

**SUNAPEE SELECTBOARD**  
MEETING AGENDA  
Monday, April 1<sup>st</sup>, 2024  
6:30PM - TOWN HALL MEETING ROOM  
Join us on Zoom: <https://us06web.zoom.us/j/86066395397>

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**1. CALL SELECTBOARD MEETING TO ORDER**

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**2. REVIEW & APPROVE MARCH 18<sup>th</sup> MINUTES**

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**3. REVIEW OF ITEMS FOR SIGNATURE:**

**CZC:**

- Parcel ID: 0128-0034-0000 – 76 Garnet Street – Stacy Madison
- Parcel ID: 0202-0007-0000 – Prospect Hill Road – Allen & Lorraine Costigliola
- Parcel ID: 0101-0014-0000 – 82 Springfield Road – Sarah & Brian McAllister
- Parcel ID: 0124-0018-0000 – Marys Road – Holly & Christopher Leonard
- Parcel ID: 0104-0066-0000 – 44 Springfield Road – Ernest & Patricia Collins

**DEMOLITION:**

- Parcel ID: 0104-0066-0000 – 44 Springfield Road – Ernest & Patricia Collins

**LAND DISTURBANCE:**

- Parcel ID: 0106-0032-000 – 10 Sunny Knoll Road – Oetting, Et Al
- Parcel ID: 0128-0034-0000 – 76 Garnet Street – Stacy Madison

**AFTER THE FACT:**

- Parcel ID: 0128-0034-0000 – 76 Garnet Street – Stacy Madison

**SHORT-TERM RENTAL CZC:**

- Parcel ID: 0121-0018-0000 – 37 West Shore Road – Stephen & Anne Sharp
- Parcel ID: 0136-0041-0000 – 11 Birch Point Lane – Kristen & Denis Horrigan

**USE OF FACILITIES:**

- Lake Sunapee Rowing Club – Use of Safety Services Building – April 21<sup>st</sup>, 2024 – 9 AM – 1 PM
- Lake Sunapee Rowing Club – Use of Georges Mills Harbor – May 6<sup>th</sup> – November 2<sup>nd</sup>

**VETERANS' TAX CREDIT/ EXEMPTION APPLICATION:**

- Jeremy & Jessica Stocker – 26 Chippendale Drive
- Deborah Thompson – 29 Maple Street
- Judith Thackaberry – 93 Ryder Corner Road

**SOLAR TAX CREDIT/ EXEMPTION APPLICATION:**

- Norris Revocable Trust – Christopher & Nancy Norris – 121 Granite Ridge Road
  - Jesse & Barbara Tyler – 7 Dowd Lane
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**4. APPOINTMENTS:**

- 7:00PM Fire Department
    - Prospect Hill Fire After Action
    - Fire Equipment Update Follow Up
  - 7:30 PM Joshua Boone, Tax Collector – Deeding
  - 7:45 PM Connie Sampson, Human Resources Director: Employee Manual Overview and Approval Request
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**5. PUBLIC COMMENT:**

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**6. SELECTBOARD ACTION:**

- Sign DRA Form 232
  - Sign updated Sunapee Selectboard Policies and Procedures Document
  - Approve Water and Sewer Office Manager to initiate loan application for the recently passed warrant article: up to \$1,050,000 for the engineering, permitting, construction and installation of new water mains at five Route 11 crossings and on Lower Main Street, and for the design, engineering and permitting to replace water mains on High Street, Central Street and Route 103B.
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**7. TOWN MANAGER REPORT:**

- Upcoming ordinance Updates: Joint Effort Coming from the Highway Safety Committee
  - Parking Ordinance (update)
  - Posted Road Ordinance (new)
- Legal update
  - Bradley M. Weiss, et al v Town of Sunapee – new trial memos were filed on 3/26 and are available online. An update will be provided when a decision is received.
  - Coalition 2.0 Update
- Perkins Pond Bond Update
- Community Conversation –19 April at Noon
- Charrette Reminder: April 12 and April 13, 2024, at the Livery
  - Public Input Sessions: April 12<sup>th</sup>
    - Session One: 3:30 PM-5:00 PM
    - Session Two: 6:30 PM-8:00 PM
  - Public Presentation: April 13<sup>th</sup>
    - All are Welcome: 3 PM

**8. SELECTBOARD MEMBERS' REPORT:**

**9. OUTSTANDING BUSINESS:**

- HB1479 Rep Damon voted as recommended, Rep Stone vote for, Tanner absent, Indefinitely Postponed
- Public Comment Question regarding 120-day grandfathering

- Letter Regarding Failing Retaining Wall signed by Selectboard Chair Wallace and sent to Property Owner
  - Fourth of July-Drones in place of Fireworks
  - Solar at the Wastewater Treatment Plant
  - Roads/Congestion
  - Conservation Commission Deed Clean-Up
  - Signage in front of Information Center
  - Follow Up Meeting with Springfield
- 

#### **10. NON-PUBLIC:**

- RSA 91-A:3, II(a) The dismissal, promotion, or compensation of any public employee or the disciplining of such employee, or the investigation of any charges against him or her, **unless** the employee affected (1) has a right to a public meeting, and (2) requests that the meeting be open, in which case the request shall be granted.
  - RSA 91-A:3, II(b) The hiring of any person as a public employee.
  - RSA 91-A:3, II(c) Matters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of this board, unless such person requests an open meeting. This exemption shall extend to include any application for assistance or tax abatement or waiver of a fee, fine or other levy, if based on inability to pay or poverty of the applicant.
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#### **UPCOMING MEETINGS:**

- April 2<sup>nd</sup>, 2024: Recreation Committee – 7:00 p.m.
- April 3<sup>rd</sup>, 2024: Conservation Committee – 7:00 p.m.
- April 4<sup>th</sup>, 2024: Zoning Board Meeting – 6:30 p.m.
- April 11<sup>th</sup>, 2024: Planning Board Meeting – 7:00 p.m.
- April 12<sup>th</sup>, 2024: Sunapee Charrette – 3:30 p.m.
- April 13<sup>th</sup>, 2024: Sunapee Charrette Presentation – 3:00 p.m.
- April 15<sup>th</sup>, 2024: Selectboard Meeting – 6:30 p.m.
- April 23<sup>rd</sup>, 2024: Abbott Library Trustees – 5:00 p.m.
- April 25<sup>th</sup>, 2024: Water & Sewer Commission Meeting – 5:30 p.m.
- April 25<sup>th</sup>, 2024: Firewards – 6:30 p.m.





**Appropriations**

Account	Purpose	Article	Appropriations As Voted
<b>General Government</b>			
4130	Executive	20	\$393,758
4140	Election, Registration, and Vital Statistics	20	\$291,042
4150	Financial Administration	20	\$485,406
4152	Property Assessment	20	\$110,000
4153	Legal Expense	20	\$55,000
4155	Personnel Administration	20	\$15,000
4191	Planning and Zoning	20	\$425,649
4194	General Government Buildings	20	\$460,356
4195	Cemeteries	20	\$15,364
4196	Insurance Not Otherwise Allocated	20	\$12,847
4197	Advertising and Regional Associations	20	\$17,015
4198	Contingency		\$0
4199	Other General Government	20	\$32,004
<b>General Government Subtotal</b>			<b>\$2,313,441</b>
<b>Public Safety</b>			
4210	Police	20	\$1,088,426
4215	Ambulances	20	\$67,000
4220	Fire	20,21	\$464,769
4240	Building Inspection		\$0
4290	Emergency Management	20	\$510
4299	Other Public Safety	20	\$155,652
<b>Public Safety Subtotal</b>			<b>\$1,776,357</b>
<b>Airport/Aviation Center</b>			
4301	Airport Administration		\$0
4302	Airport Operations		\$0
4309	Other Airport		\$0
<b>Airport/Aviation Center Subtotal</b>			<b>\$0</b>
<b>Highways and Streets</b>			
4311	Highway Administration	20	\$2,135,387
4312	Highways and Streets		\$0
4313	Bridges		\$0
4316	Street Lighting	20	\$16,500
4319	Other Highway, Streets, and Bridges		\$0
<b>Highways and Streets Subtotal</b>			<b>\$2,151,887</b>



**Appropriations**

Account	Purpose	Article	Appropriations As Voted
<b>Sanitation</b>			
4321	Sanitation Administration		\$0
4323	Solid Waste Collection		\$0
4324	Solid Waste Disposal	20	\$669,752
4325	Solid Waste Facilities Clean-Up		\$0
4326	Sewage Collection and Disposal		\$0
4329	Other Sanitation		\$0
<b>Sanitation Subtotal</b>			<b>\$669,752</b>
<b>Water Distribution and Treatment</b>			
4331	Water Administration		\$0
4332	Water Services		\$0
4335	Water Treatment		\$0
4338	Water Conservation		\$0
<b>Water Distribution and Treatment Subtotal</b>			<b>\$0</b>
<b>Electric</b>			
4351	Electric Administration		\$0
4352	Generation		\$0
4353	Purchase Costs		\$0
4354	Electric Equipment Maintenance		\$0
4359	Other Electric Costs		\$0
<b>Electric Subtotal</b>			<b>\$0</b>
<b>Health</b>			
4411	Health Administration	20	\$10,092
4414	Pest Control	20	\$500
4415	Health Agencies and Hospitals	20	\$20,800
4419	Other Health		\$0
<b>Health Subtotal</b>			<b>\$31,392</b>
<b>Welfare</b>			
4441	Welfare Administration		\$0
4442	Direct Assistance	20	\$44,012
4444	Intergovernmental Welfare Payments		\$0
4445	Vendor Payments		\$0
4449	Other Welfare		\$0
<b>Welfare Subtotal</b>			<b>\$44,012</b>



**Appropriations**

Account	Purpose	Article	Appropriations As Voted
<b>Culture and Recreation</b>			
4520	Parks and Recreation	20,22	\$266,512
4550	Library	20	\$576,713
4583	Patriotic Purposes	20	\$300
4589	Other Culture and Recreation	20	\$6,800
<b>Culture and Recreation Subtotal</b>			<b>\$850,325</b>
<b>Conservation and Development</b>			
4611	Conservation Administration	20	\$5,300
4612	Purchase of Natural Resources		\$0
4619	Other Conservation		\$0
4631	Redevelopment and Housing Administration		\$0
4632	Other Redevelopment and Housing		\$0
4651	Economic Development Administration		\$0
4652	Economic Development		\$0
4659	Other Economic Development		\$0
<b>Conservation and Development Subtotal</b>			<b>\$5,300</b>
<b>Debt Service</b>			
4711	Principal - Long Term Bonds, Notes, and Other Debt	20	\$96,900
4721	Interest - Long Term Bonds, Notes, and Other Debt	20	\$37,472
4723	Interest on Tax and Revenue Anticipation Notes	20	\$1,000
4790	Other Debt Service Charges		\$0
<b>Debt Service Subtotal</b>			<b>\$135,372</b>
<b>Capital Outlay</b>			
4901	Land		\$0
4902	Machinery, Vehicles, and Equipment	34,36	\$325,000
4903	Buildings		\$0
4909	Improvements Other than Buildings	17,18,37	\$1,400,000
<b>Capital Outlay Subtotal</b>			<b>\$1,725,000</b>



**Appropriations**

Account	Purpose	Article	Appropriations As Voted
<b>Operating Transfers Out</b>			
4911	To Revolving Funds		\$0
4912	To Special Revenue Funds		\$0
4913	To Capital Projects Funds		\$0
4914A	To Airport Proprietary Fund		\$0
4914E	To Electric Proprietary Fund	20	\$273,482
4914O	To Other Proprietary Fund		\$0
4914S	To Sewer Proprietary Fund	20	\$1,379,996
4914W	To Water Proprietary Fund	20	\$610,898
4915	To Capital Reserve Funds	23,25,26,28,3 2,33,35	\$593,700
4916	To Expendable Trusts	29,30	\$12,200
4917	To Health Maintenance Trust Funds		\$0
4918	To Non-Expendable Trust Funds		\$0
4919	To Fiduciary Funds	31	\$10,000
<b>Operating Transfers Out Subtotal</b>			<b>\$2,880,276</b>
<b>Total Voted Appropriations</b>			<b>\$12,583,114</b>

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2024-0138

Steven Rand, et al.

v.

State of New Hampshire

**STATE’S RESPONSE IN SUPPORT OF MOTION TO STAY PENDING APPEAL**

The State of New Hampshire, by and through counsel, the New Hampshire Attorney General’s Office, hereby files this response in support of the Coalition Communities’ (the “Coalition”) motion to stay. In support thereof, the State provides the following:

1. The Statewide Education Property Tax (“SWEPT”) is the primary mechanism the State uses to raise the money that it subsequently spends to fund adequate education grants to municipalities.

2. RSA 76:3 establishes the SWEPT and requires the DRA to “set the education tax rate at a level sufficient to generate revenue of \$363,000,000 when imposed on all persons and property taxable pursuant to RSA 76:8, except property subject to tax under RSA 82 [Taxation of Railroads] and RSA 83-F [Utility Property Tax].”

3. RSA 76:8, I requires the SWEPT to be calculated in a proportionate and reasonable way so it is equal in valuation and uniform in rate.

4. Under RSA 76:8, II, the DRA commissioner must then issue a warrant to the “selectmen or assessors of each municipality by December 15” directing them to assess the amount of SWEPT computed and to “pay it to the municipality for the use of the school district or districts.”

5. RSA 76:3 and RSA 76:8 do not authorize the State, or any state agency, to retain any of the money the SWEPT raises; rather, RSA 76:8, II expressly appropriates all of the revenue the SWEPT raises by paying those funds to the municipalities whose

taxpayers raised them and requires those municipalities to use those funds for a single public purpose, *i.e.*, to support their school district or districts.

6. The plaintiffs challenged the SWEPT as unconstitutional under Part II, Article 5 of the New Hampshire Constitution because they contend it results in certain communities getting to keep so-called “excess SWEPT” and because the DRA has developed a practice of allowing unincorporated places to generate a negative local education tax rate to avoid stranding taxpayer dollars in those places. The plaintiffs asserted that this alleged defect and DRA practice made the SWEPT disproportionate and non-uniform in rate in violation of Part II, Article 5. *See Appeal of Bethlehem (N.H. Dep’t of Envtl. Servs.)*, 154 N.H. 314, 322 (2006) (“Part II, Article 5 . . . requires that all taxes be proportionate and reasonable, equal in valuation and uniform in rate, and just.”).

7. The State opposed the challenge.

8. The State argued that the SWEPT is not structured like previous education taxes that this Court has found unconstitutional because it requires the DRA to set a property tax rate across the State that is proportionate and reasonable, equal in valuation and uniform in rate, and just. *See RSA 76:8, I.* A taxpayer’s SWEPT rate is not abated, phased-in, or reduced in any way on the front end, like previous education taxes, and therefore the SWEPT meets the requirements of Part II, Article 5.

9. The State further asserted that the plaintiffs were really challenging the legislature’s decision regarding how to spend SWEPT dollars once they have been raised. The State explained that the legislature’s power to spend money is plenary and is controlled by Part I, Article 12 and Part II, Article 6 of the New Hampshire Constitution. Under those constitutional provisions, so long as the money spent is earmarked for a “public purpose,” a legislative spending decision is constitutional, even if the benefits are distributed unequally. *See Manchester Fed. Sav. & Loan Ass’n v. State Tax Comm’n*, 105 N.H. 17, 21 (1963). As this Court explained in a case dealing with the distribution of tax money for schools to school-districts in the town, “[t]axes must be proportionally assessed on persons and property; but there is no constitutional provision that money raised by taxation must be appropriated in such a manner that the several tax-payers, or

districts of tax-payers, will be directly benefited in proportion to the amount of their taxes. Such a provision, if it existed, could not be executed.” *School-District No. 1 in Walpole v. Prentiss*, 66 N.H. 145, 146 (1889).

10. RSA 76:8, II constitutionally appropriates the SWEPT by paying it to the municipality “for the use of the school district or districts,” which is manifestly a public purpose. *See, e.g.*, N.H. Const. Part II, Art. 83; *Opinion of the Justices*, 99 N.H. 536, 538 (1955) (“The furtherance of education is universally regarded as a public purpose . . .”). Even though this spending is unequal among municipalities, this inequality in the benefit received does not render the SWEPT unconstitutional. *See Manchester Fed. Sav. & Loan Ass’n*, 105 N.H. at 21 (“Neither the plaintiffs nor any taxpayer can complain that the distribution of a valid tax after its collection must be allocated to a specific purpose so long as it is devoted to a public use.”).

11. The State also argued that the SWEPT statutes constitutionally classify the property subject to it. Specifically, the State asserted that the SWEPT applies solely to property in municipalities. *See* RSA 76:3 (explaining that the SWEPT is imposed only on “all persons and property taxable pursuant to RSA 76:8, . . .”); RSA 76:8 (referring only to “municipalities,” the “municipality’s tax base,” and issuing a warrant “to the selectmen or assessors of each municipality”).

12. The State explained that an unincorporated place is not a municipality because unincorporated places lack the defining features a municipality possesses: they are not incorporated, they do not have a regular local government, they contain a *de minimis* population, they do not provide infrastructure for the general public protection, health, and welfare, and they do not support many regular municipal functions. *See Hillsborough v. Deering*, 4 N.H. 86 (1827) (explaining the limited privileges of unincorporated places and stating that, “They cannot vote to raise money to make highways . . . . Nor can they vote to raise money to repair highways . . .” and “that

unincorporated places have no authority to raise money for the support of paupers. Nor can any action be maintained by or against them.”).<sup>1</sup>

13. Property in municipalities therefore differs in kind and use from property in unincorporated places.

14. Accordingly, the State asserted that “just reasons” within the meaning of the case law supported applying the SWEPT to property in municipalities and not applying the SWEPT to property in unincorporated places. *See, e.g., Smith v. N.H. Dep’t of Rev. Admin.*, 141 N.H. 681, 686 (1997) (explaining that “part II, article 6 authorizes the legislature to ‘classify’ property for purposes of taxation” based on “the property’s kind or use” and that “the rule of equality and proportionality does not apply to the selection of the subjects of taxation, provided just reasons exist for the selection made”) (internal quotations omitted).

15. The trial court disagreed with both arguments.

16. It found that this Court’s decision in *Claremont Sch. Dist. v. Governor*, 142 N.H. 462 (1997) (“*Claremont II*”) made the SWEPT a unique form of property tax that may only be used to generate dollars to meet the State’s constitutional adequacy obligations under Part II, Article 83. (Coalition’s NOA, Order on Cross-Motions for Partial Summary Judgment at 13-16.)

17. The trial court further ignored the plain language of RSA 76:3 and RSA 76:8 and found that the State cannot classify the property subject to the SWEPT in the literal manner it had because all property owners benefit from the public education of students, the SWEPT’s purpose is to support funding the State’s constitutional adequacy obligation, and exemption from the SWEPT for property in unincorporated places would not be “just” as a result. (Coalition’s NOA, Order on Cross-Motions for Partial Summary Judgment at 17-18.) The trial court even suggested in a footnote that many other property tax exemptions from the SWEPT may be unconstitutional as well. (*Id.* at 18 n.

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<sup>1</sup> The county performs many of these functions for the unincorporated places, including the provision of education to any children when they happen to reside there, RSA 28:7-d; RSA 198:16.

5.) If that is true, then State property, municipally-owned property, the property of charitable organizations, and property used for religious purposes may also have to be subject to the SWEPT for the SWEPT to be constitutional.<sup>2</sup>

18. In the State’s view, the trial court’s order is wrong.

19. This Court’s *Claremont* decisions did not rewrite the state constitutional provisions governing the legislature’s taxing and spending powers. The SWEPT meets Part II, Article 5’s uniformity and proportionality requirements, and the statutory provisions implementing the SWEPT constitute a constitutional exercise of the legislative spending power. The SWEPT also permissibly classifies the property to which it applies as property in municipalities and does not encompass property in unincorporated places for just reasons.

20. An education property tax like the SWEPT does not occupy a special place in the constitutional pantheon that exempts it from the normal rules of legislative taxation and spending, and the judiciary does not have the power to enshrine its preferred tax policy in the State Constitution.

21. Nonetheless, the State might have refrained from filing in support of the Coalition’s motion to stay if the trial court had simply declared the SWEPT unconstitutional and had not taken the extraordinary additional step of rewriting the SWEPT statutes by enjoining “the State” from “permitting communities to retain excess SWEPT funds,” requiring communities that generate “excess SWEPT” (none of whom are actual parties to this case) to remit those funds to the New Hampshire Department of Revenue (“DRA”), and requiring those remitted funds, which are subject to no legislative

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<sup>2</sup> The following statutory provisions appear to exempt various kinds of real property from the SWEPT: RSA 72:23, I-II (exempting certain real property owned by the State, counties, municipalities, school districts, and village districts from taxation); RSA 72:23, III (exempting real property held by religious entities for religious purposes); RSA 72:23, IV (exempting buildings and structures of all schools, including the land thereto appertaining); RSA 72:23, V (exempting “[t]he buildings, lands and personal property of charitable organizations and societies organized, incorporated, or legally doing business in this state, owned, used and occupied by them directly for the purposes for which they are established, provided that none of the income or profits thereof is used for any other purpose than the purpose for which they are established”).

appropriation other than the direction of the SWEPT statute, RSA 76:8, II, to be “used for the exclusive purpose of satisfying the State’s adequacy obligations.” (Coalition’s NOA, Order on Cross-Motions for Partial Summary Judgment at 20-21.)

22. The judiciary declares what the law is and may properly enjoin unlawful or unconstitutional activity. The judiciary does not, however, have the power to rewrite taxing and spending statutes it has deemed unconstitutional to force a legislative funding system to operate in a preferred way. It is the legislature’s role to remedy an unconstitutional law, not the trial court’s role to rewrite it, which is why a stay of an order declaring a critical taxing and funding mechanism like the SWEPT unconstitutional is prudent and appropriately deferential to the other co-equal branches of government pending appeal.

23. The ultimate problem with the trial court’s remedy, however, is evident in the results it will produce.

24. While the DRA can notify communities by letter that they cannot retain so-called “excess SWEPT” and should remit it to the DRA in accordance with the trial court’s order, the DRA has no statutory authority that would permit it to enforce that remittance. Those communities are also not parties to this action and therefore cannot be held in contempt for non-compliance.

25. In denying the State’s motion to stay pending appeal, the trial court speculated in a footnote that the State must have the authority to enforce remittance. (Coalition’s NOA, Order on Pending Motions at 8.) The trial court further speculated that “common sense suggests that the DRA has mechanisms in place to enforce the tax scheme, perhaps by offsetting uncollected or improperly retained amounts via a reduction in States grants or aid.”<sup>3</sup> (*Id.* at 8 n. 1.)

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<sup>3</sup> The trial court invited the State to file a motion to reconsider on this issue if it believed the trial court’s speculation was wrong, and the trial court would hold an evidentiary hearing on it. The State did not move for reconsideration because: (1) the issue it raised, and that the trial court chose not to resolve, is purely a legal issue that was presented in the State’s motion to stay; and (2) any further delay in the resolution of this important tax matter would not serve the public interest.

26. What the trial court's order does not appreciate is that the trial court cannot rewrite the SWEPT statutes and then make various other statutory mechanisms in the RSAs, assuming they even exist, applicable to its statutory rewrite when the legislature clearly did not intend that result.

27. The legislative directive with respect to revenue the SWEPT raises is very clear; the money gets raised and is then appropriated and paid to the municipality for its school district or districts. RSA 76:8, II. There is no authority in statute for the DRA to force the so-called "excess SWEPT" to be remitted to the DRA, and there is no authority in statute for the DRA, which does not provide grants or aid to municipalities, to reduce grants or aid that other state agencies might provide to municipalities because the municipality has not remitted its "excess SWEPT" to the DRA. But even if such other statutes did exist, the legislature clearly did not intend those other statutes to apply to so-called "excess SWEPT" payments. The trial court simply has no authority in fashioning a remedy to rewrite the tax and spending law of the State to create a new education funding regime.

28. Finally, the trial court's remedy requires that any "excess SWEPT" remitted to the DRA "must be used for the exclusive purpose of satisfying the State's adequacy aid obligations." (Coalition's NOA, Order on Cross-Motions for Partial Summary Judgment at 21.) The DRA has no legislative authority to utilize "excess SWEPT" funds remitted to it for any purpose. As a result, if the DRA receives such funds, the DRA will provide those funds to the state treasury to hold in an escrow account until the litigation ends and the legislature directs what should be done with them. *See In re Strandell*, 132 N.H. 110, 115 (1989) ("It is well established that the executive branch may expend public funds only to the extent, and for such purposes, as those funds may have been appropriated by the legislature.").

29. The branch of government tasked with how to use and spend properly raised tax funds is the legislative branch, not the judicial or executive branches. The legislative branch required the DRA to direct by warrant that all revenues raised by the SWEPT be appropriated to the municipality for school district purposes. RSA 76:8, II.

The trial court's merits order rewrites that legislative regime by directing that properly raised revenue now be diverted from its intended legislative public purpose to a different, exclusive purpose chosen by the trial court. This direction usurps the legislature's core constitutional power to appropriate money, in violation of Part I, Article 37 of the New Hampshire Constitution, and the DRA does not intend on furthering that usurpation.

30. Thus, for all of the above reasons, the State respectfully supports the Coalition's motion to stay pending appeal.

WHEREFORE, the State respectfully requests that this Court issue an order:

- A. Granting the Coalition's Motion To Stay Pending Appeal; and
- B. Granting such further relief as the court deems just and equitable.

Respectfully submitted,

STATE OF NEW HAMPSHIRE

By its attorney,

JOHN M. FORMELLA  
ATTORNEY GENERAL

Date: March 18, 2024

By: /s/Anthony J. Galdieri  
Anthony J. Galdieri, Bar # 18594  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent via the Court's electronic filing system to all parties of record.

Date: March 18, 2024

*/s/Anthony J. Galdieri*

**EDUCATION**

# Education Funding Boost Draws Mixed Reviews

By GARRY RAYNO, InDepthNH.org 13 hours ago



Screenshot

Former Representative Doug Hall of Chichester, supports an amendment to increase the rate of the Statewide Education Property Tax, but not a state budget cap on school districts before the House Finance Committee Tuesday.

By GARRY RAYNO, InDepthNH.org

CONCORD — A proposal to “re-characterize” local property taxes into a state tax was generally supported at a public hearing Tuesday, but a statewide school budget cap in the same proposal was not.

The House Finance Committee heard a proposed amendment to House Bill 1583, which increases state aid to public education by raising the per-pupil state adequacy grant to the level recommended by a superior court judge in the ConVal School District vs the State decision issued last year.

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Superior Court Judge David Ruoff suggested the minimum per-pupil grant to cover the cost of an adequate education should be \$7,356.

The proposed amendment would achieve that by using about \$450 million of what are now local education property tax dollars and using the money as state aid instead.

The change would increase the amount of money so-called donor communities would have to send to the state instead of retaining for education expenses at the school district level from about \$29 million to about \$90 million raising the property taxes for those 50 plus communities around the state.

The \$90 million would be the only “new money” for state education aid under the amendment which would come from property taxpayers in the donor communities.

In property wealthy communities, the Statewide Property Tax raises more money that is needed to cover the cost of an adequate education for their students. They have been able to retain the money and spend it on education or lower the amount needed for the local school property tax portion of property tax bills.

While there was general support for the change from local to state property tax, there was almost universal opposition to the section imposing a three-year budget cap on school district spending to the three-year average increase in the Consumer Price Index.

The cap could be overridden by a two-thirds majority of the legislative body of the school district.

Not only were people opposed to the cap for taking away local control, they also said the proposal would lock in the significant disparities that currently exist in the quality of education in a property wealthy community versus a property poor community.

“I hope you guys are going to understand the moment that is in front of you,” Portsmouth Mayor Deaglan McEachern told the committee. “A moment to actually solve education funding and to do so in an equitable way.”

McEachern opposed both the budget cap and expanding the Statewide Education Property Tax which will impact Portsmouth taxpayers as it raises excess money under the current rate for the SWEPT.

But Doug Hall, a former House Finance Committee member now affiliated with the NH School Funding Fairness Project, said he could support the expansion of the statewide property tax and ending allowing the property wealthy communities to retain the excess money, but not the budget cap.

“The goal we all share is that all students should have the opportunity for an education that does not vary by zip codes,” Hall said. “This would lock in the large disparities that exist.”

He noted every expensive special education student that moves into a district reduces funds for other students, saying in his community, Chichester, special education costs exceed all state aid.

He also noted the cap would not allow for any new building to replace or renovate many of the old school buildings.

Waterville Valley town manager Mark Decoteau, who is also the chair of the Education Coalition Communities 2.0, which is comprised of property wealthy towns and unincorporated places with negative local school property taxes, opposed the amendment saying his organization opposes raising property taxes on one community and sending some of that money to another community without any oversight.

He said the amendment would exacerbate an unfair funding scheme that was repealed in 2011 and the House voted down earlier this session.

“This concept is fundamentally wrong and at odds with how local government has worked for centuries,” Decoteau said.

He said under the plan his community would have to send \$1.2 million of the \$1.5 million it raises in SWEPT to the state and then raise another \$1.2 million to replace the money it was spending on education that would go to the state and would have to do that every year.

That will impact other town projects such as highways and bridges, water and sewer and public safety, he said.

This creates winners and losers all across the Granite State, Decoteau said.

“The Education Coalition Communities 2.0 appreciates the challenges in addressing school funding in our state,” Decoteau said. “We deeply care about ensuring a quality education for our children and will continue our support for a fair and comprehensive approach for education funding in New Hampshire, but will continue to oppose any plan which requires property taxes raised in one community, sent to another community and used without any accountability for this use.”

Sean Parr, Manchester Board of School Committee member, said he supports fully funding education in New Hampshire, and as a co-plaintiff on the ConVal suit, supports the judge’s findings in the case.

He noted Manchester already has a tax cap, and the amendment would further limit local authority.

“Manchester is one of the districts with the greatest needs,” Parr said, “and has the largest and most diverse student population in the state.”

The amendment was supported by Charles Smith Jr. of Orford who spoke of the problems facing rural communities with low student enrollment and little new construction.

The situation is not sustainable, he said, with a greater and greater burden on property taxpayers.

He also raised the issue, as did McEachern, of the impact the state’s current use system places on some communities.

While he supported the bill, he noted they ought to be looking for other means to support education.

Longtime Hollis-Brookline Coop Budget Committee member Tom Enright objected to the statewide budget cap which he said “substitutes your judgment for the judgment of my budget committee, my school board, and most importantly, my district’s judgment. I want local control.”

He told the committee during the pandemic teachers barely received a raise in its three-year contract and the district has had problems finding and retaining teachers.

But at the district meeting this year, voters approved one of the largest increases for teachers he has seen in his 30 years on the budget committee, and now the district can find and retain teachers. With the state budget cap, the teachers’ pay increase could not have happened.

“A spending cap gets in the way of controlling our own situation,” Enright said. “My community’s judgment is better than the judgment you want to thrust over me.”

Jason Sorens of Amherst and the founder of the Free State Project, objected to the amendment saying it would create unintended consequences and have the opposite effect to what lawmakers are trying to achieve.

He called the proposal a kind of redistribution based on property taxes that encourages schools to be unproductive while discouraging schools who are more efficient.

People will want to be in communities receiving aid instead of having to provide additional funding to other communities, Sorens maintained.

“It gives towns an incentive to be inefficient, to become property poor and not want to be donor towns,” he said, and will penalize families with a greater taste for education who will want to live in a town with good schools, but are often more expensive to live in.

Exclusionary zoning also impacts communities, Sorens said, by stopping development and commercial building which towns need to grow, but communities put in place due to the cost of educating more students.

“You do not want to do things to make the problem worse,” Sorens said. “Low income families should have access to good schools, rather than from rich people in Hanover giving to the rest of the state.”

Rep. Glenn Cordelli, R-Tuftonboro, opposed the amendment saying where he lives the cooperative school district has six towns, two of which are donor communities. The amount of excess revenue they have from the SWEPT is \$2.8 million, but that will grow to \$9 million with the amendment.

The proposal calls for donor towns to send 30 percent of the excess revenue to the state in February, he said, which will be very difficult for donor communities because their budgets are already set.

“I’m not sure of the process,” he said, “but it is of great concern to many of our towns.”

The Finance Committee’s Division II holds a work session on the amendment at 10 a.m. Wednesday.

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