HB 1576 - AS INTRODUCED

2018 SESSION

18-2298
01/04

HOUSE BILL ***1576***

AN ACT creating managed asset trusts for real property.

SPONSORS: Rep. Williams, Hills. 4; Rep. Cilley, Straf. 4; Rep. Hansen, Hills. 22; Rep. Chandley, Hills. 22; Sen. Daniels, Dist 11

COMMITTEE: Judiciary

ANALYSIS

This bill creates managed asset trusts for real property.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

18-2298
01/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT creating managed asset trusts for real property.

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

1 New Paragraphs; New Hampshire Trust Code; Definitions. Amend RSA 564-B:1-103 by inserting after paragraph 33 the following new paragraphs:

(34) "Managed Asset Trust" (MAT) means a special purpose perpetual trust, subject to provisions of this chapter except as provided in RSA 564-B:13. The settlor being a real property owner or buyer seeking to preserve and protect the marketability of a single real property title.

(35) "Registered Asset Identifier" (RAI) means a Universal Transverse Mercator coordinate for geographic indexing, which is accurate to one square meter and meets standards set by the National Imagery and Mapping Agency as amended. The RAI shall be a permanent identifier written to and recorded with a land title deed and site plan to the registry of deeds of the county in which the real property is situated. The RAI illustrated on the plan within the property boundaries set by the associated deed, such description and diagram shall be accurate and useful for its intended purpose in the professional opinion of a licensed land surveyor.

2 New Hampshire Trust Code; Managed Asset Trusts. New Subdivision; Managed Asset Trusts. Amend RSA 564-B by inserting after section 12-1210 the following new subdivision:

ARTICLE 13

MANAGED ASSET TRUSTS

564-B:13-1301 Managed Asset Trusts. A managed asset trust or "MAT" is a special purpose trust to be the legal owner of a single real property title. The settlor may be a real property owner or buyer seeking to preserve and protect the marketability a single real property title while retaining a beneficial interest in the MAT. The MAT shall be identified by the registered asset identifier (RAI) assigned by a licensed land surveyor who shall certify compliance with RSA 541-A as to RAI placement on the site plan so described by land title deed. The plan and deed shall record together upon conveyance to the MAT.

(a) The RAI is a permanent identifier and the MAT once created shall not own a real property other than the land title deed associated with the RAI identifying the MAT.

(b) The RAI shall permanently remain an element of the land title deed description.

(c) A MAT agent shall be an employee of a trust company in compliance with RSA 383-C.

564-B:13-1302 Managing a MAT. The trust company managing a MAT shall comply with RSA 383-C and shall not operate or qualify to operate as a real estate holding company as defined under RSA 78-B:1-a.

(a) The terms of the MAT are the governing instrument that sets forth the uses of the MAT, the duties and powers of a MAT agent, and the manner in which a MAT agent manages the interests and rights of MAT beneficiaries. The terms of a MAT shall be in a single governing instrument common to all trust companies and to every MAT.

(b) A MAT shall only hold real property as the legal owner. A trustee shall not be a beneficiary of a MAT under its control.

(c) The trust company shall be responsible for the actions of a MAT agent assigned to manage the real and personal property interests held by a MAT under trust company management.

(d) The MAT agent shall have the legal authority granted under the terms of the MAT to convey both legal ownership and equitable interests and rights to MAT property.

(e) The MAT agent may directly or by third parties administer all real and personal property interests legally owned by the MAT.

564-B:13-1303 Beneficiary Interests and Rights. Beneficiary interests and rights to real property owned by the MAT are fungible following notice to the MAT agent, provided that:

(a) The trust company shall register all transactions of actions taken regarding beneficial interests in MAT property by keeping a registration journal suitable to verify that beneficiaries have a valid claim to MAT property.

(b) A beneficiary holding a marketable interest in a MAT so registered and acknowledged by a MAT agent may sell, assign, grant, gift, encumber, or otherwise manage that interest by notifying the MAT agent in writing in a form designated by the trust company of such action.

(1) All registrations to assign, buy, or sell an equitable interest in MAT assets are made by MAT agents on a first-to-register basis.

(2) A MAT agent may transact a future interest in MAT property if the holder petitions the MAT agent to carry out a specific future transaction at a designated time.

(c) Should one beneficiary hold all rights to a property owned by a MAT and such property title is unencumbered, notwithstanding easements, grants, or rights that do not effect marketability and existed at the time of conveyance into the MAT, and the sole beneficiary elects to convey the marketable title owned by the MAT out of the MAT, the trustee shall notify all parties with a recorded right or interest in the marketable title deed of the proposal for conveyance out of the MAT. The right of any party to object to the proposed distribution terminates if the party does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the party of the right to object and of the time allowed for objection.

(d) Should a land title convey out of a MAT, the conveyance shall be by fiduciary title deed in association with the RAI referencing a recorded site plan, together with a recordable abstract of all transaction history while associated with the MAT.

564-B:13-1304 Archiving Transactional Records. Archiving transactional records is the responsibility of the trust company. The trust company shall capture, store, retrieve, manage, and

report transactions made for or by MAT beneficiaries to include all records and forms associated with any MAT for which the MAT agent has taken an action.

(a) The MAT agent shall keep accurate records of every conveyance or assignment of any equitable interest or right to a MAT property assigned to or by a beneficiary in a manner suitable to validate the marketability of the MAT interest at any time.

(b) Trust company responsibility includes, but is not limited to, verifiable data management, protection of personally identifiable information, and a secure operational environment in which the trust company stores and maintains the archival records of transactions for each MAT under its management. Records management shall meet or exceed industry standards.

(c) MAT record management shall employ a single uniform document identification system to simplify regulatory compliance and conflict resolution.

(1) All transactions between a trust company and a MAT beneficiary shall be in writing and every transaction document shall have appended to it a uniform document identifier.

(2) Documents shall be in a common legal form suitable for the specific purpose and each document type shall have a unique document code.

(3) The uniform document identifier shall incorporate an RAI, a document type code, a vendor identification code, a date, a time, and a sequence number.

(4) Transactions requiring public notice thereof shall record to the registry of deeds of the county in which the real property is situated with a uniform document identifier.

(d) The trust company shall provide document management capacity to:

(1) Electronically capture, identify, validate, process, store, and catalog each document evidencing a transaction;

(2) Certify, retrieve, transmit and archive all transaction information;

(3) Perfect each transaction with a uniform document identifier enumerating at least one document evidencing a conveyance, transfer, assignment or other transaction from a grantee, the transaction conveying to a grantor beneficial ownership of at least one right or interest in a real property owned by a MAT.

(e) All MAT beneficiaries, government regulators, and the public shall have electronic access to the transactional data by the RAI. Each beneficiary shall have an individual account listing its equitable ownership interests in MAT property and all transactions registered relating to the MAT:

(1) Electronic access to all transactional information shall be made available to MAT specific beneficiaries and generally to state and federal regulatory agencies and courts.

(2) Public access shall be at the discretion of the trust company via a secure private account able to view documents redacted of personally identifiable information.

(3) Electronic access shall be accessible to view through a client computer user interface, implemented in accordance with ordinary skill, capable of displaying and reporting user-

defined data.

3 New Paragraphs; Tax on Transfer of Real Property; Managed Asset Trusts. Amend RSA 78-B:2 by inserting after paragraph XXII the following new paragraphs:

XXIII. To an equitable interest or other obligation secured by real property owned by a managed asset trust (MAT), as defined in RSA 564-B:13.

XXIV. To an otherwise taxable transfer to or from a MAT, as defined by RSA 564-B:13, if the transfer tax is paid by the MAT on the initial purchase of the property.

XXV. Any transfer to a MAT, as defined by RSA 564-B:13, from a current owner.

4 Taxation of Incomes; Managed Asset Trusts. Amend RSA 77:4-d, II to read as follows:

II. Amounts reported and taxed federally as capital gains to the holder of an ownership interest in a ***real estate investment trust, a*** qualified investment company, as defined in RSA 77-A:1, XXI, a mutual fund, or a unit investment trust.

III. Amounts accruing to a managed asset trust (MAT), as defined in RSA 564-B:13, for operational expenses and for redistribution to holders of equitable interests in the MAT so entitled to receive such amounts.

IV. Amounts reported and taxed federally as dividends or interest to the holder of an ownership interest in a real estate investment trust.

5 Business Profits Tax; Managed Asset Trusts. Amend RSA 77-A:1, I to read as follows:

I. "Business organization" means any enterprise, whether corporation, partnership, limited liability company, proprietorship, association, business trust, real estate trust or other form of organization; organized for gain or profit, carrying on any business activity within the state, except such enterprises as are expressly made exempt from income taxation under the United States Internal Revenue Code as defined in RSA 77-A:1, XX. Each enterprise under this definition shall be subject to taxation under RSA 77-A:2 as a separate entity, unless specifically authorized by this chapter to be treated otherwise, such as, but not limited to, combined reporting. Trusts or foundations treated as grantor trusts under section 671 of the United States Internal Revenue Code shall be included in the return of their owners, and such owners shall be subject to the tax thereon to the extent such owners would be considered a business organization hereunder notwithstanding the existence of the trust or foundation. The use of consolidated returns as defined in the United States Internal Revenue Code as defined in RSA 77-A:1, XX is not permitted. Notwithstanding any other provision of this paragraph, an enterprise shall not be characterized as a business organization and shall be excluded from taxation at the entity level if it elects to be treated as a qualified investment company as defined in RSA 77-A:1, XXI. A partnership, limited liability company, estate, trust, or foundation except grantor trusts pursuant to section 671 of the United States Internal Revenue Code, "S" corporation, real estate investment trust, or any other such entity, other than an organization electing to be treated as a qualified investment company as defined in RSA 77-A:1, XXI whose net income is reportable by the true owners either directly or indirectly shall be subject to tax at the entity level, and no part of such earnings or loss shall be

included in the calculation of the gross business profits of the owners of such entity. ***"Business organization" shall not include a managed asset trust established under RSA 564-B:13.***

6 Business Profits Tax; Managed Asset Trusts. Amend RSA 77-A:1, XII to read as follows:

XII. "Business activity" means a substantial economic presence evidenced by a purposeful direction of business toward the state examined in light of the frequency, quantity, and systematic nature of a business organization's economic contacts with the state. "Business activity" includes, but is not limited to, a group of actions performed by a business organization for the purpose of earning income or profit from such actions and includes every operation which forms a part of, or a step in, the process of earning income or profit from such group of actions. The actions ordinarily include, but are not limited to, the employment of business assets, the receipt of money, property, or other items of value and the incurring or payment of expenses. Notwithstanding any other provision of this paragraph, a holder of an ***equitable interest in a managed asset trust, as defined in RSA 564-B, or an*** ownership interest in a qualified investment company as defined in RSA 77-A:1, XXI, shall not be deemed to be carrying on any business activity within this state due solely to its holding an ownership interest in such ***titling entity or*** qualified investment company.

7 New Paragraph; New Hampshire Business Corporation Act; Definitions. Amend RSA 293-A:1.40 by inserting after paragraph (13B) the following new paragraph:

(13C) "Managed asset trust" means a special purpose perpetual trust, subject to provisions of this chapter except as provided in RSA 564-B:13. The settlor being a real property owner or buyer seeking to preserve and protect the marketability of a single real property title.

8 New Paragraph; Treatment of New Hampshire Investment Trusts; Managed Asset Trusts. Amend RSA 293-B:2 by inserting after paragraph VIII the following new paragraph:

IX. "Managed asset trust" means a special purpose perpetual trust, subject to provisions of this chapter except as provided in RSA 564-B:13. The settlor being a real property owner or buyer seeking to preserve and protect the marketability of a single real property title.

9 Statute of Uses Not to Effect Trusts. Amend RSA 477:25 to read as follows:

477:25 Statute of Uses Not to Effect Trusts. When a conveyance or devise of real estate is made to a grantee or devisee in trust or as trustee under a declaration of trust, ***except as provided in RSA 564-B:13,*** such conveyance or devise shall vest in the grantee or devisee, as trustee, legal title with full power to convey the real estate in accordance with the trust.

10 New Paragraph; Liens for Labor and Materials. Amend RSA 447:2 by inserting after paragraph II the following new paragraph:

III. In this section, if the legal owner of the real property title is a MAT, as defined in 564-B:13-1301, any services, labor, and materials provided to improve the real property owned by the MAT may be secured by a lien that encumbers only the equitable interest owned by the MAT beneficiary to whom the services, labor, and materials were provided.

11 Liens for Labor and Materials; Subcontractors. Amend RSA 447:5 to read as follows:

447:5 Subcontractors.

I. If a person shall perform labor, provide professional design services as defined in RSA 447:2, or furnish materials to the amount of $15 or more for any of the purposes specified in RSA 447:2, 447:3 and 447:4 and in RSA 453, by virtue of a contract with an agent, contractor or subcontractor of the owner, the person shall have the same lien as provided in said sections, provided, that he or she gives notice in writing to the owner or to the person having charge of the property that he or she shall claim such lien before performing the labor or furnishing the material for which it is claimed.

II. No beneficiary of a MAT, as defined in RSA 564-B:13-1301, may encumber any real property interest or right owned by the MAT other than such property interests and rights documented by a MAT trustee as belonging to the beneficiary procuring services, materials or labor.

III. If any contractor, agent, or subcontractor desires to provide services, materials or labor to a real property owned by a MAT, they shall give notice to the MAT trustee prior to providing services, materials or labor. The contractor, agent, or subcontractor shall furnish an account in writing of the labor to be performed, professional design services provided, or materials furnished prior to delivery. The MAT trustee shall, upon receipt of such accounting, retain a sufficient sum of money from the beneficiary of the real property interest that will receive the proposed labor, services or materials; or the MAT trustee may encumber the specific interest of the beneficiary responsible for engaging such services, materials or labor until evidence that the account has been satisfied. Neither the MAT or the trustee shall be liable to any agent, contractor, or subcontractor for services, labor or materials provided to or received by a MAT beneficiary.

IV. If notice is given to the MAT trustee after the labor is performed, the professional design services are provided, or the material is furnished, and a pending lien is valid to the extent of the amount then due or that may thereafter become due to the contractor, agent, or subcontractor engaged by the owner of a beneficial interest in the MAT, the amount required to satisfy the account shall be the personal responsibility of the MAT beneficiary, not the MAT trustee or other equitable owners of MAT property.

12 Effective Date. This act shall take effect January 1, 2019.