

CHAPTER 12
HB 102 - FINAL VERSION

5Jan2022... 2151h
03/17/2022 1048s

2022 SESSION

21-0078
10/05

HOUSE BILL

102

AN ACT establishing a commission to study worldwide combined reporting method for unitary businesses under the business profits tax, and relative to the treatment of water or sewerage disposal utilities under the business profits tax.

SPONSORS: Rep. Schamberg, Merr. 4

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill establishes a commission to study worldwide combined reporting method for unitary businesses under the business profits tax. The bill also provides for the tax treatment of water and sewer disposal utilities under the business profits tax.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing a commission to study worldwide combined reporting method for unitary businesses under the business profits tax, and relative to the treatment of water or sewerage disposal utilities under the business profits tax.

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

1 12:1 Findings. The general court finds that New Hampshire has a unique tax structure. With no
2 general sales or income tax and no severance tax on natural resources, New Hampshire relies on its
3 business profits tax more than any other state and most countries. In 1981, the business profits tax law
4 was amended to allow the department of revenue administration or taxpayers to employ the combined
5 reporting method of taxation under the unitary business principle.

6 12:2 Commission on Worldwide Combined Reporting for Unitary Businesses Under the Business
7 Profits Tax. Amend RSA 77-A by inserting after section 23-a the following new section:

8 77-A:23-b Commission on Worldwide Combined Reporting for Unitary Businesses Under the
9 Business Profits Tax. There is established a commission to study the replacement of the water's edge
10 method by the worldwide combined reporting method for reporting and apportionment of income under the
11 business profits tax.

12 I. The members of the commission shall be as follows:

13 (a) Three members of the house of representatives, who shall be from the ways and means
14 committee, appointed by the speaker of the house of representatives.

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

16 (c) Three members of the state's business community, one representing in-state
17 domesticated businesses with less than 100 employees, one representing in-state domesticated
18 businesses with more than 100 employees, and one representing out-of-state or foreign domesticated
19 businesses, appointed by the president of the New Hampshire Business and Industry Association.

20 (d) The president of the New Hampshire Society of Certified Public Accountants, or
21 designee.

22 (e) The commissioner of the department of revenue administration, or designee.

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

24 (g) The attorney general, or designee.

25 (h) An attorney expert in transnational and New Hampshire business profit tax accounting
26 issues, appointed by the president of the New Hampshire Bar Association.

27 II. Legislative members of the commission shall receive mileage at the legislative rate when
28 attending to the duties of the commission.

29 III. The commission shall study the advantages and disadvantages for the state's economy and
30 revenues of replacement of the current water's edge method by the worldwide combined reporting method

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1 for reporting and apportionment of income under the business profits tax. It shall consult with national
2 experts in both methods, including economists, business associations, and tax experts.

3 IV. The members of the commission shall elect a chairperson from among the members. The
4 first meeting shall be called by the first-named house member. The first meeting of the commission shall
5 be held within 45 days of the effective date of this section. Six members of the commission shall
6 constitute a quorum.

7 V. The commission shall report its preliminary findings on or before November 1, 2022 and issue
8 a final report of its findings and any recommendations for proposed legislation on or before November 1,
9 2023, to the president of the senate, the speaker of the house of representatives, the senate clerk, the
10 house clerk, the governor, and the state library.

11 12:3 Repeal. RSA 77-A:23-b, relative to the commission on worldwide combined reporting for unitary
12 businesses under the business profits tax, is repealed.

13 12:4 New Section; Business Profits Tax; Treatment of Water and Sewerage Disposal Utilities.
14 Amend RSA 77-A by inserting after section 3-c the following new section:

15 77-A:3-d Treatment of Water and Sewerage Disposal Utilities. In determining gross business profits,
16 a business organization shall apply section 118 of the United States Internal Revenue Code consistent
17 with the following adjustments:

18 I. The term "contribution to the capital of the taxpayer" includes any amount of money or other
19 property received from any person, whether or not a shareholder, by a regulated public utility which
20 provides water or sewerage disposal services if:

21 (a) Such amount is:

22 (1) A contribution in aid of construction; or

23 (2) A contribution to the capital of such utility by a governmental entity providing for the
24 protection, preservation, or enhancement of drinking water or sewerage disposal services;

25 (b) In the case of a contribution in aid of construction which is property other than water or
26 sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph II;
27 and

28 (c) Such amount, or any property acquired or constructed with such amount, is not included
29 in the taxpayer's rate base for ratemaking purposes.

30 II. An amount meets the requirements of subparagraph I(b) if:

31 (a) An amount equal to such amount is expended for the acquisition or construction of
32 tangible property described in United States Internal Revenue Code section 1231(b):

33 (1) Which is the property for which the contribution was made or is of the same type as
34 such property; and

35 (2) Which is used predominantly in the trade or business of furnishing water or sewerage
36 disposal services;

37 (b) The expenditure referred to in subparagraph (a) occurs before the end of the second
38 taxable year after the year in which such amount was received; and

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1 (c) Accurate records are kept of the amounts contributed and expenditures made, the
2 expenditures to which contributions are allocated, and the year in which the contributions and
3 expenditures are received and made.

4 III. For purposes of this section:

5 (a) "Contribution in aid of construction" shall mean as the term is defined by the United States
6 Department of the Treasury's Treasury Regulations 1.118-2 (2001), except that such term shall not
7 include amounts paid as service charges for starting or stopping services.

8 (b) "Predominantly" means 80 percent or more.

9 (c) "Regulated public utility" has the meaning given such term by Internal Revenue Code
10 section 7701(a)(33), except that such term shall not include any utility which is not required to provide
11 water or sewerage disposal services to members of the general public in its service area.

12 IV. Notwithstanding any other provisions of law, no deduction or credit shall be allowed for, or by
13 reason of, any expenditure which constitutes a contribution in aid of construction to which this section
14 applies. The adjusted basis of any property acquired with contributions in aid of construction to which this
15 section applies shall be zero.

16 12:5 Applicability; Treatment of Water and Sewerage Disposal Utilities. The provisions of section 4
17 of this act shall apply to contributions made on or after January 1, 2021.

18 12:6 Effective Date.

19 I. Section 3 of this act shall take effect November 1, 2023.

20 II. The remainder of this act shall take effect upon its passage.

Approved: April 11, 2022

Effective Date:

I. Section 3 shall take effect November 1, 2023.

II. The remainder shall take effect April 11, 2022.

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