

STATE OF NEW HAMPSHIRE
GRAFTON COUNTY SUPERIOR COURT

Docket No. 215-2022-CV-00167

Steven RAND et al.

v.

STATE OF NEW HAMPSHIRE

INTERVENOR'S CONSOLIDATED STATEMENT OF MATERIAL FACTS

In accordance with Superior Court Rule 12(g)(3)(b) and (c), the Intervenor presents the following Consolidated Statement of Facts:

RESPONSES TO PLAINTIFF'S STATEMENT OF MATERIAL FACTS

1. In New Hampshire, the property tax year is determined by statute and runs from April 1 through March 31. RSA 76:2.

Response: Agreed.

2. All property taxes are assessed based on the inventory taken in April of the property tax year. RSA 76:2.

Response: Agreed.

3. Property taxes may be collected on a semi-annual or a quarterly basis. RSA 76:15-a, RSA 76:15-aa.

Response: Agreed.

4. In towns and cities where taxes are collected semi-annually, the first property tax payment is due by July 1. Tax bills for this payment are mailed out in late May or early June. This initial payment is computed by taking the previous year's assessed valuation and multiplying it by one-half of the previous year's tax rate. RSA 76:15-a.

Response: Agreed.

5. By November, the Department of Revenue Administration (the “DRA”) receives data from various state agencies, towns, cities, and school districts that is used to set local tax rates for the current fiscal year. RSA 21-J:35.

Response: Agreed.

6. This data includes estimated appropriations certified or voted upon by municipalities, in the prior winter or spring, and the Department of Education’s estimate of the state aid to be disbursed to each school district to cover the cost of an adequate education pursuant to RSA 198:40-a. RSA 21-J:34, RSA 21-J:35.

Response: Agreed.

7. RSA 76:8 determines how the Statewide Education Property Tax (“SWEPT”) is calculated and raised. First, the DRA Commissioner calculates a municipality’s tax base for SWEPT. Then, the equalized tax rate set under RSA 76:3 is multiplied by that tax base to determine the total amount of revenue generated by the SWEPT in that municipality.¹ RSA 76:8, I(a), (b).

Response: Agreed.

8. By statute, the Commissioner is directed to set the SWEPT rates by December 15 of each year. RSA 76:8.

Response: Agreed.

9. In practice, the DRA Commissioner sets the SWEPT rates and begins issuing warrants starting in late September through November, with towns collecting the SWEPT tax in December.

Response: Disputed. For the past five years, DRA set the rates for towns in October through December, and in two instances after December. See Kneur Aff. ¶9 (attached to State Obj. to Prelim. Inj.).

10. Payments made in December comprise the second tax payment of the current property tax year. While the first tax payment, made during the summer, is based on the prior year’s tax rate, the second tax payment reflects the actual tax rates set by the DRA for the current year. RSA 76:15-a.

Response: Agreed.

11. The SWEPT is collected and distributed locally by each municipality to fund the State’s cost of funding an adequate education. RSA 76:8.

Response: Agreed, with the caveat that the State has other sources of funding. See RSA 6:12, I(b)(65) (describing various sources of revenue for Education Trust Fund)

12. Although assessed, collected, and distributed locally, the SWEPT is a state tax.

Response: Agreed.

13. From 2005 to 2021, the New Hampshire Legislature (the “Legislature”) set the total to be raised by the SWEPT at \$363 million annually. RSA 76:3.

Response: Agreed.

14. This amount is not adjusted for inflation. *See* RSA 76:3.

Response: Agreed.

15. For the 2022-2023 state fiscal year only, the Legislature lowered the amount of the money to be collected by the SWEPT from \$363 million to \$263 million.

Response: Agreed.

16. That amount is expected to revert back to \$363 million for the 2023-2024 fiscal year.

Response: Agreed.

17. The State factors in revenue generated by the SWEPT in each municipality when calculating total education grants under RSA 198:41. In municipalities where the amount of SWEPT generated cannot cover the full cost of an adequate education, the State provides supplemental funding. This supplemental funding comes from the State’s Education Trust Fund. *See* RSA 198:40-a, RSA 198:41, RSA 198:42.

Response: Agreed.

18. In some municipalities, the revenues raised by the SWEPT exceed the total cost of providing a constitutionally adequate education in that community, as calculated by the State.

Response: Agreed.

19. In the past, the State has required these municipalities to remit the excess revenue generated to the State’s Education Trust Fund.

Response: Agreed.

20. However, since 2011, communities have been permitted to retain the excess amounts raised by the SWEPT when the amount raised by the SWEPT exceeds the total cost of adequacy. The communities permitted to retain excess SWEPT revenues for tax year 2021 are listed in Table 1, appended to the affidavit of Mr. Douglas Hall attached hereto as Exhibit A.

Response: Agreed.

21. When the DRA sets the local education tax rates in these communities, the DRA permits communities that retain excess funds to characterize these excess funds as proper sources of revenue. RSA 21-J:35.

Response: Disputed. The statute cited does not permit any entity to characterize any funds as “proper sources of revenue.”

22. The DRA also sets negative local education tax rates in a small number of communities to offset SWEPT revenues. The communities the DRA instructed to levy negative local education taxes, and the SWEPT tax rates for those communities, for tax year 2021 are listed in Table 3 to Exhibit A.

Response: Agreed, with the caveat that there is no factual support that DRA sets negative local rates in order to “offset SWEPT revenues.”

23. Plaintiffs reside in, or own commercial property in, communities that do not generate excess SWEPT or issue negative local education tax rates.

Response: Agreed.

24. Plaintiffs pay the full SWEPT tax rate set by the DRA. Taxpayers who own property in communities permitted to keep excess SWEPT revenues, or those with negative tax rates, do not pay the full SWEPT rate as set by the DRA. This is because the negative tax rates and the retention of excess funds serve as offsets to the full SWEPT rate. As a result, the SWEPT tax rate, as administered by the DRA, is not uniform throughout the state.

Response: Disputed. All taxpayers pay the same SWEPT rate. See Exhibits 7 -8 to Turner Aff., appended to Intervenor Obj. and Cross Motion for Summ. J.; see also Hall Aff. Table 1.

INTERVENOR’S ADDITIONAL STATEMENT OF MATERIAL FACTS

- A1. N.H. Laws 2011 ch. 258 repealed the portions of prior law that required municipalities that generated SWEPT surpluses to remit the surplus to the State. See N.H. Laws 2011 ch. 258:6-9.
- A2. N.H. Laws 2011 ch. 258 also instituted stabilization grants and capped the education grants for FY2013 to 105.5 percent of grants received in the previous year. See N.H. Laws 2011 ch. 258, Amended Analysis.
- A3. N.H. Laws 2011 ch. 258 did not raise any revenue. See HB337 Fiscal Note, Exhs. 3 and 4 to Turner Aff.

- A4. The projected fiscal impact of HB337 was to decrease education expenditures by approximately \$95 million over the biennium. See Exh. 4 to Turner Aff., at 11.
- A5. The only change made by N.H. Laws 2011 ch. 258 to the SWEPT was to repeal the requirement that surpluses be remitted to the State.
- A6. N.H. Laws 2011 ch. 258 did not change the SWEPT tax rate.
- A6. The SWEPT rate was \$1.825 per \$1,000 applied to all eligible taxpayers for the tax year starting April 2021. See 2021 Education Tax Warrant Summary, Exhibit 7 to Turner Aff.
- A7. The SWEPT rate was \$1.23 per \$1,000 applied to all eligible taxpayer the 2022 tax year. See 2022 Education Tax Warrant Summary, Exhibit 8 to Turner Affidavit.

Respectfully submitted,

COALITION COMMUNITIES

By Its Attorneys,

SHEEHAN PHINNEY BASS & GREEN, P.A.

Dated: February 6, 2023

By: /s/ John-Mark Turner

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CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing pleading was filed via the Court's electronic system, on counsel of record.

/s/ John-Mark Turner

John-Mark Turner