

July 9, 2018

**Via In-Hand Delivery**

Tracy Uhrin, Clerk  
Merrimack County Superior Court  
163 N Main Street  
Concord, NH 03301

RE: In re: Dunbarton School District

Dear Clerk Uhrin:

Enclosed please find a **Petition for a Special District Meeting** for filing with the Court on behalf of the Dunbarton School District along with our check in the amount of \$260.00 for the filing fees.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Matthew H. Upton

MHU/pf  
Enclosures

cc: Dean S.T. Cascadden, Superintendent

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In re: Dunbarton School District

Docket No. \_\_\_\_\_

**PETITION FOR A SPECIAL DISTRICT MEETING**

1. In this action, the Dunbarton School District, by and through its attorneys, Drummond Woodsum, hereby petitions this Court pursuant to RSA 197:3 for permission to hold a special school district meeting on September 26, 2018 so that the voters of the District may consider the attached warrant articles and decide how they wish to utilize in excess of \$1.0 Million in unexpended and unappropriated funds discovered after an audit which was completed after the District's annual meeting in March 2018.

**FACTS**

2. The Dunbarton School District ("District ") is a New Hampshire municipal corporation with a principal mailing address of 55 Falcon Way, Bow, NH 03304. The District serves, and is geographically coextensive with, the Town of Dunbarton in Merrimack County, New Hampshire.

3. Pursuant to RSA 189, the District, via its School Board, oversees the provision of elementary and secondary education to all pupils who reside within the district.

4. To that end, the District independently operates the Dunbarton Elementary School and has historically entered into an AREA agreement with a neighboring school district to provide secondary education to its pupils.

5. For many years, the District was a member of School Administrative Unit 19 ("SAU #19"), along with the New Boston School District and the Goffstown School District. Pursuant to a then AREA agreement, the District sent its secondary students to Goffstown schools.

6. During that time, the District relied upon SAU #19 to manage the financial affairs of the District. These services were performed by a full time business administrator and staff who handled the accounting functions for SAU #19 and each of the member districts: Goffstown, Dunbarton, and New Boston.

7. At the District's annual meeting in March 2013, the District voted not to extend the then AREA agreement with Goffstown and instead voted to enter into a new AREA agreement with the Bow School District, effective July 1, 2014. Further the District voted to leave SAU #19 effective July 1, 2014 and to join School Administrative Unit 67 ("SAU #67"), which would thereupon oversee the financial affairs of the District and the Bow School District.

I. Background on municipal budgeting and unexpended fund balances.

8. School district budgets are subject to the general municipal budget law.

*See RSA 32.*

9. One of the cornerstones of the municipal budget law is the prohibition against spending funds without voter authorization (i.e., appropriation). RSA 32:8. By law, voters may only appropriate funds at annual or special district meetings. RSA 32:6.

10. To that end, every year each school district is required to hold an annual meeting. RSA 197:1. The primary purpose of the meeting is “for raising and appropriating money for the support of schools for the next fiscal year consistent with the municipal budget law. *Id.*

11. Further, and subject to limited exceptions, if a school district holds appropriated but unexpended funds at the end of a fiscal year, the funds lapse and then are, by default, returned to the taxpayers as an offset on funds raised through general taxation. RSA 32:7. In other words, a school district generally cannot retain budget surpluses from year to year without voter authorization.

12. As a result, school districts, subject to Department of Revenue Administration rules and guidance, take care to properly account for any unexpended funds at the end of the fiscal year by noting any unspent appropriations and excess revenues as an “undesigned fund balance” in its financial reports.

13. In most cases the amount of undesigned fund balance is relatively small and has a minimal effect on the local tax rate. In contrast, and when the amount of undesigned fund balance is allowed to accumulate over multiple years, as is the case here, returning of the entire amount of undesigned fund balance in a single tax year

can cause wild significant variations in the resultant tax rate from one year to the next.

**II. SAU #19 discovers that the Goffstown and New Boston School Districts had an unknown, unappropriated, and unexpended surplus on its books exceeding between One and Nine Million Dollars.**

14. In the fall of 2017, as a result of a mistake made during SAU #19/Goffstown's school budgeting process, the SAU #19 superintendent hired an independent auditor, Angell and Company, to conduct an audit of the SAU's, and its then member district's, financial records.

15. Although at the time of the audit the Dunbarton School District was not a member of SAU #19, the audit covered years in which the District was a member of SAU #19: approximately 2007-2014.

16. In December 2017, SAU #19 and the Goffstown School District announced that the audit was complete. The auditors had discovered that over \$9.1 million in unaccounted for and unexpended funds were in the Goffstown School District's accounts. Additionally, the auditors discovered over \$1.1 million in unaccounted for and unexpended funds were in New Boston School District's accounts.

17. These surpluses apparently resulted from a mistreatment of the yearly unexpended fund balance by the SAU #19 business administrator.

18. When the District asked SAU #19 if the auditor had looked at the Dunbarton School District's finances during the years in question, the SAU #19 business administrator informed the District that it had not.

19. As a result, the District hired its own independent auditor, Plodzick & Sanderson, P.A. to conduct a review of its records from the same period, 2007-2014.

**III. The auditors complete the audit after the annual meeting of the District and a surplus of over One Million Dollars is discovered.**

20. Prior to the annual meeting, the District convened budget and bond hearings. During those hearings, the District published information to the public in attendance, and via public records, concerning the District's finances. The District Board developed an operating budget warrant article and other warrant articles for inclusion in the 2018 Annual District Meeting Warrant based on the financial information known to it at the time.

21. However, and because the audit was still ongoing, the District was unable to plan or prepare for any potential surplus, or deficit, the audit might uncover prior to the 2018 Annual School District Meeting.

22. On March 10, 2018, the voters of the District met for the District's Annual Meeting. At that meeting, the voters were presented with a slate of warrant articles (the "Annual School District Meeting Warrant"). See Exhibit 1, Dunbarton School District 2018 Warrant. The primary operating budget approved by the voters was \$6.9 million.

23. Three months later, on June 7, 2018, the District received the completed audit report from Plodzick & Sanderson. The audit revealed that, like the Goffstown

School District and the New Boston School District, the Dunbarton School District had an unaccounted for and unexpended surplus in excess of \$1 million. This surplus had accumulated while the District was a member of SAU #19.

24. According to the results of the audit, the surplus likely occurred because the SAU #19 business administrator reported erroneous end of year undesignated fund balances for several years. Over time, these errors resulted in the carryover and accumulation of a significant undesignated fund balance.

#### IV. Legal Standard

25. RSA 197 governs school district meetings.

26. Funds may be appropriated only at annual or special meetings. RSA 32:6.

27. Upon petition of 10 or more voters, or 1/6 the voters in a district, or by a vote of the district school board, and upon a showing of emergency need, the Superior Court may grant permission to hold a special district meeting. RSA 197:3.

28. Prior to petitioning the court, the school district board must post a notice of its vote to seek court relief within 24 hours after voting to do so and at least 10 days prior to filing the petition. RSA 197:3, IV.

29. The school district must also notify the commissioner of the DRA at least 10 days prior to filing the petition that an emergency exists. RSA 197:3, II.

30. An emergency for purposes of a special meeting is defined as “a sudden or unexpected situation or occurrence...of a serious and urgent nature, that demands prompt or immediate action.” RSA 197:3, I (b).

31. An emergency does not need to be a “crisis.” *Id.* Instead, the statute directs the court to consider a number of factors, including:

- (1) The severity of the harm to be avoided.
- (2) The urgency of the petitioner's need.
- (3) Whether the claimed emergency was foreseeable or avoidable.
- (4) Whether the appropriation could have been made at the annual meeting.
- (5) Whether there are alternative remedies not requiring an appropriation.

RSA 197:3, I(c).

**V. The unexpected surplus constitutes an emergency and a special meeting should be convened so that the District's voters may decide how to handle this unexpected surplus.**

32. At the March 2018 Annual Meeting, the District raised and appropriated funds for its operations during the 2018-2019 school year.

33. Now, the District, by way of the recently completed audit, is aware that it has an undesignated fund balance of over \$1 Million dollars. These funds were unaccounted for in the budgeting process, and are currently unappropriated and unexpended.

**a. The severity of the harm to be avoided.**

34. Given the sheer size of the current undesignated fund balance, the District School Board is concerned about returning the funds directly to the taxpayers in a single tax year without giving the voters an opportunity to consider other alternatives that might be more desirable.

35. While typical undesignated fund balances have only marginal effects on the tax rate when returned to the voters in a single tax year, the surplus revealed by the audit would constitute over 21% of the District's projected amount to be raised by local school taxes in the 2018 tax year. A straight return of these all funds in one tax



year would cause Town property owner's tax bills to drop dramatically. In fact, it is estimated that if the \$1.0 Million undesignated fund balance is allowed to lapse it would cause the annual tax bill for each home valued at \$300,000 to drop by nearly \$1000.00.

36. The following tax year (FY 2020), there would be a reciprocal increase in the tax bill and a return to "normal" or historic property tax rates. However, the first half tax bills in the spring of 2019 would be artificially lower as they are based upon one-half of the decreased 2018 tax rate. The second half tax bills, also known as the notice of the tax, would increase substantially to make up for the lack of revenue collected in the first half tax billing assuming the level of school spending follows historic trends.

37. This dramatic dip and surge in tax bills could interfere with taxpayer's ability to budget, affect private mortgage insurance policies/payments, and wreak havoc with planned mortgage escrow arrangements.

38. The District, and its taxpayers, may benefit from a return of the undesignated fund balance in a manner that would reduce the tax rate in a more gradual and sustained manner. Most importantly, the taxpayers should be given the opportunity to decide the fate of these funds.

39. Therefore, there is risk of harm to the taxpayers and District.

**b. The urgency of the petitioner's need.**

40. By law unexpended funds by default lapse to offset taxes. RSA 32:7. Further, RSA 197:3, V requires that a special meeting must be conducted prior to

December 31 to have effect. Accordingly, the District must have a special district meeting if the voters are going to be given the opportunity to decide the fate of the unanticipated and undesignated fund balance.

41. Therefore, there is an urgent need to convene a special district meeting and let the voters decide.

**c. The emergency was not foreseeable or avoidable and the appropriation could not have been made at the 2018 annual meeting.**

42. As discussed above, the surplus is a result of mistakes made by the District's prior school administrative unit. Indeed, the mistakes date back to 2007-2014, when the District relied on SAU #19 to manage its financial affairs.

43. The District was only made aware of the possibility of any accounting errors in late 2017 and was unable to obtain sufficient information from SAU #19 to accurately assess the magnitude of the irregularities before the 2018 Annual District Meeting

44. Thereafter, the District ordered an audit in a timely manner and took all reasonable steps to obtain accurate information once it was made aware that a problem might exist.

45. However, the audit was not complete until June 2018.

46. Therefore, this emergency was neither foreseeable nor avoidable. Accordingly, the District was not in a position to appropriate these funds at the 2018 Annual District meeting because neither the existence or amount of the undesignated fund balance had been determined or ascertained.

**d. There are no alternative remedies available.**

47. The only other alternative is to let the unexpended fund balance lapse pursuant to RSA 32:7, returning the entire undesignated fund balance in a single tax year.

48. The District merely requests that the voters be given an opportunity to decide the fate of the undesignated fund balance for themselves.

49. The attached warrant article provides the voters with the opportunity to:

Article 1: Place some or all (through amendments on the floor to a sum certain) of the undesignated fund balance (surplus) into a trust fund pursuant to RSA 35:1-c for "...the purpose of paying for tuition expenses for Dunbarton Middle and High school students to attend grades seven through twelve under an approved tuition agreement..."; or

Article 2: Place some or all (through amendments on the floor to a sum certain) of the undesignated fund balance (surplus) "...into the existing Dunbarton School Capital Reserve Fund..."

See Exhibit 2, proposed Special District Meeting Warrant.

50. Should the District voters reject both articles, the surplus funds will, by default, be returned to offset the tax rate pursuant RSA 32:7 but the voters will have spoken.

**VI. The District has complied with RSA 197:3.**

51. On June 12, 2018, the District Board voted 4-0 to authorize the instant petition. On June 13, 2018, and as required by RSA 197:3, IV, the District posted notice

of the vote.

52. On June 18, 2018, and as required by RSA 197:3, II, the District notified the Commissioner of the DRA, via certified mail, by providing a copy of the attached articles, this petition, and an explanation of the emergency.

**PRAYER FOR RELIEF**

WHEREFORE, the Dunbarton School District respectfully requests this Court:

- A) Find that an emergency has arisen within the Dunbarton School District which may require an immediate expenditure or appropriation of money;
- B) Authorize the Dunbarton School District to hold a Special School District Meeting on September 26, 2018 for the purpose of acting upon the articles set forth in the accompanying petition, and the School District Meeting shall have the same authority as that of an annual School District Meeting; and
- C) Grant such other and further relief as justice may require.

Respectfully submitted,

Dunbarton School District

By its attorneys,

Drummond Woodsum

By:



Matthew H. Upton, NHB# 6910

Drummond Woodsum

1001 Elm St., Ste. 303

Manchester, NH 03101-1845

603-716-2895

[mupton@dwmlaw.com](mailto:mupton@dwmlaw.com)

Dated: July 9, 2018

Demetrio F. Aspiras, III, NHB# 19518  
Drummond Woodsum  
100 International Drive, Ste. 340  
Portsmouth, NH 03801  
603-433-3317  
[daspiras@dwmlaw.com](mailto:daspiras@dwmlaw.com)

**VERIFICATION**

I, DEAN CASCADEN, duly authorized SUPERINTENDENT of the Dunbarton School District, and being duly sworn, verify that the attestations set forth in the foregoing document are true to the best of my knowledge and belief.

July 9, 2018  
Date

By: [Signature]

Printed name: DEAN S.T. CASCADEN

STATE OF New Hampshire

COUNTY OF Merrimack

On this 9<sup>th</sup> day of July, 2018, personally appeared before me the above-named DEAN S.T. CASCADEN known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and who took oath that the foregoing statements are true to the best of his knowledge, recollection and belief.

[Signature]  
Notary Public/Justice of the Peace  
My Commission Expires

GAYLE THEOS, Notary Public  
My Commission Expires February 1, 2022

**CERTIFICATION**

I, Matthew Upton, counsel for the Dunbarton School District, hereby certify that on this day, the 9<sup>th</sup> of July, 2018, a copy of the foregoing petition and accompanying exhibits have been forwarded via certified mail to the Commissioner of the Department of Revenue Administration.

Date: July 9, 2018

By: Matthew H. Upton  
Matthew H. Upton

**DUNBARTON SCHOOL DISTRICT WARRANT  
2018 WARRANT  
THE STATE OF NEW HAMPSHIRE**

To the Inhabitants of the School District in the Town of Dunbarton qualified to vote in District affairs:

YOU ARE HEREBY NOTIFIED TO MEET AT THE DUNBARTON COMMUNITY CENTER AT  
DUNBARTON ELEMENTARY SCHOOL IN SAID DISTRICT ON SATURDAY, THE 10<sup>TH</sup> DAY OF MARCH,  
2018, AT ONE O'CLOCK IN THE AFTERNOON, TO ACT UPON THE FOLLOWING SUBJECTS:

**ARTICLE 1**

To see if the School District will vote to raise and appropriate the sum of Two Million Two Hundred Seventy-Three Thousand Three Hundred Ten Dollars (gross budget) (\$2,273,310) for the addition and renovations to Dunbarton Elementary School and to authorize the issuance of not more than One Million Seven Hundred Ninety-Five Thousand Dollars (\$1,795,000) of bonds or notes in accordance with the provisions of the Municipal Finance Act (RSA 33) and to authorize the municipal officials to issue and negotiate such bonds or notes and to determine the rate of interest thereon; furthermore to authorize the withdrawal of up to Four Hundred Seventy-Eight Thousand Three Hundred Ten Dollars (\$478,310) from the Dunbarton School Capital Reserve Fund established in March 1991 created for this purpose; this amount includes Twenty-Six Thousand Three Hundred Ten Dollars (\$26,310) for the first year's interest payment on said bond or note and to authorize the School Board to accept any additional federal, state or private grants for this project and take any other action necessary to carry out this vote, including the acquisition and/or conveyance of any necessary utility easements or interests in land to support the project. (2/3 Vote Required for Passage of this Warrant Article)

*Estimated Tax Rate Impact - \$0.00*

The School Board voted to recommend (5-0-0)

**ARTICLE 2**

To see if the School District will vote to raise and appropriate the sum of Two Hundred Forty Thousand Dollars (\$240,000) to be added to the existing Dunbarton School Capital Reserve Fund established in March 1991. Said amount is to come from general taxation. (Majority vote required)

*Estimated Tax Rate Impact - \$0.79*

The School Board voted to recommend (5-0-0)

**ARTICLE 3**

Shall the School District vote to adopt the provisions of RSA 32:5 V-a, to require the governing body, relative to budget items or any warrant article, to record votes and the numerical tally of any such vote to be printed next to the affected warrant article

*Estimated Tax Rate Impact - \$0.00*

The School Board voted to recommend (5-0-0)

**ARTICLE 4**

Shall the School District vote to adopt the provisions of RSA 32:5 V-b, to require that the annual budget and all special warrant articles having a tax impact, as determined by the governing body shall contain a notation stating the estimated tax impact of the article.

*Estimated Tax Rate Impact - \$0.00*

The School Board voted to recommend (5-0-0)

**ARTICLE 5**

To see if the School District will vote to raise and appropriate the sum of Six Million Nine Hundred Eighteen Thousand Ninety Three Dollars (\$6,918,093) for the support of schools, for the payment of salaries for the School District

officials and agents, and for the payment of the statutory and contractual obligations of the District or to take any other action in relation thereto. This warrant article (Operating Budget) does not include appropriations in ANY other warrant article. This warrant article includes the appropriation for food service. (Majority vote required)

*Less Estimated Revenues: \$1,345,886*  
*Estimated Tax Rate Impact - \$16.07 Local, \$2.44 SWEPT*

The School Board voted to recommend (5-0-0)

#### **ARTICLE 6**

To see if the School District will vote to raise and appropriate up to One Thousand Dollars (\$1,000) for deposit into the existing Dunbarton Community Center Capital Reserve Fund established in March 2008 and to authorize the use of that amount from the June 30, 2018 Unreserved Fund balance (surplus) available for transfer on July 1, 2018. (Majority vote required)

*Estimated Tax Rate Impact - \$0.00*

The School Board voted to recommend (5-0-0)

To transact any other business that may legally come before the meeting.



**GIVEN UNDER OUR HANDS AT SAID DUNBARTON THIS 7<sup>th</sup> DAY OF FEBRUARY, 2018:**

\_\_\_\_\_  
Deborah Trottier, Chair

\_\_\_\_\_  
Jarrett Duncan

\_\_\_\_\_  
Heather Lalla

\_\_\_\_\_  
Clement Madden

\_\_\_\_\_  
Jeffrey Trexler

**A TRUE COPY OF THE WARRANT ATTEST:**

\_\_\_\_\_  
Deborah Trottier, Chair

\_\_\_\_\_  
Jarrett Duncan

\_\_\_\_\_  
Heather Lalla

\_\_\_\_\_  
Clement Madden

\_\_\_\_\_  
Jeffrey Trexler

**DUNBARTON SCHOOL DISTRICT  
2018 SPECIAL SCHOOL DISTRICT MEETING WARRANT  
THE STATE OF NEW HAMPSHIRE**

To the Inhabitants of the School District in the Town of Dunbarton qualified to vote in District affairs:

YOU ARE HEREBY NOTIFIED TO MEET AT THE DUNBARTON COMMUNITY CENTER AT DUNBARTON ELEMENTARY SCHOOL IN SAID DISTRICT ON **SEPTEMBER 26, 2018, AT 6:00 P.M.**, TO ACT UPON THE FOLLOWING SUBJECTS:

**ARTICLE 1**

To see if the School District will vote to establish the Middle and High School Tuition Expendable Trust Fund per RSA 198:20-c, V for the purpose of paying for tuition expenses for Dunbarton Middle and High school students to attend grades seven through twelve under an approved tuition agreement and to raise and appropriate up to **\$959,803** to be placed in the fund, said amount to come from the June 30, 2018 Unreserved Fund Balance (surplus) available for transfer on July 1, 2018. (Majority vote required)

The School Board voted to recommend (INSERT VOTE).

**ARTICLE 2**

To see if the School District will vote to raise and appropriate up to **\$100,000** for deposit into the existing Dunbarton School Capital Reserve Fund established in March 1991 said amount to come from the June 30, 2018 Unreserved Fund balance (surplus) available for transfer on July 1, 2018. (Majority vote required)

The School Board voted to recommend (INSERT VOTE).

To transact any other business that may legally come before the meeting.

**GIVEN UNDER OUR HANDS AT SAID DUNBARTON THIS \_\_\_\_\_ DAY OF  
SEPTEMBER, 2018:**

\_\_\_\_\_  
Deborah Trottier, Chair

\_\_\_\_\_  
Jarrett Duncan

\_\_\_\_\_  
Heather Lalla

\_\_\_\_\_  
Clement Madden

\_\_\_\_\_  
Jeffrey Trexler

**A TRUE COPY OF THE WARRANT ATTEST:**

\_\_\_\_\_  
Deborah Trottier, Chair

\_\_\_\_\_  
Jarrett Duncan

\_\_\_\_\_  
Heather Lalla

\_\_\_\_\_  
Clement Madden

\_\_\_\_\_  
Jeffrey Trexler