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N.H. Historic Agricultural Structures Advisory Committee
c/o N.H. Division of Historical Resources
19 Pillsbury Street
Concord, N.H. 03302 - 2043

**RSA 79-D**
**Frequently Asked Questions**

Q. I want to work on my barn now. Should I wait until next spring to do it and get the easement in place first?

A. The earliest that tax relief under this law can now be effective in the tax year 2004; for that purpose, applications must be submitted on or before April 15, 2004. Unless your town is about to have a reevaluation of its property, the current assessment of your barn is what will be used in calculating tax relief at the time you enter into the easement agreement. Any repair or maintenance work done subsequently to preserve the structure while your preservation easement is in effect will not result in an increase in the assessment.

Q. What if there is an antique shop in the barn? Is it eligible?

A. It is up to the local town or city governing body to decide. [See separate Q & A on "Use of the Structure".]

Q. How much money are we talking about saving? $100? $500 per year?

A. That depends on the individual structure and town. In many cases, the amount may only be a few $100, but it is intended to encourage the owner to maintain and save the barn. And the guarantee against the assessment being increased due to repair and maintenance work on the barn can be significant.

Q. What if the barn has been moved from another location?

A. That, in itself, should not rule out eligibility. In the past, barns were often moved. In meeting one or more parts of the test of public benefit, an important question would be whether the historic integrity and character of the structure have been maintained. Another question is whether the barn looks and "feels" historically appropriate in its present location.

Q. What if it has been necessary to replace the siding and roofing materials ? What percentage of the building needs to be at least 75 years old to qualify ?

A. It is not uncommon for barns to have had roofing , siding , or other materials replaced over the years. In so doing, has the character and historic integrity of the barn been maintained ? Does it continue to contribute to the general public's scenic enjoyment or meet one of the other tests of public benefit ? Input from the local Heritage Commission , Historic District Commission, or historical society may be helpful in making this judgment.

Q. What should be included in the completed application? Can the selectboard ask for more information ?

A. Identification of the property and its owner(s), a map showing the location of the structure, and a description of how the property meets the test of public benefit spelled out in the law. Photographs of the structure in its setting, including old photographs, and other supporting materials may be attached to the application. The selectboard may ask for additional information in order to be satisfied that the application is complete.

Q. Who will check on the barns to see if people are maintaining/improving them? What is the process for penalizing them if they are not?

A. It will be up to the local town or city authority to review compliance. It is possible that a local Heritage Commission or historical society can assist in this regard, such as by providing an annual report on compliance. If an owner fails to maintain the structure in accordance with the preservation agreement he has entered into with his town, or causes it to significantly deteriorate or be demolished, a penalty is to be assessed in accordance with terms spelled out in the law.

Q. Why should I support tax relief for my neighbor who just bought the place and is well off while I live in a modest home with no barn ? How is it fair that everyone else has to make up the difference ?

A. Historic barns are important and much appreciated parts of our landscape and our history. Taxes on barns, which often are no longer used, frequently cause owners to put off making repairs or even tear them down.

Granting some tax relief to an owner is intended as the town's part of an agreement in which the owner commits to maintain the barn for ten years or more.

The town government will have to decide whether the benefit to the community of helping to save the old barn outweighs the loss of tax revenue. Just as with locally granted exemptions and tax credits, such as for the blind or disabled, or for solar powered energy systems, any reduction in taxes would be made up by apportioning the amount among all town taxpayers, including the owner of the barn under easement.

Of course, if the barn owner demolishes the barn or sells it to a parts dealer, the town forfeits all future tax revenue on the structure.

Q. Who draws up the easement? What will it look like?

A. The property owner should work with the Selectboard or their representative in drawing up the easement document. A model easement has been prepared by the Advisory Committee. An easement should include the commitment of the owner to maintain the property, the entity which will be responsible for monitoring that commitment, the percentage of tax reduction to be applied, the commitment that the assessment will not increase due to repair and maintenance, and provisions covering renewal, release, expiration, and enforcement.

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## Determining Eligibility for RSA 79-D
## Use of the Structure

Question: What about an old barn or other historic agricultural structures which has been converted into single or multiple-family dwelling, or into a farm stand, restaurant, or other commercial facility? Is it eligible for consideration for a discretionary preservation easement under the provisions of RSA 79-D ?

Answer: It is the responsibility of the local town or city governing body to determine whether such structures qualify for consideration. In making the determination, the following factors are relevant:

-- Eligibility is to be determined by applying the test of public benefit specified in the law (79-D:3.II.) and by considering the Guidelines adopted by the Advisory Committee.

-- Particular attention should be given to the question in the Guidelines under "Use of the Structure" which asks, "If the structure has been adapted for other use, has the historic character of the structure been maintained?" Furthermore, each property owner applying for a preservation easement is required to agree "to maintain the structure in keeping with its historic integrity and character during the life of the easement" (79-D:4.I.).

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**RSA 79-D**
**Improvements vs. Maintenance and Repair**

Question: What if I want to make improvements to my barn ?

Answer: The intent of RSA 79-D is to encourage the preservation of historic agricultural structures by reducing the full value assessment of the buildings under easement and also by protecting the property owner from increases in the assessed value as a result of maintenance and repair work done on the building while the easement agreement is in effect. RSA 79-D:7 II specifically provides: "The assessment shall not be increased because the owner undertakes maintenance and repairs designed to preserve the structure". The law does not refer to improvements and is not intended to extend to them the same treatment, for the purpose of assessment, as that given to "maintenance and repairs designed to preserve the structure".

Question: What is the difference between "improvements" and "maintenance and repairs" ?

Answer: What constitutes valid maintenance and repairs will depend on the circumstances of the individual structure. Newly introduced features which were not present before the effective date of the preservation easement, such as extensive lighting systems and other electrical work, heating, insulation, and air conditioning, presumably should be classified as improvements rather than maintenance and repairs. However, the replacement of a stone foundation under a barn with concrete footings could be considered to be repairs, given that animals are no longer housed in that particular structure, thereby no longer providing sufficient heat to keep foundation stones from heaving during winter. The

replacement of roofing, roof boards, and siding are examples of work that should be considered maintenance and repairs under RSA 79-D.

For structures which have undergone improvements, an accounting practice has been devised by the N.H. Department of Revenue Administration that "backs out" or excludes the improved portions from the property tax reduction provided under RSA 79-D. Specifically, the full value of the structure is assessed, and then the value of the improved portions is deducted from the full value. The tax reduction is then calculated on the remaining sum.

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**RSA 79-D**
**Potential Effect of Revaluations**

Question: Is the assessed value of a barn or other historic structure under a RSA 79-D preservation easement "protected" from the effect of a town-wide revaluation ?

Answer: No. While the law does not specifically address the question of a town-wide revaluation, the operative phrase is contained in RSA 79-D:7 II, namely, "The assessment shall not be increased because the owner undertakes maintenance and repairs designed to preserve the structure." Therefore, it is possible in a time of generally increasing property values, that the full value assessment of a barn under easement could be increased as a result of a town-wide revaluation. However, the *percentage reduction* of the full value assessment which has been granted in the preservation easement *shall remain the same* for the duration of the easement.

Question: On what basis would the new full value assessment be determined during a town-wide revaluation ?

Answer: Logically, such a revaluation would have to be based on the condition of the structure at the time the easement was accepted by the local town or city governing body, plus any subsequent improvements which have been made in addition to "maintenance and repairs designed to preserve the structure".

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## Solar Panels and RSA 79-D Preservation Easements

**Question:** Would solar panels on the roof of an old barn make the structure ineligible for a RSA 79-D preservation easement. Or, if added to a structure already under an easement, would that result in it no longer being eligible?

**Answer:** Barn owners who participate in RSA 79-D preservation easements agree to maintain their barn "in keeping with its historic integrity and character during the term of the easement" (RSA 79-D:4.I). While solar panels can help maintain a historic barn by producing low cost power, a large array of solar panels installed on a highly visible side of a barn in a manner that harms its historic building materials and construction would not be in keeping with the barn's historic integrity and character. Local officials may want to consider a number of factors before deciding on whether a solar panel(s) affects a barn preservation easement. These include the scale of the installation, its location and visibility, its effect on the building's structural system, long-term maintenance and overall appearance, and whether the installation could be reversed in the future with no harm to the building. Solar panels are a rapidly evolving technology, with less intrusive installations being introduced on a regular basis. If the panels are not in use or are no longer viable as a means of producing power during the easement period, best practices recommend removing the solar panels from the structure.

# Tax Implications of HB 522

Discretionary easements, including the preservation easements proposed in HB 522 to encourage the preservation of historic New Hampshire barns, are, for tax purposes, treated in the same way as current use property, with everyone sharing in the benefits or burdens that come with them.

It will be up to each Selectboard or City Council, in deciding whether or not to accept a preservation easement, to weigh the public benefit to be gained by helping to save an historic barn against the disadvantage of reducing taxes received from it. The proposed incentive mechanism would not be a state mandate. Instead, it would be strictly discretionary, with the governing body of each town or city considering, case by case, whether the building would be eligible for tax relief, and, if so, how much. Relief would be granted by reducing the assessed value of the building by between 25 and 75 percent of the current full value assessment.

Question: Would HB 522 reduce the amount of taxes raised to pay for municipal expenses?

Answer: No. Since the municipality's expenses to be paid by property taxes would remain the same, any reduction in taxes resulting from discretionary preservation easements would need to be made up by apportioning that amount among all of the town's taxpayers, including the owners of the barns under easement. The amounts involved are likely to be small. This is the same"burden-sharing" process used in New Hampshire to offset tax credits or exemptions that are granted locally for veterans and blind or disabled resident or for the use of wind-powered, solar and wood heating systems.

Question: Would HB 522 decrease the amount of property tax revenue collected by towns and then sent to the State as their share of the education property tax?

Answer: Yes, but not significantly. A town's total equalized value of property, as used to calculate its statewide education property tax obligation, would be reduced by the amounts granted in any preservation easements. The amounts can be expected to be very small, especially when compared to the millions of dollars of total assessed values of today's town and city "grand lists" of taxable property, and to the total amount of

education tax due. In many cases, annual property taxes on old barns, often only marginally used, are only a few hundred dollars. But frequently that can be enough to prompt the owner -- looking for ways to make ends meet and faced with the prospect of an increased assessment if he or she repairs the building -- to decide to let a salvage dealer tear it down. And in those cases, it is lose/lose for the town and for the state: a part of the town's heritage disappears and so do any future tax revenues to be derived from it.

A real-life example: a large, 19th century former dairy barn in Orford, N.H., which is an appreciated local landmark and has essentially been unused for over 50 years, is currently assessed at $20,600 and pays a local property tax of $467. The additional education property tax on the building, payable to the State, is $119.48. If, as a result of a preservation easement, the Selectboard were to reduce the assessed value of the building by 50%, the state education tax portion of the barn owner's tax bill would be lowered by a little under $60. Since the total equalized value of all property in Orford is $65.7 million, the town's payment to the education property tax is $381,060. Therefore, the impact of this preservation easement on the town's payment to the state would be to reduce it by .015%.

What happens at the end of the easement term? Can my taxes be raised even if I reapply to the program?

***** A. If a barn owner chooses not to continue to offer an easement at the end of the term, the agreed amount of tax relief comes to an end. The agreed terms of the easement may, but do not have to include the specification of an amount up to 10 percent of fair market value to be paid upon expiration of the easement.

If no provision for automatic renewal under the same terms is included in the easement, the owner may apply for a renewal, with the owner and the selectboard having the same rights and duties as they did with the original application. Thus, under the new terms, the degree of tax relief could be reduced, increased, or stay the same.