consensus Revenue Forecast.

This estimate assumes that the vast majority of controlling interest sales will pay the 1.25% property transfer tax rate. Transfers that pay this tax are non-principal residences and principal residences on the marginal value above $100,000

Sections 19-20: Online Travel Agencies (OTAs)

Under current law, online travel agencies[4] (OTA) themselves are not required to remit the 9% rooms tax. In a typical transaction, when a customer reserves a room through an OTA, the OTA collects the 9% tax on the *listed* price of the room. The OTA then forwards an agreed-upon room rate to the operator (which is often 15-20% less than the listed room rate) plus the 9% rooms tax on only that agreed-upon rate. The operator remits the 9% tax on the agreed-upon rate to the Department of Taxes. The OTA keeps the 9% rooms tax on the difference between the listed rate and the agreed-upon rate.

The following example illustrates this process:

Listed Price online for Hotel room	$100
OTA collects 9% rooms tax on listed price	$100 x 9% = $9
OTA sends Hotel 80% of listed rate	$80
OTA sends Hotel rooms tax on listed rate	**$80 x 9% = $7.20**
OTA keeps 20% service charge on listed rate	$20
OTA keeps rooms tax collected on listed rate	**$20 x 9% = $1.80**
Hotel remits rooms tax to Department of Taxes	$7.20
Rooms tax left unremitted by OTA	$1.80

[3] "Annual Report: Based on 2018 Grand List Data." Division of Property Valuation and Review. Vermont Department of Taxes. https://tax.vermont.gov/sites/tax/files/documents/PVR-Annual%20Report-2018%20Grand-List-Data.pdf

[4] These include most online travel websites, including Expedia, booking.com, Priceline, but also includes booking websites for short term rentals, including AirBnB, HomeAway, and VRBO.

This section requires OTAs ("booking agents") to remit the rooms tax on all amounts collected by the OTA. In the example above, the OTA would be required to collect and remit to the Department of Taxes both the $7.20 it was previously sending to the Hotel, but also the $1.80 in rooms tax it was previously keeping.

JFO estimates that requiring OTAs to collect and remit rooms tax on all amounts listed by the OTA will generate approximately $2.8 million in additional meals and rooms tax revenue in FY 2020 and growing in future fiscal years. 75% of this revenue will go to the General Fund and 25% will go to the Education Fund.

Table 3: Estimate of Additional Revenue on OTA Fees (in millions)			
Fiscal Year	**FY 2020**	**FY 2021**	**FY 2022**
Total Estimate	$2.7	$3.1	$3.2
Of which: General Fund	$2.0	$2.3	$2.4
Of which: Education Fund	$0.7	$0.8	$0.8

In addition to this revenue, the section also requires booking agents to remit the rooms tax on all amounts collected at the point of sale. Booking agents include websites that list short-term rental properties, in addition to websites that list traditional hotels and motels. Under current law, rooms tax is due on short-term (or any) rentals if the operator rents the room for greater than 15 days in a calendar year, and remittance of the tax is the responsibility of the operator, not the booking agent. The Department of Taxes and JFO have estimated that there is 40% noncompliance[5] amongst short-term rentals who use booking agents other than AirBnB[6]. This section would require booking agents to collect on behalf of those noncompliant operators.

JFO estimates that closing the noncompliance gap amongst short term rentals would generate an additional $1 million in rooms tax in FY 2020 and growing in future fiscal years. 75% of this revenue will go to the General Fund and 25% will go to the Education Fund.

Table 4: Estimate of Additional Revenue from Closing Short-Term Rental Tax Gap (in millions)			
Fiscal Year	**FY 2020**	**FY 2021**	**FY 2022**
Total Estimate	$1.0	$1.1	$1.2
Of which: General Fund	$0.77	$0.83	$0.87
Of which: Education Fund	$0.23	$0.28	$0.29

[5] Fiscal Note: S.204 of the 2018 Session. https://ljfo.vermont.gov/assets/docs/fiscal_notes/76ee30e86b/2018_S_204_fiscal_note_-_short-term_rentals_house_ways_and_means.pdf

[6] In 2016, AirBnB signed an agreement with the Department of Taxes to collect rooms tax on behalf of operators on its platform.

In total, JFO estimates that in total, this section will raise rooms tax revenues by $3.8 million in FY2020, growing to $4.2 million in FY21 and $4.4 million in FY2022. 75% of this revenue will go to the General Fund and 25% will go to the Education Fund.

Table 5: Estimate of Total New Rooms Tax Revenue (in millions)			
Fiscal Year	**FY 2020**	**FY 2021**	**FY 2022**
Total Estimate	$3.7	$4.2	$4.4
Of which: General Fund	$2.8	$3.1	$3.3
Of which: Education Fund	$0.9	$1.1	$1.1

Sources:

These estimates relied upon the following sources:

- Pennsylvania estimates on HB1511 of 2018
- 2017 Tourism Benchmark Report, Vermont Department of Tourism and Marketing[7].
- Lodging Magazine
- Department of Taxes data
- January 2019 Consensus Revenue Forecast

[7] "2017 Benchmark Report: Tourism in Vermont." Vermont Department of Tourism and Marketing. December 2018. https://accd.vermont.gov/sites/accdnew/files/documents/VDTM/BenchmarkStudy/VDTM-Research-2017BenchmarkStudyFullReport.pdf

Section 17: Expansion of the First Time Homebuyer Tax Credit

Section 17 of the bill expands the First Time Homebuyer Tax Credit administered by the Vermont Housing Finance Agency (VHFA).

The current first year credit allocation for the First Time Homebuyer Tax Credit is $125,000. The bill proposes to raise the first year credit allocation to $250,000 and extends the program through FY2026. Because the program was set to expire in FY22, all credits awarded thereafter would be new fiscal cost relative to current law.

This tax credit is a 5 year tax credit, meaning a claimant claims the credit for 5 consecutive years. As such, the total credits awarded in a given year are the current year's first year credit allocation, plus any credits from the previous five years. For any increase in the size of first year credit allocations, the fiscal impact increases each year by the size of that increase over the next five years.

The FY20 cost of increasing first year credit allocations of the First Time Homebuyer Tax Credits is $125,000. However, in FY21, the cost is the sum of FY20's second year cost ($125,000) plus the first year cost in FY21 ($125,000) for a total cost of $250,000. This continues over the next five years. Table 6 details the complete cost of the expansions over the next 5 fiscal years.

Table 6: Fiscal Impacts of Tax Credit Expansions in Section 2 (GF)

	FY20	FY21	FY22	FY23	FY24
Expansion of First Time Homebuyer Credit	-$125,000	-$250,000	-$375,000	-$625,000	-$875,000