

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In re: Dunbarton School District

Docket No. 217-2018 CV 379

Via in-Hand Delivery

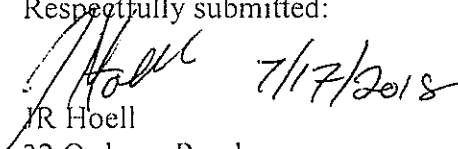
Tracy Uhrin, Clerk
Merrimack County Superior Court
163 N. Main Street
Concord, NH 03301

Dear Clerk Uhrin:

Enclosed is supplemental information that is time sensitive to the Dunbarton District request for a special meeting. Judge McNamara is planning on delivering a written opinion regarding this petition, and it is urgent that these additional documents and affidavits be delivered to his Honor prior to the decision.

I would ask that you ensure that this additional information is delivered today on the behalf of the citizens of Dunbarton.

Respectfully submitted:

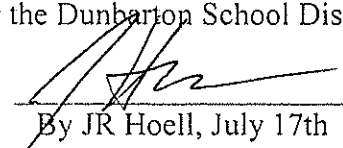
 7/17/2018
JR Hoell
32 Ordway Road,
Dunbarton, NH 03046

Encl.

Affidavit from Daniel Troy
Affidavit from Cynthia Kalina-Kaminsky
Supplemental information regarding HB502, 1997

CERTIFICATION

I, JR Hoell, Resident of Dunbarton, hereby certify that on this day, the 17th of July, I have hand delivered this document and supporting exhibits to the the offices of Drummond Woodsum, Attorney's for the Dunbarton School District.


By JR Hoell, July 17th

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In re: Dunbarton School District

Docket No. 217-2018 CV 379

**SUPPLEMENTAL INFORMATION FOR THE COURT IN OPPOSITION TO THE
PETITION FOR A SPECIAL DISTRICT MEETING**

Additional information and copies of affidavits from citizens who attended the hearing today with personal knowledge evidencing the town of Dunbarton's prior notice pertaining to these funds

As a follow up to the hearing regarding this petition, I would like to submit the following three reference documents that were not brought up during the hearing and two affidavits that are from Dunbarton citizens who attended the evidentiary hearing but did not bring their personal knowledge of these events to my attention until **after** the hearing.

Both of the affidavits speak to the Dunbarton/District officers knowing about a large sum of money being available nullifying the argument of unforeseen or avoidable, and noting the desire of the citizens to have the funds returned via the statutory process of reducing the property taxes in December of this year during the information session held on the 12th OF June 2018.

In reference to other documents that are pertinent to this matter at hand: In 1997, the Legislature took up this issue of what considered an emergency, as a follow-up to the Mascoma case, House Bill HB502. I have attached copies of some of the committee hearing testimony in support of HB502,¹

During this committee hearing testimony on HB502 on April 23rd, 1997, Mr. Don Sission, of Epping noted that after the Mascoma decision, that

“two other cases involving the Town of Exeter and the Merrimack School District were ALLOWED² by the Superior Courts and were appealed to the New Hampshire Supreme Court. The high court stood by their June order and remanded those two cases back to those towns, both towns backed off from their requests.

I attended that NH Supreme Court hearing and listened to the Justice plead with both the two attorneys to clearly DEFINE ANY JUSTIFIABLE EMERGENCY³

¹ (House bill to codify the Supreme Court recommendations resulting from the Mascoma Valley Regional School District decision 141 N.H. 98 (1996).

² Emphasis in the original testimony.

³ Emphasis in the original testimony.

that would qualify for a special meeting. Neither attorney could supply a valid emergency.”

On the same day, HB502 co-sponsor Rep. Gordon Bartlett, Belknap 6, speaking about a series of events in his town noted in his written testimony:

“It was just a question that because if one side didn't win they felt that they should go in and declare an emergency; and they were issued that emergency.

It isn't my feeling that every time somebody loses something that can they can just run back to the courts and request an emergency meeting to try and push it through again..”

Lastly, Rep. M. Virginia Burke had this to say in her written testimony on February 25th, 1997 before the New Hampshire House hearing as justification for the change in the statute. “As we know, special town meetings have been held in the past when there was no need to do so. The co-sponsors of this bill represent communities which have had such meetings. These meetings are costly, poorly attended and often have been used to push something through that would not have survived the scrutiny of the annual town, village or⁴ school district meeting.”

Duncan⁵ requires that a taxpayer must show that some right of theirs has been prejudiced or impaired in order to have standing to bring a declaratory judgment challenging governmental action. This objection pursuant to RSA 197:3 is distinguishable from Duncan in that I am alleging that the governmental pro-active request to this Court is a different than a taxpayer challenging an appropriation or expenditure. I believe that we are not even at that point, as before we can get there, Dunbarton must meet the statutory criterion in order for this Court to grant their Petition.

Additionally, although I have found no record of the minutes from the information session called in Dunbarton on June 12th, 2018, I have included the Concord Monitor news article from the following day that documents that the Dunbarton town citizens voted to return the funds as opposed to holding a special town meeting. “Voters certainly weren't short on opinions of the subject; a straw poll toward the end of the meeting showed a majority of the 50 [fifty] or so attendees would prefer the one-time tax relief.”⁶ Dunbarton’s current population is estimated to be 2,758 in 2010.⁷

Lastly, the New Hampshire Municipal Association sent out a bulletin in January regarding town meetings and included the subject of special town meetings noting that an emergency demands a “Prompt or immediate action, including an immediate expenditure of money” and then gives examples that would be considered an emergency. These examples are more urgent and important than transferring money to a reserve account. The examples include: “This might, for instance, include the failure of an article for the operation of a transfer station or solid waste compact (leading to a health and safety emergency), or the deletion of an appropriation for a statutorily-required function, such as the

⁴ Error in the original text.

⁵ Bill Duncan & a v. The State of New Hampshire & a, Strafford, NO. 2013-455 (Decided August 28, 2014) 166 N.H. 630.


⁶ Dunbarton wants voters to decide what to do with extra \$1M, Caitlin Andrews, Wednesday June 13th, 2018, Concord Monitor.

⁷ <http://www.city-data.com/city/Dunbarton-New-Hampshire.html>

town clerk's or tax collector's operations.”⁸

In light of this additional testimony and documents, I again ask that the court find that no emergency exists that the petitioners have not met the statutory requirements for a special meeting.

Respectfully submitted:


JR Hoell
32 Ordway Road
Dunbarton, NH 03046

CERTIFICATION

I, JR Hoell, Resident of Dunbarton, hereby certify that on this day, the 17th of July, I have hand delivered this document and supporting exhibits to the offices of Drummond Woodsum, Attorneys for the Dunbarton School District.



By JR Hoell, July 17th

⁸ *NHMA January/February 2018, Original article, written by C. Christine Fillmore, first appeared in the March 2011 issue of New Hampshire Town and City. This article has been revised and updated by Margaret M.L. Byrnes, Staff Attorney with the New Hampshire Municipal Association. She may be contacted at 603.224.7447 or at legalinquiries@nhmunicipal.org.*

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In re: Dunbarton School District

Docket No. 217-2018 CV 379

AFFIDAVIT REGARDING THE ANNUAL TOWN MEETING
IN OPPOSITION TO THE
PETITION FOR A SPECIAL DISTRICT MEETING


INTEREST IN THIS LITIGATION

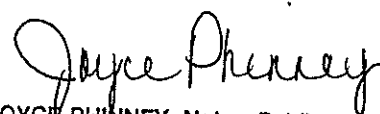
As a longtime resident of the town of Dunbarton, and the sound-man at the 2018 Annual School district meeting, I attest to the following having taken place.

After the fiscal articles were approved and prior to the adjournment of the School Board meeting, members of the school board announced that they were aware of the an excess of over \$600,000.00 and that they were awaiting the finalized results from the accounting audit to inform the town of the final amount.

Traditionally, Dunbarton has modified warrant articles at the town meeting and the overage could have been addressed at Annual School meeting.

Respectfully submitted:


Daniel Troy
58 Winslow road
Dunbarton NH 03046
Resident since 1986


JOYCE PHINNEY, Notary Public
Commission Expires February 10, 2021

CERTIFICATION

I, JR Hoell, Resident of Dunbarton, hereby certify that on this day, the 17th of July, I have hand delivered this document and supporting exhibits to the the offices of Drummond Woodsum, Attorney's for the Dunbarton School District.

STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

In re: Dunbarton School District

Docket No. 217-2018-CV 379

AFFIDAVIT REGARDING THE ANNUAL TOWN MEETING OF MARCH 10, 2018 AND
TOWN INFORMATION MEETING OF JUNE 12, 2018

INTEREST IN THIS LITIGATION

My name is Cynthia Kalina-Kaminsky. My husband has been a resident since 2012. I have been a full time resident of the Town of Dunbarton since February 2015. During that time, I have been a Dunbarton taxpayer and have consistently attended school board meetings. I was present and spoke at both the March 10, 2018 June 12, 2018 meetings noted in this affidavit.

RECITAL

On March 10, 2018 a town meeting was held. Approximately \$250,000 U.S.D. was voted to be raised through taxes and placed in a "general" fund (my quotes since I do not remember the exact wording, but it was not dedicated to a specific item). Approximately \$1.7MM U.S.D. was approved by voters to be taken out in bond funds for completion of upgrades/updates to the town school.

The meeting was well attended. Attendance, by sight, was approximate to the annual school board meetings.

No statement was made concerning at least \$600,000 of money the school board knew was due to Dunbarton from Geoffstown due to accounting discrepancies by any school board member, legal advisor, financial advisor, or the moderator during the presentation, discussion, or voting on any of the monetary/financial/warrant items voted on during the meeting. Due to a previous time commitment, I had to leave the meeting prior to its conclusion.

During the June 12, 2018 meeting and under question by a citizen wanting to know why the refund was withheld from general assembly knowledge during the voting on monetary/financial/warrant items, the school board acknowledged that they had withheld discussion of the fund, they did know that an amount was to be paid to Dunbarton. It was stated by school board spokesman Mr. Jeff Trexler that since the school board did not know exactly how much would be refunded, they did not broach the subject until the end of the March 10, 2108 meeting. The citizen made a comment that if it had been known, he and other citizens would have taken the amount to be refunded into account during the warrant on the bond issue.

It was also stated during the June 12, 2018 meeting and confirmed by school board spokesman Mr. Jeff Trexler that the same amount of money would be collected over time, just spread out over the next year if the money was held in a 5-year bond.

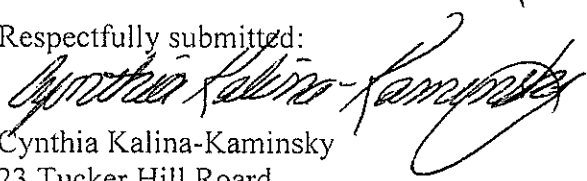
I asked the school board what the cost was to the school district to hold a special meeting. I was told approximately \$6000. I do not know if this included attorney time.

During the same June 12, 2108 meeting, a citizen requested that a straw poll be taken to show those in favor of allowing the approximately \$1.06 MM U.S.D. to either 1) remain in the general fund as unspent monies, not require a special meeting, and reducing future tax payment(s) or to 2) hold a special school meeting to vote for one of the other allowable items presented (see Exhibit titled "What We Can Do?"). The moderator counted the votes and stated a majority voted to allow the funds to sit untouched in the general fund as unspent money, not hold a special meeting, and to then use the funds to reduce future tax payment(s).

Shortly after the vote was taken and the majority chose to have the funds put into the general fund as unspent money, school board spokesperson Mr. Jeff Trexler stated that the school board could not use the voters' decision, that the school board did not feel comfortable dictating how the money should be dealt with, and that there was a way to place the money into a fund to be used for the school bond payments, which I had understood from Mr. Trexler's previous statements during the presentation to be impossible.


When the school board spokesperson Mr. Trexler made it known to the assembly that a special meeting would be held despite the vote, I formally asked if, since this was tax money already collected, if absentee ballots would be made available to all those who worked during the unknown date and time of the future meeting as well as to those who are invalidated, cannot get to a special meeting due to transportation or other problems, and those whose business/job activity require them to miss the meeting, but pay taxes. The school board spokesman Mr. Trexler made it known to the assembly that the school board under state law did not have to do any of the above. No provisions had to be made to assure that all Dunbarton citizens would be able to vote on the refunded \$1.06 MM U.S.D.

Respectfully submitted:

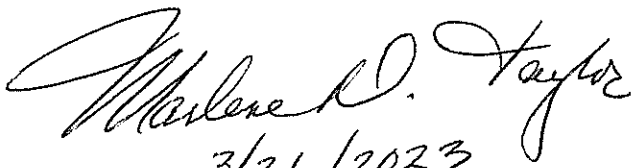

Cynthia Kalina-Kaminsky
23 Tucker Hill Road
Dunbarton, NH 03046
Resident

CERTIFICATION

I, JR Hoell, Resident of Dunbarton. Hereby certify that on this day, the 17th of July, I have hand delivered this document and supporting exhibits to the offices of Drummond Woodsum, Attorney's for the Dunbarton School District.


JR Hoell July 17th 2018

Cynthia Kalina-Kaminsky AND JOSEPH HOELL, JR.
Signed and appeared before me on
July 17, 2018 in Merrimac County, N.H


3/21/2023

1997 SESSION

97-0650
08/02

HOUSE BILL

502-LOCAL

AN ACT placing limitations on warrant articles at special meetings.

SPONSORS: Rep. Burke, Hills 15; Rep. Bartlett, Belk 6; Rep. Dodge, Rock 4; Rep. Kobel, Rock 6; Rep. McGough, Hills 18; Sen. Rubens, Dist 5; Sen. Roberge, Dist 9; Sen. D. Wheeler, Dist 11; Sen. Francoeur, Dist 14; Sen. Johnson, Dist 3

COMMITTEE: Municipal and County Government

ANALYSIS

This bill defines the term "emergency," for the purposes of special town and school district meetings, as a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money.

The bill also prohibits the subject matter of a warrant article which has been addressed at a special town, district, or school district meeting from being put before the legislative body again until the next annual meeting.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

April 23, 1997

To: Members of the Senate Public Affairs Committee
Subject: Testimony favoring HB 502

As you all know, the NH Supreme Court handed down their decision in the MASCOMA VALLEY REGIONAL SCHOOL DISTRICT CASE stating that their interpretation of EMERGENCY did not allow them approving an emergency meeting request from that school district.

After that important decision it became obvious that the routine requests from school districts and towns for special meetings, would be opposed in the Superior Courts.

I personally became involved in my town when the Epping School District petitioned the Rockingham Superior Court in August of 1996. Having over-spent their approved operating budget for two straight years, they had NOT requested deficit appropriations at their ANNUAL DISTRICT MEETING in March.

They were asking for the emergency meeting to appropriate \$198,000 to cover two years of deficit spending, including the current school year.

I went to the court hearing and strongly opposed the request for that special meeting. The court DENIED the school district request based on my testimony and no meeting was approved.

The court's ruling followed the Supreme Courts decision of June 3rd, 1996 as NO EVIDENCE was presented that an actual EMERGENCY existed.

Later in 1996, two other cases involving the Town of Exeter and the Merrimack School District were ALLOWED by the Superior Courts and were appealed to the NH Supreme Court.

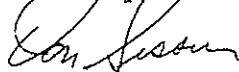
Again the high court stood by their June order and remanded those two cases back to those towns, ordering evidentiary hearings be held. As no evidence existed, both towns backed off from their requests.

I attended that NH Supreme Court hearing and listened to the justices plead with both the two attorneys to clearly DEFINE ANY JUSTIFIABLE EMERGENCY that would qualify for a special meeting. Neither attorney could supply a valid emergency.

The courts need your committee's actions in defining the word "EMERGENCY." House Bill 502 will clearly define this important issue. This bill is much needed legislation.

Please vote this bill "ought to pass" as did the House Municipal and County Government Committee.

Thank you!



Don Sisson

P.O. Box 438
Epping, NH 03042

emergency meeting and we should stick to it. I think, that meaning no offense to the courts, but I think that in some cases they've gotten somewhat lenient in what their feeling is towards what actually constitutes an emergency. And for that reason I strongly support this bill.

Senator Sheila Roberge, D. 9: Do you support it in exactly the same form it came to us; or do I understand you've got an amendment someplace?

Representative Bartlett: There was an amendment that was put on this thing that has been taken off and that amendment more directly affects some of the others that are here to speak on that. And I know what it is and I have no objection to supporting the amendment. But I would let them explain the amendment to you and what it is they want to add to the bill.

Senator Caroline McCarley, D. 6: Can you tell me how this came out of committee?

Representative Bartlett: Frankly, I don't know how it came out. I'm not on that particular committee but it came out pretty strong I know.

Representative Robert Brundige: Representing Hillsborough 18 which is the town of Merrimack.

I kind of got confused a minute ago when the representative said that the amendment was withdrawn. Not to my knowledge. You should have a copy...the copy you have is as amended by the House; so the amendment stands.

What we amended...I wrote the blurb on this particular bill and what the committee felt was if you look...the original bill called for...(3(d))..."*no petition for approval of a special meeting to vote on a collective bargaining agreement or to vote on a bond issue shall be considered an emergency requiring an immediate expenditure of money.*" And (e)..."*Once a warrant article has been voted on by the legislative body at a special meeting and the meeting has been adjourned, the subject matter of the warrant article shall not be put before the legislative body again until the next annual school district meeting.*" We removed both of those because the feeling was if the definition of emergency covers everything there, in order to come back with a collective bargaining agreement and in order to come back with a warrant article that's already been defeated, they have to meet the criteria for an emergency; and we felt that (d) and (e) are redundant because in order to get back to have a special meeting, they have to meet the criteria to specify.

Testimony of Representative M. Virginia Burke on February 25, 1997, before the Municipal and County Government Committee.

HB 502 - Placing limitations on warrant articles at special town meetings.

Thank you, madam chairman, and members of the committee. This bill defines the term emergency for the purposes of special town, village or school district meetings. The analysis of this bill says it all.

Emergency is defined as a sudden or unexpected situation or occurrence, or a combination of occurrences of a serious, urgent nature that requires prompt, immediate action, including an immediate expenditure of money.

This bill also prohibits the subject matter of a warrant article which has been addressed at a special town, district or school district meeting from being put before the legislative body again until the next annual meeting.

HB 502 codifies previous decisions of the New Hampshire Supreme Court and it specifically states two situations that are not deemed emergencies. They are collective bargaining agreements and bond issues. Neither situation must be acted upon immediately.

As we know, special town meetings have been held in the past when there was no need to do so. The co-sponsors of this bill represent communities which have had such meetings. These meetings are costly, poorly attended and often have been used to push something through that would not have survived the scrutiny of the annual town, village or school district meeting.

Last year in my town, we had a special school district meeting to vote on a collective bargaining agreement with our newly formed custodial and maintenance employees' union. Co-incidentally, or not so co-incidentally, agreement could not be reached until right after the town meeting. We certainly did not have a huge crowd at our annual meeting that year but the turnout for the special meeting was pitiful. This special meeting should not have been held. Agreement would more than likely have been reached prior to our annual school district meeting if the parties involved knew they would have to wait for another year before the vote would occur.

Several co-sponsors of HB 502 will speak to you about the unnecessary meetings held in their towns. Unfortunately the Senate is in recess and four of the five Senate sponsors will probably not be with us due to travel, family and work

commitments. They, too, have stories to tell of unnecessary meetings within their districts. I suspect you, members of the committee, could cite some in your home districts as well.

In summation, this bill is putting into law what has been previously decided by our N.H. Supreme Court. By providing these specific guidelines or criteria, it will benefit everyone and keep frivolous special meeting requests from burdening our judicial system.

Thank you, madam chairman, and members of the committee. I would be happy to answer any questions you may have.

XXVI

<u>Date</u>	<u>Docket Number</u>	<u>Name of Case</u>	<u>Origin</u>	<u>Judge</u>	<u>Order</u>
12/3	95-264	<i>Theresa N. Schneider v. New England Clinical Laboratories, Inc.</i>	Belknap	O'Neill	Withdrawn
12/5	96-642	<i>In re Town of Exeter</i>	Rockingham	Murphy	Vacated and remanded
12/5	96-714	<i>In re Merrimack School District</i>	Hillsborough South	Hollman	Vacated and remanded
12/6	95-222	<i>State of NH v. David Gonsalves</i>	Merrimack Concord DC	McGuire Sullivan	Affirmed
12/9	95-600	<i>State of NH v. Faith Yanez-Lemire</i>	Sullivan	Morrill	Affirmed
12/10	95-666	<i>State of NH (Shannon Pratt) v. Kevin Small</i>	Belknap Laconia DC	McHugh Martin	Affirmed
12/10	95-773	<i>State of NH v. Robert V. O'Brien</i>	Merrimack	Smukler	Affirmed
12/10	96-479	<i>Michael M. Mills, Jr. v. First Class Limousine, Inc. & a.</i>	Hillsborough South	Hampsey	Waived
12/12	95-249	<i>State of NH v. Matthew Abraham</i>	Newport DC	Iacopino	Vacated and remanded
12/18	93-828	<i>State of NH v. Joel Frost</i>	Strafford	Dickson	Affirmed
12/19	95-754	<i>State of NH v. Toby Sanville</i>	Grafton	Fitzgerald Morrill	Affirmed
12/19	96-078	<i>State of NH v. Christopher Michal</i>	Grafton	Sullivan O'Neill	Affirmed
12/20	95-457 95-833	<i>State of NH v. Glen Berthel</i>	Coos	Smith	Affirmed

XXVII

<u>Date</u>	<u>Docket Number</u>	<u>Name of Case</u>	<u>Origin</u>	<u>Judge</u>	<u>Order</u>
12/20	95-642	<i>Appeal of Max Lager, R.Ph.</i>	Board of Pharmacy		Affirmed
12/20	95-704	<i>Petition of Bryan Marshall</i>	Police Standards and Training Council		Affirmed
12/20	95-722	<i>State of NH v. Joseph Couture</i>	Dover DC	Morrison	Affirmed
12/20	96-211	<i>Peggy McAlpine v. Richard Duford, Jr.</i>	Plymouth DC	Korbey	Affirmed
1/13	95-317	<i>Roger Jacobson v. Sonia Kehney</i>	Hillsborough South	Smukler	Affirmed
1/13	95-455	<i>John Gekas v. Dorson Fleisher, Inc. & a.</i>	Hillsborough North	Dalianis	Reversed; vacated; and remanded
1/13	95-716	<i>Suzette M. Smith v. Randy C. Smith</i>	Hillsborough North	Sullivan	Affirmed
1/13	95-749	<i>Petition of Malcolm F.</i>	Franklin DC	Townley-Tilson	Affirmed
1/14	95-765	<i>A.B.C. Builders, Inc. v. American Mutual Insurance Company</i>	Hillsborough North	Conboy	Affirmed
1/14	95-826	<i>State of NH v. Michael Defosses</i>	Carroll	Abramson	Affirmed
1/14	96-108	<i>Office of Ombudsman & a. v. Jordyce Collier</i>	Merrimack	McGuire	Affirmed
1/14	96-223	<i>State of NH v. David J. Prevost</i>	Cheshire	Brennan	Affirmed
		<i>Petition of Paul Versho</i>	Rockingham	McHugh	Denied

THE NEW HAMPSHIRE REPORTS

MAY 9, 1996—MAY 8, 1997

HOWARD J. ZIBEL
REPORTER

VOLUME CXXI

MICHE
Charlottesville, VA 22906-7587

News > Local (/News/Local/)

Dunbarton wants voters to decide what to do with extra \$1M

By CAITLIN ANDREWS
Monitor staff

Wednesday, June 13, 2018

The Dunbarton school board wants taxpayers to decide what do with an extra million dollars in the budget.

A recent audit found \$1.06 million left over in Dunbarton's undesignated fund balance due to reporting errors made while the district was part of the School Administrative Unit 19, which includes New Boston and Goffstown.

There are two ways the district could use that money – put it in a reserve fund that could be used to pay for things like school improvements and tuitioning high school students to Bow over time, or use it take a one-time bite out of the tax rate.

After Tuesday night's two-hour "million-dollar" informational meeting, the board decided to ask Merrimack County Superior Court for permission to hold a special town meeting dedicated to deciding how the excess money should be spent.

"The school board is nervous about making this decision for the town," school board member Jeff Trexler said prior to the vote, which occurred after the information meeting. "We'd rather let voters decide."

Voters certainly weren't short on opinions on the subject; a straw poll toward the end of the meeting showed a majority of the 50 or so attendees would prefer the one-time tax relief.

Some said it was the only way to make sure those who had been overtaxed got their due.

“To be fair, a lot of people who paid money in, five years from now, a lot of people won’t be here,” said Dana Mullen. “You can’t track down everyone who overpaid every time and won’t reap the benefits.”

Others asked why the town couldn’t simply write a check to taxpayers. Even after Trexler explained, saying there was no law in place that gives municipalities the authority to “rebate” overpaid taxes, some remained unconvinced.

“If there’s an RSA preventing money from coming back to us, fine,” said Dan Meekes. “But if there’s no mechanism in place ... how is it that we pay attention to something that doesn’t have a state law?”

If it wanted to, the school district can’t just send out checks, unless the Legislature gives towns that kind of authority, said Dunbarton state Rep. J.R. Hoell. Theoretically, someone could push for a law change, but even if such a bill flew through the Legislature, it wouldn’t take effect until next year.

“I don’t know if we want to wait that long,” Hoell said.

Similarly, the district is not allowed to use the money to “pre-pay” on bonded projects like the \$2.2 million Dunbarton Elementary School facilities project or to create a reserve to pay for future bond payments, Trexler said.

Should the money lapse this year, taxpayers would see a sincere decrease in their December 2018 tax bill – about \$1,000 for a home with an assessed property value of \$300,000, according to Dunbarton school board documents.

But SAU 67 Finance Director Duane Ford cautioned that the one-time payment would be exactly that – one-time – and the tax rate would return to similar levels by next June. If the town decided to spread the money out, it would impact the tax rate at a more gradual level – keeping the tax rate flat for roughly three years.

The money also doesn’t have to be spent in the school district, Trexler said – it could also be transferred to the town’s side.

“There’s no wrong answer here,” he said. “It’s all going to come back eventually and benefit the town.”

SAU 19 first reported in December that it had made errors in how it reported its end-of-year fund balances for several years dating back to 2007, when Dunbarton was still part of the district.

The report led to the discovery of \$9.1 million retained in Goffstown's fund balance and \$1.1 million in New Boston's fund balance. The district's business administrator, Raymond Labore, resigned after the review, according to an SAU 19 press release.

Both New Boston and Goffstown decided to let their excess money lapse directly into their undesignated fund balance, Ford said.

Dunbarton's \$1 million in excess money was discovered through an independent audit conducted by Plodzick and Sanderson, according to Dunbarton school officials. Dunbarton's records were not included in the SAU 19 review.

Should the board's petition be granted, SAU 67 Superintendent Dean Cascadden said a public hearing on the issue will take place sometime in late August with a special town meeting in September.

That meeting would have to take place before the district sends its final financial reviews to the Department of Revenue Services, which are due in September before the tax rate is set in October. Dunbarton can request an extension on sending that information.

(Caitlin Andrews can be reached at 369-3309, candrews@cmonitor.com or on Twitter at @ActualCAndrews.)

NEW HAMPSHIRE MUNICIPAL ASSOCIATION (/)

New Hampshire Town And City

Town Meeting: It's Not Over Until It's Over

New Hampshire Town and City, January/February, 2018

By Margaret M.L. Byrnes

Despite the best preparation, things may go wrong at a town meeting. Notices were not posted in time, hearings were not held properly, critical articles necessary for the operation of municipal business did not pass. What to do now? Helpfully, there are a few options built into town meeting laws to address just this sort of situation.

Official Ballot Referendum (SB 2) Special Budget Meeting

If the operating budget fails in an official ballot referendum (SB 2) municipality, the governing body has two options. One is to do nothing and allow the default budget to take effect as the new operating budget. The other is for the governing body to call a special meeting to consider a revised operating budget. RSA 40:13, X. This meeting does not require superior court permission but may not be used to address any issue other than a failed operating budget.

Collective Bargaining Agreement Special Meeting

If the voters do not approve the cost items in a collective bargaining agreement, the governing body may call one special meeting to try again without obtaining superior court permission. In order to do this, however, the governing body must be sure to include the following language on the original article: "Shall (the municipality), if article ___ is defeated, authorize the governing body to call one special meeting, at its option, to address article ___ cost items only?" RSA 31:5, III. If a special meeting is being held on both an SB 2 revised operating budget and a collective bargaining agreement, those meetings must be combined.

Time

If the mistake involved a procedural error, time may actually solve the problem. Under RSA 31:126 - :131, once five years have passed from the time of the vote, all forms of municipal legislation (ordinances and other articles passed by town meeting) are presumed to be "procedurally valid." In other words, no challenge may be raised after that time based on an error in the procedure followed to pass it, although it may still be challenged for other reasons, such as its constitutionality.

Procedural Defect Meetings

Of course, five years can be a long time to wait. RSA 31:5-b was enacted to allow towns to correct minor defects in town meeting procedure without having to seek court permission or special legislative validation. (RSA 40:16 clarifies that SB 2 municipalities may also use this option for legalizing procedural errors.) Under this statute, towns may call a special

meeting without court permission to ratify the action that was taken by the original meeting. This tool may only be used to correct "minor procedural irregularities," including the failure to comply with statutory requirements for time or place of notice, vote, hearing or wording, or with any procedural act not contrary to the spirit or intent of the law. So, for example, if the public hearing on zoning amendments was held a day or two late, or if the budget and warrant were posted a day or two late, the selectmen could call a special town meeting for the purpose of ratifying those items.

Special Town Meeting with Court Permission

If the error involved an appropriation of money and was anything other than a minor procedural defect, the governing body will have to obtain superior court permission to hold a special meeting to address it. Under RSA 31:5, a special town meeting to appropriate money may only be held in two circumstances. Either 50 percent of all voters on the checklist must attend the special meeting (which is not likely to occur), or the superior court must grant permission for the meeting in advance. The court cannot grant this permission unless it finds that an "emergency" exists. An "emergency" is "a sudden or unexpected situation or occurrence ... of a serious and urgent nature, that demands prompt or immediate action, including an immediate expenditure of money." This might, for instance, include the failure of an article for the operation of a transfer station or solid waste compact (leading to a health and safety emergency), or the deletion of an appropriation for a statutorily-required function, such as the town clerk's or tax collector's operations.

Original article, written by C. Christine Fillmore, first appeared in the March 2011 issue of New Hampshire Town and City. This article has been revised and updated by Margaret M.L. Byrnes, Staff Attorney with the New Hampshire Municipal Association. She may be contacted at 603.224.7447 or at legalinquiries@nhmunicipal.org (<mailto:legalinquiries@nhmunicipal.org>).

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New Hampshire Municipal Association

25 Triangle Park Dr.

Concord, NH 03302

603.224.7447

nhmainfo@nhmunicipal.org (mailto:nhmainfo@nhmunicipal.org)

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