

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

POSTED
R

Fred S. Teeboom

v.

City of Nashua

and

Daniel Moriarty

v.

Mayor, City of Nashua, et al.

Case No. 2018-0171

RECEIVED
NEW HAMPSHIRE
SUPREME COURT
2018 NOV 15 A 10:34

BRIEF FOR APPELLANTS TEEBOOM AND MORIARTY

Charles G. Douglas III, Esquire (NH Bar #669)
DOUGLAS, LEONARD & GARVEY, P.C.
14 South Street, Suite 5
Concord, NH 03301
(603) 224-1988

ORAL ARGUMENT BY:
Charles G. Douglas III, Esq.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

Fred S. Teeboom

v.

City of Nashua

and

Daniel Moriarty

v.

Mayor, City of Nashua, et al.

Case No. 2018-0171

BRIEF FOR APPELLANTS TEEBOOM AND MORIARTY

Charles G. Douglas III, Esquire (NH Bar #669)
DOUGLAS, LEONARD & GARVEY, P.C.
14 South Street, Suite 5
Concord, NH 03301
(603) 224-1988

ORAL ARGUMENT BY:
Charles G. Douglas III, Esq.

TABLE OF CONTENTS

TABLE OF AUTHORITIESii

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES OR
REGULATIONS INVOLVED IN THE CASE 1

QUESTIONS PRESENTED 2

STATEMENT OF THE CASE 3

STATEMENT OF FACTS 4

SUMMARY OF ARGUMENT 7

ARGUMENT 8

CONCLUSION 17

REQUEST FOR ORAL ARGUMENT 18

CERTIFICATE OF ATTACHMENT OF APPEALED DECISIONS 18

CERTIFICATE OF SERVICE 18

APPEALED DECISIONS 20

ADDENDUM TABLE OF CONTENTS 49

TABLE OF AUTHORITIES

Cases

Censabella v. Hillsborough County Attorney, 171 N.H.-(10/17/18).....15

City of Manchester v. Sec’y of State, 161 N.H. 127, 128 (2010)..... 11, 15, 16

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 349 (2006) 5

Duncan v. State, 166 N.H. 630 (2014)..... 7, 10, 20

Stamper v. Selectmen, Town of Hanover, 118 N.H. 241, 243 (1978).....20

Statutes

RSA 21-J:35(1)..... 3, 6

RSA 491:2219

RSA 49-B:13, II-a passim

RSA 49-C:12, I..... 10, 15, 16

RSA 49-C:23..... 3, 10, 13, 15

RSA 49-C:33..... 13, 18

Other Authorities

HB 341..... 12, 13, 14

Laws 2011, 234:7..... 13

N.H.H.R. Jour., June 1, 2011..... 14

N.H.H.R. Jour., March 16, 2011 12

N.H.S. Jour., September 7, 2011..... 14

Nashua Charter § 56 4

Nashua Charter § 56-c..... 4

Nashua Charter § 56-d..... 5

Nashua Charter section 59(d)..... 17

SB 2..... 12, 13, 14

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES OR
REGULATIONS INVOLVED IN THE CASE**

RSA 49-B: 13 Separability; Preservation

II-a. All town or city charters which have been adopted, revised, or amended to include a tax or spending cap of any kind and all charter commissions which have been properly established and elected; all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken.

RSA 49-C: 33 Optional Provisions; Limitations

I. City charters may include provisions relating to any or all of the following matters: (d) A limit on the annual spending increases that increase the amount raised by taxes under the city budget adopted pursuant to RSA 49-C:23. Such a tax cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. A tax cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.

Nashua Charter § 56. Annual budget and estimates

The municipal budget shall be prepared by the mayor with the assistance of the officer exercising the control function provided for in section 50-b. At such time as may be requested by the mayor or specified by the administrative code, each officer or director of a department shall submit an itemized estimate of the expenditures for the next fiscal year for the department or activities under his control. The mayor shall submit the proposed budget to the board of aldermen at least one month before the start of the fiscal year of the budget.

Nashua Charter § 56-c. Limitation on budget increases

Recognizing that final tax rates for the City of Nashua are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35(1), the mayor, the board of aldermen, and all departments in the City of Nashua including the mayor's office, aldermanic office, legal department, administrative services division, community services division, community development division, school department, public works

division, fire department, police department, public libraries, parking garages and cemeteries shall prepare their annual budget proposals and the Board of Aldermen shall act upon such proposals in accordance with the mandates in this paragraph.

In establishing a combined annual municipal budget for the next fiscal year, the mayor and the board of aldermen shall consider total expenditures not to exceed an amount equal to the combined annual budget of the current fiscal year, increased by a factor equal to the average of the changes in the Gross Domestic Product Implicit Price Deflator (IPD) for State and Local Government Consumption Expenditures and Gross Investment of the three (3) calendar years immediately preceding budget adoption as published by the Bureau of Economic Analysis.

This provision shall not prevent the mayor and the board of aldermen from establishing a combined annual municipal budget below this limit.

This provision shall not prevent the mayor and the board of aldermen from appropriately funding any programs or accounts mandated to be paid from municipal funds by state and federal law.

Nashua Charter § 56-d. Exception to budget limitation

The total or any part of principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be exempted from the limitation defined in paragraph 56-c upon an affirmative vote of at least ten (10) aldermen. This decision shall be made annually.

In addition, capital expenditures deemed necessary by the mayor and the board of aldermen, subject to recommendation by the capital improvements committee (ref. Paragraph 77-a of the City Charter) may similarly be exempted from this limitation upon an affirmative vote of at least ten (10) aldermen.

QUESTIONS PRESENTED

1. Does a municipal taxpayer who has standing under federal law (DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 349 (2006)), have standing in state court to challenge improper expenditure of municipal tax dollars?

2. Is the Nashua spending cap compliant with state law, and therefore enforceable?

3. Whether the Nashua spending cap was violated by the removal of certain funds from the combined annual municipal budget?

STATEMENT OF THE CASE

This consolidated appeal involves the proper interpretation and application of a budget spending cap adopted years ago by the voters of the City of Nashua (the "City"). The plaintiffs, Fred S. Teeboom and Daniel Moriarty, allege that the City and/or Jim Donchess, the City's Mayor (the "Mayor")(collectively, the "defendants") have violated the spending cap by exempting certain funds from the limits set by the spending cap, and failing to account for that exemption when calculating the maximum permissible budget for the 2018 fiscal year.

Because the plaintiffs brought suit before the City had officially adopted a budget for the 2018 fiscal year, the matter was stayed "until the City t[ook] action on the budget." After the City's Board of Aldermen (the "BOA") adopted the Mayor's proposed budget for the 2018 fiscal year by a vote of 10 to 5, the defendants argued that the plaintiffs' claims should be dismissed as moot, arguing that even if the proposed budget exceeded the spending cap, the Charter permits the City to exceed the spending cap with a supermajority vote of the BOA. When the matter had become ripe for adjudication, the Superior Court (Temple, J.) held a hearing on the merits on October 23, 2017. That transcript is part of the record in this appeal.

During the October 23, merits hearing, the Court heard testimony from Teeboom, the Mayor, and City Treasurer/Tax Collector David Fredette. In addition, the defendants and Moriarty submitted proposed findings of fact and rulings of law. In

their submission, the defendants questioned whether the plaintiffs had standing to bring this action.

On January 8, 2018, after conducting the merits hearing, the court belatedly asked for briefing of the issue of standing under Duncan v. State, 166 N.H. 630 (2014). See Addendum p. 47. After considering the evidence, testimony, and arguments presented during the October 23, 2017, hearing, the Superior Court held that the savings statute in RSA 49-B:13, II-a did not apply so the Nashua ordinance was invalid because it did not contain an override provision. The court also ruled under Duncan, that Teeboom and Moriarty had no standing to pursue the matter anyway.

The trial court issued its Order on Standing on February 12, 2018, and motions for reconsideration were filed. Addendum p. 52 and 60. These were denied on March 7 and March 23, Addendum p. 62 and 63 and a timely appeal to this court was filed thereafter.

STATEMENT OF FACTS

The Nashua spending cap was added to the Charter 25 years ago in the municipal election in November of 1993. As a result, the BOA first applied the spending cap to the budget for the 1995 fiscal year (and has continued to apply it to every subsequent fiscal year). In its current form, Charter section 56-c provides:

Recognizing that final tax rates for the City ... are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35(1), the [M]ayor, the [BOA], and all departments of the City... including the [M]ayor's office, aldermanic office, legal department, administrative services division, community services division, community development division, school department, public works division, fire department, police department, public libraries, parking garages and

cemeteries shall prepare their annual budget proposals and the [BOA] shall act upon such proposals in accordance with the mandates in this paragraph.

In establishing a combined annual municipal budget ["CAMB"] for the next fiscal year, the [M]ayor and [BOA] shall consider total expenditures not to exceed an amount equal to the [CAMB] of the current fiscal year, increased by a factor equal to the average of the changes in the Gross Domestic Product Implicit Price Deflator (IPD) for State and Local Government Consumption Expenditures and Gross Investment of the three (3) calendar years immediately preceding budget adoption as published by the Bureau of Economic Analysis....

Emphasis added.

Section 56-d of the Charter outlines "exceptions" to the spending cap which in Nashua is the "override" provision:

The total or any part of principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be exempted from the limitation defined in paragraph 56-c upon an affirmative vote of at least ten (10) aldermen. This decision shall be made annually.

In addition, capital expenditures deemed necessary by the major and the board of aldermen, subject to recommendation by the capital improvements committee (ref. Paragraph 77-a of the City Charter) may similarly be exempted from this limitation upon an affirmative vote of at least ten (10) aldermen.

Id.

The Superior Court found that on April 11, 2017, by a vote of 9 to 6, the BOA passed O-17-031 (Addendum p. 64), thereby exempting the entire "wastewater system fund (sewer fund): from the CAMB. Prior to April of 2017 the "wastewater treatment... enterprise fund []" had been split in two, with the sewer use fees excluded from the CAMB but wastewater treatment operation and management enterprise funds ("wastewater treatment funds") were included in the CAMB. Order on Standing

(2/13/18) at page 9. Wastewater is a function of the Department of Public Works and thus should be in the CAMB. Addendum p. 68.

The trial court also found that on April 25, 2017, the Mayor proposed a budget to the BOA for fiscal year 2018. This budget utilized the recently enacted amendment under O-17-031 (Addendum 64, removing the entire wastewater treatment fund (\$8.1 million) from the spending cap calculations. Order on Standing, p.9. In comparing the 2018 CAMB to the 2017 CAMB, the Major did not adjust for the fact that the 2017 CAMB included \$8.1 million of wastewater treatment funds which were not included in the 2018 CAMB.

This had the effect of permitting the Mayor to allocate a significant amount of additional funds to other areas supposedly without running afoul of the spending cap. Id. At 10. In other words, if no other changes were made to the 2017 CAMB when setting the 2018 CAMB, the 2018 CAMB would have been \$8.1 million lower than the 2017 CAMB because that was the amount of the wastewater treatment funds that had just been exempted from the CAMB. Id. Instead, the 2018 CAMB was \$265,598,979, whereas the 2017 CAMB was \$263,823,554, and thus the 2018 CAMB was \$1,775,425 more than the 2017 CAMB according to the trial court. Id.

On the surface, the 2018 CAMB appeared to comply with the spending cap, as the reported "Maximum Budget Allowed" for 2018 was \$267,517,084. Id. (limiting the upcoming fiscal year's budget to an amount no more than the previous year's budget plus a specified "factor"); Pls.' Ex. 8, at 15 of 321 (noting that the "factor" for the 2018

budget was 1.4%, and thus the “Maximum Budget Allowed” for 2018 was \$267,517,084 [\$263,823,554 x. 1.014]).

The Appellants challenged Nashua City Ordinance NRO5-145 (Addendum p. 69) and as amended (Addendum p. 71) to the annual budget as being inconsistent with the spending cap calculations that contain no exclusions except for capital improvements and bonded indebtedness. Had the wastewater treatment fund not been removed for fiscal year 2018, the proposed annual municipal budget would have been \$8.1 million above the cap as shown in Teeboom’s Exhibit 13 in the Addendum at page 74.

But having been presented with a proposed annual budget for the 2018 fiscal year that purported to be \$1.9 million below the spending cap, on June 13, 2017, the BOA then voted, ten to five, to adopt the budget. Noting that the FY2018 dollar amount was \$1.9 million under the limit established by Nashua Charter section 56-c, so no vote was taken to “override” (exempt) the limit. Had the budget been recognized (in the resolution to adopt the budget) to exceed the limit by \$8.1 million, a vote to “override” (exempt) the limit as required by Nashua Charter section 56-d would have been required.

SUMMARY OF ARGUMENT

The trial court erred when it did not recognize the legislature’s ratification statute for all caps then in effect and erroneously concluded that Nashua’s ordinances did not have an override mechanism. The removal of the wastewater treatment funds from the CAMB was illegal. Finally, while the court followed Duncan v. State on

standing that decision was abrogated with the amendment adopted on November 6, 2018, by over 400,000 voters.

ARGUMENT

I. The Court erred when it held that the Nashua Spending Cap did not Comply with State Law.

Since the City first adopted the spending cap in the 1990's the BOA has adopted several ordinances which impacted the spending cap but always kept it in place. During the same period of time, other cities and towns drafted and/or adopted similar budgetary or tax caps. But in 2009, several citizens of the City of Manchester "challeng[ed] the legality of a proposed amendment to the City of Manchester's charter" which, if adopted, would have imposed a similar spending cap on the City of Manchester's annual budget. See City of Manchester v. Sec'y of State, 161 N.H. 127, 128 (2010). The proposed spending cap included a provision which required "a third-thirds majority" vote by Manchester's Board of Aldermen in order "to override the cap." Id. at 133. After reviewing the then existing statutory scheme, the court "interpreted RSA 49-C:12, I to require a simple majority vote unless otherwise specified by statute." City of Manchester, 161 N.H. at 133-34, emphasis added.

Accordingly, the court "conclude[d] that the proposed charter amendment [wa]s inconsistent with state law" because it "constrain[ed] the board to either abide by the spending cap or act by a two-thirds majority to override it," in direct conflict "with the board's authority to adopt a budget, see RSA 49-C:23, by the vote of a simple majority, see RSA 49-C:12, I." Id. at 134.

The Manchester case held it only took a majority to pass a budget, but in 2011, a year later, legislative amendments did three things. First, tax or spending caps going forward were recognized as being legally possible, and, second, they had to provide for a supermajority to override. Finally, the legislature ratified all of the existing caps whether or not they conformed to the new or old statutes. RSA 49-B:13, II-a.

Each chamber of the New Hampshire Legislature in 2011 drafted a bill aimed at authorizing New Hampshire municipalities to adopt spending and/or tax caps. See House Bill 341 (hereinafter "HB 341") and Senate Bill 2 (hereinafter "SB 2"). Addendum pages 78 and 83. In its amended form, HB 341 included the following provisions:

49-C:23-a Limitations on the Growth of Budgets and Taxes. A city charter may provide for limitations on the growth of one or more of the following: the annual city budget, the annual school budget if the city and the school district have the same legislative body, or taxes assessed by the city. Such charter may exclude certain expenditures or appropriations from limitations imposed by the charter. Any charter adopting such limitations shall authorize the elected body to override any such limitation by a 2/3 vote of all members of the elected body or a 2/3 vote of all members of the elected body present and voting. Emphasis added.

...

4 Applicability. Any municipal charter provision adopted, amended, or revised prior to the effective date of this act which authorizes a 2/3 vote of the elected body to override any provision limiting the growth of budgets or taxes shall remain in effect on the effective date of this act. (Emphasis added).

See N.H.H.R. Jour., March 16, 2011, pp. 912-13. In delivering the recommendation of the House Committee on Municipal and County Government that HB 341, as amended, "ought to pass," Representative Betsey L. Patten explained, "[s]ince there have been

lawsuits prohibiting the tax caps, this bill is required to declare local spending caps are lawful.” Id.

While considering HB 341, the legislature was also considering SB 2, and weighing the relative merits of the two bills. As of March of 2011, SB 2 would have amended RSA 49-B:13 (“Separability; Preservation”) as follows (adding the bolded, italicized language, and removing the language that is struck through):

II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby ***endorsed, ratified, validated, and legalized***, [~~provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state~~] ***and are fully enforceable.***

See Amendment to SB 2, #2011-1149s (March 22, 2011) Addendum p. 88. After SB 2 was sent over for consideration by the House of Representatives, the House Committee recommended an amended version of SB 2 as “ought to pass.” The recommended amendment eliminated the proposed changes to paragraph II of RSA 49-B:13 in exchange for the addition of the following new paragraph:

II-a. All town or city charters which have been adopted, revised, or amended to include a tax or spending cap of any kind and all charter commissions which have been properly established and elected; all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken. Emphasis added.

See Laws 2011, 234:7. In delivering the House CMCG’s recommendation to the full House of Representatives, Representative Franklin W. Sterling explained:

The purpose and intent of SB 2 is to provide a process by which any municipality may adopt a tax/spending cap. The bill amends RSA 49-C and RSA 49-D so that cities or towns that are governed by a town or city council can amend their charters to include spending caps. The legislation provides a clear process by which a charter can be amended and it provides the language necessary to comply with [the] recent supreme court ruling.

Also included in the legislation is a provision to ratify and declare valid other spending caps adopted prior to the enactment of this bill.

See N.H.H.R. Jour., June 1, 2011, pp. 1649-54 (emphasis added). Addendum p. 91. This amended version of SB 2, which added paragraph II-a to RSA 49-B:13, was ultimately passed, while HB 341 was “laid on the table” and died. See N.H.S. Jour., September 7, 2011, pp. 747-49. The statutory changes enumerated in SB 2 became effective on July 5, 2011. Addendum p. 92.

SB 2 amended RSA 49-C:33, I, by inserting a new subparagraph I(d):

I. City charters may include provisions relating to... (d) A limit on the annual spending increases that increase the amount raised by taxes under the city budget adopted pursuant to RSA 49-C:23. **Such a tax cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter.** A tax cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.

RSA 49-C:33, I(d)(emphasis added).

Section I(d) would affect new caps, but would render the addition of RSA 49-B:13, II-a a nullity if I(d) above were to be read retroactively. II-a is worded in the past tense when it refers to any tax or spending caps “which have been adopted.” II-a also says the actions taken thereunder “are hereby endorsed, ratified, validated, and

legalized “without regard to whether such ... actions were authorized by law at the time they were established or taken.” Thus, the ratification of caps in cities like Dover, Franklin and Nashua were grandfathered notwithstanding the Supreme Court’s decision construing statutes in the Manchester case.

That 2011 amendment’s intent is reflected in the legislative history that came out of the House from the Municipal and County Government Committee spokesperson Representative Franklin Sterling, who said that the intent was “to ratify and declare valid other spending caps adopted prior to the enactment of this bill.” Addendum p. 91.

Nothing could be clearer. Furthermore, the legislature knows how to not broadly bless such acts when in section II of RSA 49-B:13, it said something very different in 1991. The legislature then conditioned legalization of charters or charter commissions “provided that such charters at the time of their adoption were not contrary to the general laws ... of the state.” (Emphasis added).

As this court recently said concerning statutory construction:

Thus, we are the final arbiter of the legislature’s intent as expressed in the words of the statute considered as a whole. Id. at 103. When examining the language of a statute, we ascribe the plain and ordinary meaning to the words used. Id. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. We also interpret a statute in the context of the overall statutory scheme and not in isolation. Id. Censabella v. Hillsborough County Attorney, 171 N.H.-(10/17/18).

The plain and ordinary meaning is different in sections II and II-a of RSA 49-B:13. To read them identically is error. The process of ratification is done frequently by the

legislature in the field of municipal law. Bills are enacted that ratify and confirm all votes at the [fill in blank] town meeting despite improper notice or location moved by a snowstorm, etc. A typical example is seen in the 2006 session when Chapter 215 was enacted as follows:

Be it Enacted by the Senate and House of Representatives in General Court convened:

215:1 Ratification of Actions Since the 1996 Seabrook Annual Town Meeting. All acts, notices, votes and proceedings of the town of Seabrook since 1996 and until the effective date of this act are hereby legalized, ratified, and confirmed against any challenge arising out of the adoption of article 3 of the Seabrook town meeting held on March 12, 1996. Addendum p. 98.

The Superior Court at pages 16 and 17 of the Order on Standing concluded erroneously that the “sweeping language” of RSA 49-B:13, II-a had to give way to the statutes cited in the Manchester case. The court said that “SB2 did not alter the language of RSA 49-C:23 or RSA 49-C:12, I (as interpreted by the court in City of Manchester... and because the current language of those provisions remains the same as it was when the New Hampshire Supreme Court decided City of Manchester, this Court must follow that court’s interpretation of those provisions.” Order p. 17.

That conclusion is legally incorrect because ratification legislation is always “sweeping.” Such bills do not specify any and all errors in the Jaffrey or Salem town meetings but merely “ratify and confirm all acts taken.” The trial court misses the point that Manchester in 2010 was construing statutes as they then existed, but the 2011 legislature both amended and grandfathered and ratified prior caps like Nashua,

Dover, etc. regardless of whether they had been “authorized by law at the time they were established.” RSA 49-B:13, II-a.

While statutory construction requires that “the specific statute controls over the general statute” (Order at 15) the trial court turned that principle upside down when it held the specific provisions of RSA 49-B:13, II-a had to yield to the language of RSA 49-C:12 and 23 rendering the grandfathering ratification a nullity. In footnote 7 of the Order the trial court said “the broad, general language used by the legislature “was insufficient” when in fact it is quite clear on its face and is consistent with the intent expressed on behalf of the Municipal and County Government Committee.

II. The Nashua Spending Cap Does Have an Override Provision

If this court rejects the above argument, the trial court also erred in concluding there is no override provision in the Nashua ordinances. Order at pp 19-20.

At issue is Nashua Charter section 59(d):

The total or any part of principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be exempted from the limitation defined in paragraph 56-c upon an affirmative vote of at least ten (10) aldermen. This decision shall be made annually.

In addition, capital expenditures deemed necessary by the mayor and the board of aldermen, subject to recommendation by the capital improvements committee (ref. Paragraph 77-a of the City Charter) may similarly be exempted from this limitation upon an affirmative vote of at least ten (10) aldermen.

The spending cap in Nashua Charter section 56-c defines an inflation factor by which the budget may grow every year.

The spending cap in 56(d) also has an "exception" to this growth for interest and principal on bonded debt and for capital improvements, if voted by 10 members of the Board of Aldermen. Over the years this has been interpreted to be the "dollar figure" in the annual budget that can offset for other spending. Thus for FY 2018 the proposed budget contained the following items that could be exempted or overridden by the budget limit:

City annual debt payment (principal + interest	\$ 5.8 million
School annual debt payment:	\$ 10.6 million
Solid waste annual debt payment:	\$ 2.1 million
Wastewater annual debt payment:	\$ 5.0 million
Capital Expenditures:	<u>\$ 1.2 million</u>
	\$ 24.7 million

This "exception" has also been commonly referred to as an 'override.'"

At trial Attorney James Donchess, who was mayor of Nashua in the 1980's and is again its Mayor, testified as follows:

Q. Sure. Would you agree that 56(d) includes two types of spending that are given special provision in that section?

A. 56(d) call - applies to things that are within the combined annual municipal budget. The board of aldermen may exempt from the limitation defined in paragraph 56, may exempt the two categories that you've mentioned by a ten vote majority.

Q. And the two things are what, sir?

A. The two things are the two categories that you mentioned.

Q. Yes, which are?

A. Bonded indebtedness and capital improvements.

October 23, 2017, Hearing Transcript at pp. 148-9.

At page 152 line 3 the Mayor again said: "56(d) is the override provision."

Again speaking historically he testified:

When the overrides occurred, you introduced them as exhibit and mayor - or someone did, I think Mr. Teeboom did, during the Streeter administration. The mayor had not proposed a budget that conformed with a spending cap. He proposed an override budget. Id. p. 153, l. 21-15.

Further:

A. The question is, what does the City charter require. And I think what the City charter requires what - that if a budget is going to be over the cap, it needs to be endorsed or voted on by ten aldermen; beyond that, there's no - there's no requirement. Id. 157, l. 21-5.

Notwithstanding the fact that the Mayor is in agreement with Appellants Teeboom and Moriarty that 56(d) is the override mechanism in Nashua's Charter for the last 25 years of practice, the trial court again read RSA 49-C:33, I(d) as somehow negating 56(d) by ignoring the 2011 grandfather ratification provision of RSA 49-B:13, II-a.

As to the merits of the Appellants' factual arguments the court ruled in their favor in footnotes 5 and 6 as follows:

Specifically, the plaintiffs argue that O-17-031 violates the Charter because it removes the wastewater treatment fund from the spending cap calculations under Charter section 56-c, but the wastewater treatment fund does not qualify for an exemption under section 56-d, which states that only debt repayment and capital improvements are eligible for such exemptions. The plaintiffs further argue that even if the wastewater treatment fund was eligible for such an exemption, section 56-d still requires that such an exemption be made only by an annual vote of a supermajority of ten aldermen. Because the BOA adopted O-17-037 by a vote of 9 to 6, that vote would not satisfy this supermajority requirement. (Emphasis added, Order fn. 5).

In the plaintiffs' view, although ten members of the BOA voted to adopt the Mayor's proposed 2018 budget on June 13, 2017, this did not

amount to a valid vote to exempt the wastewater treatment fund from the spending cap calculations, because the vote was not labeled as such. Rather, as noted above, the 2018 budget purported to be \$1,918,105 under the applicable cap. The Court finds the plaintiffs' arguments on that point persuasive. Even if the BOA could have cured a spending cap violation by exempting additional funds pursuant to Charter section 56-d, the Court could not reasonably construe the BOA's vote to adopt a budget which purported to be more than \$1 million below the spending cap as a vote to cure a spending cap violation by "exempt[ing]" additional "municipal bond" principal and interest payments" or "capital expenditures." See Charter § 56-d; see also Stamper v. Selectmen, Town of Hanover, 118 N.H. 241, 243 (1978)(declining to "read into" a town "voice vote" an intention to withdraw the powers previously delegated to" the town's selection where "[t]he original motion clearly did not purport to withdraw that power" and "[t]he amendment which was passed only 'advised' the selectmen of the 'sense of the meeting'"). Order at p. 11, fn. 6, emphasis added.

III. The Standing Issue is Moot

At the time Judge Temple ruled Duncan v. State, 166 N.H. 630 (2014), was governing on standing. With the voters' adoption on November 6 of amendments to Part I, Article 8 the issue of taxpayer standing squarely gives Nashua taxpayers Teeboom and Moriarty standing to have brought this case which has been on appeal when the constitution was changed. Question 1 was approved by 83% of the voters and effectively revives RSA 491:22. See Addendum p. 99.

CONCLUSION

This court should rule that the adoption of RSA 49-B:13, II-a in 2011 ratified and grandfathered the Nashua spending cap whether or not it has an override provision. In any event the Nashua ordinance in section 56-d does have a spending cap override mechanism the trial court found that it was improper and illegal to not include the

wastewater treatment fund in the calculations. Finally, because standing is a jurisdictional question the adoption of amendments to Part I, Article 8 resolves that issue.

REQUEST FOR ORAL ARGUMENT

Counsel for Fred S. Teeboom requests that he be permitted 15 minutes for oral argument.

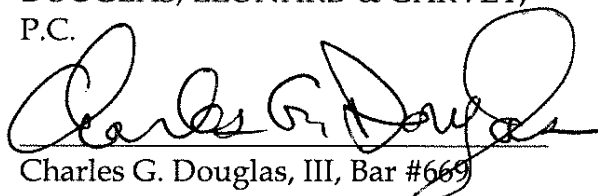
CERTIFICATE OF ATTACHMENT OF APPEALED DECISIONS

Counsel for Fred S. Teeboom hereby certifies that the appealed decisions or orders are in writing and are appended to this brief.

Respectfully submitted,
FRED S. TEEBOOM
By his attorneys,
DOUGLAS, LEONARD & GARVEY,
P.C.

Date: November 15, 2018

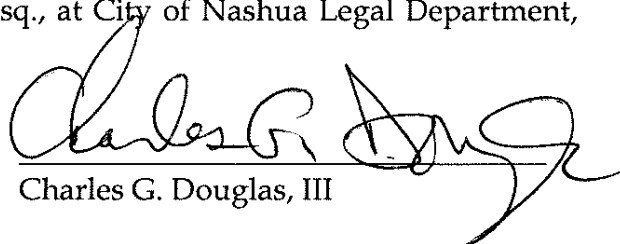
By:



Charles G. Douglas, III, Bar #669
14 South Street, Suite 5
Concord, NH 03301
(603) 224-1988

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been mailed by first-class mail this 15 day of November 2018, to Seth J. Hipple, Esq., counsel for Daniel Moriarty, at Law Offices of Martin and Hipple, PLLC, 22 Bridge Street, Second Floor, Suite 3, Concord, NH 03301; and Steven A. Bolton, Esq., at City of Nashua Legal Department, P.O. Box 2019, Nashua, NH 03061.



Charles G. Douglas, III

APPEALED DECISIONS

DECISIONS	PG.
1. Order on Standing, dated February 12, 2018 (Temple, J.)	21
2. Notice of Decision, dated March 7, 2018 (Temple, J.)	44
3. Notice of Decision, dated March 23, 2018 (Temple, J.)	45

DECISIONS FOLLOW

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

File Copy

Case Name: **Daniel Moriarty v Jim Donchess, Mayor, City of Nashua, et al**
Case Number: **226-2017-CV-00221 226-2017-CV-00160**

Enclosed please find a copy of the court's order of February 12, 2018 relative to:

ORDER ON STANDING

February 13, 2018

Marshall A. Buttrick
Clerk of Court

(293)

C: Seth J. Hipple, ESQ; Steven A. Bolton, ESQ; Fred S Teeboom

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 226-2017-CV-00160
No. 226-2017-CV-00221

Fred S. Teeboom

v.

City of Nashua

&

Daniel Moriarty

v.

Jim Donchess, Mayor of the City of Nashua, and the City of Nashua

ORDER ON STANDING

This consolidated action centers around the proper interpretation and application of a budget spending cap adopted by the voters of the City of Nashua (the "City"). See Section 56-c of the City Charter (the "Charter"). The plaintiffs, Fred S. Teeboom and Daniel Moriarty,¹ allege that the City and/or Jim Donchess, the City's Mayor (the "Mayor") (collectively, the "defendants") have violated the spending cap by exempting certain funds from the limits set by the spending cap, and failing to account for that exemption when calculating the maximum permissible budget for the 2018 fiscal year.

¹ Teeboom and Moriarty (collectively, the "plaintiffs") filed their cases separately. Teeboom's April 12, 2017 Complaint sought "declaratory relief, injunctive relief or, in the alternative, a Writ of Mandamus for the City . . . to fully and faithfully comply with . . . [C]ity [C]harter par[agraph] 56-c when preparing and adopting its annual budget. . . ." See Court Index # 1 in case number 226-2017-CV-00160 (hereinafter "Teeboom's Compl.") at 4. Moriarty's May 9, 2017 Petition sought essentially the same relief. See Court Index # 1 in case number 226-2017-CV-00221 (hereinafter "Moriarty's Pet.") at 11 (requesting that the Court: order the defendants to propose a new budget . . . that complies with the spending cap; declare that Ordinance O-17-031 violates the Charter; reform Ordinance O-17-031 to comply with the Charter; and/or enjoin the defendants from acting pursuant to Ordinance O-17-031). The Court consolidated the cases due to the similarity of their issues on June 9, 2017. See Court Index # 14 in case number 226-2017-CV-00221.

Because the plaintiffs brought suit before the City had officially adopted a budget for the 2018 fiscal year, the matter was stayed "until the City t[ook] action on the budget." See Court Index # 9 in case number 226-2017-CV-00160 at 7 (June 9, 2017 Order). After the City's Board of Aldermen (the "BOA") adopted the Mayor's proposed budget for the 2018 fiscal year by a vote of 10 to 5, the defendants argued that the plaintiffs' claims should be dismissed as moot, opining that even if the proposed budget exceeded the spending cap, the Charter permits the City to exceed the spending cap with a supermajority vote of the BOA. See Court Index # 17 in case number 226-2017-CV-00160 (Defs.' Obj. Pls.' Mot. For Relief From Stay), ¶ 3 (contending that "[t]he [C]harter provides that the budget may exceed the 'cap' when 10 aldermen vote to exclude all or part of the expense for debt service or capital improvements"); see also id. at Court Index # 21 (August 28, 2017 Order denying the defendants' motion to dismiss because several "legal issues remain[ed] regardless of the outcome of the June 13, 2017 vote" and thus the Court could not "conclude" that the plaintiffs' claims were "academic or dead" (citation omitted)). Because the matter had become ripe for adjudication, the Court scheduled a hearing on the merits for October 23, 2017.

During the October 23, 2017 merits hearing, the Court heard testimony from Teeboom, the Mayor, and City Treasurer/Tax Collector David Fredette. In addition, the defendants and Moriarty submitted proposed findings of fact and rulings of law. See Court Index ## 24–25 in case number 226-2017-CV-00160.² In their submission, the

² The Court's findings and rulings are in narrative form in this Order. Therefore, any requests of the parties for findings and rulings are granted, denied, or determined to be unnecessary, consistent with the following narrative. See Geiss v. Bourassa, 140 N.H. 629, 632–33 (1996); Howard v. Howard, 129 N.H.

defendants questioned (with little supporting legal argument) whether the plaintiffs have standing to bring this action. See Defs.' Req. Findings and Rulings ¶¶ 40–41. In response, the Court ordered "the parties to submit additional briefing . . . on the issue of standing" See Court Index # 26 in case number 226-2017-CV-00160; see also Hughes v. N.H. Div. of Aeronautics, 152 N.H. 30, 35 (2005) ("[A] party's standing to bring suit is a question of subject matter jurisdiction, which may be addressed at any time."). Consistent with the Court's instructions, the parties submitted memoranda of law addressing that issue on January 19, 2018. See Court Index ## 27–29 in case number 226-2017-CV-00160. After considering the evidence (including testimony) and arguments presented during the October 23, 2017 hearing, the arguments presented in the parties' post-hearing memoranda, and the applicable law, the Court finds and rules as follows.

Background

The spending cap was added to the Charter by municipal election in November of 1993. As a result, the BOA first applied the spending cap to the budget for the 1995 fiscal year (and has continued to apply it to every subsequent fiscal year). In its current form, Charter section 56-c provides:

Recognizing that final tax rates for the City . . . are set by the New Hampshire Department of Revenue Administration pursuant to RSA 21-J:35(1), the [M]ayor, the [BOA], and all departments in the City . . . including the [M]ayor's office, aldermanic office, legal department, administrative services division, community services division, community development division, school department, public works division, fire department, police department, public libraries, parking garages and

657, 659 (1987).

Teeboom v. City of Nashua / 226-2017-CV-00160
&
Moriarty v. Donchess, et al. / 226-2017-CV-00221

cemeteries shall prepare their annual budget proposals and the [BOA] shall act upon such proposals in accordance with the mandates in this paragraph.

In establishing a combined annual municipal budget [{"CAMB"}] for the next fiscal year, the [M]ayor and [BOA] shall consider total expenditures not to exceed an amount equal to the [CAMB] of the current fiscal year, increased by a factor equal to the average of the changes in the Gross Domestic Product Implicit Price Deflator (IPD) for State and Local Government Consumption Expenditures and Gross Investment of the three (3) calendar years immediately preceding budget adoption as published by the Bureau of Economic Analysis.

This provision shall not prevent the [M]ayor and [BOA] from establishing a [CAMB] below this limit.

This provision shall not prevent the [M]ayor and the [BOA] from appropriately funding any programs or accounts mandated to be paid from municipal funds by state and federal law.

Pls.' Ex. 1. Section 56-d of the Charter outlines "exceptions" to the spending cap:

The total or any part of principal and interest payments of any municipal bond, whether established for school or municipal purposes, may be exempted from the limitation defined in paragraph 56-c upon an affirmative vote of at least ten (10) aldermen. This decision shall be made annually.

In addition, capital expenditures deemed necessary by the mayor and the board of aldermen, subject to recommendation by the capital improvements committee (ref. Paragraph 77-a of the City Charter) may similarly be exempted from this limitation upon an affirmative vote of at least ten (10) aldermen.

Id.

Since the City first adopted the spending cap, the BOA has adopted several ordinances which impacted the spending cap. See Pls.' Ex. 4; Defs.' Ex. A. During the same period of time, other cities and towns drafted and/or adopted similar budgetary caps. In 2009, several citizens of the City of Manchester "challeng[ed] the legality of a

proposed amendment to the City of Manchester's charter" which, if adopted, would have imposed a similar spending cap on the City of Manchester's annual budget. See City of Manchester v. Sec'y of State, 161 N.H. 127, 128 (2010). The proposed spending cap included a provision which required "a two-thirds majority" vote by Manchester's Board of Aldermen in order "to override the cap." Id. at 133. After the trial court "transferred" several "questions of law" to the New Hampshire Supreme Court, the court "ordered supplemental briefing to address the added question" of "[w]hether the two-thirds override provision of the proposed charter amendment conflicts with RSA 49-C:12, I." Id. at 129; see also RSA 49-C:12, I ("The elected body shall establish its own rules, and a majority shall constitute a quorum for the transaction of the business of the board . . . In cases where the mayor is directly elected, the mayor shall not be counted to make a quorum of such board, nor vote as a member of the board except in case of equal division.") After reviewing the existing statutory scheme, the court "interpreted RSA 49-C:12, I to require a simple majority vote unless otherwise specified by statute." City of Manchester, 161 N.H. at 133–34. Accordingly, the court "conclude[d] that the proposed charter amendment [wa]s inconsistent with state law" because it "constrain[ed] the board to either abide by the spending cap or act by a two-thirds majority to override it," in direct conflict "with the board's authority to adopt a budget, see RSA 49-C:23, by the vote of a simple majority, see RSA 49-C:12, I." Id. at 134.

In response to this ruling, each chamber of the New Hampshire Legislature drafted a bill aimed at authorizing New Hampshire municipalities to adopt spending and/or tax caps. See N.H.H.R. Bill 341 (2011) (hereinafter "HB 341"); N.H.S. Bill 2

(2011) (hereinafter "SB 2").³ In its amended form, HB 341 included, *inter alia*, the following provisions:

49-C:23-a Limitations on the Growth of Budgets and Taxes. A city charter may provide for limitations on the growth of one or more of the following: the annual city budget, the annual school budget if the city and the school district have the same legislative body, or taxes assessed by the city. Such charter may exclude certain expenditures or appropriations from limitations imposed by the charter. Any charter adopting such limitations shall authorize the elected body to override any such limitation by a 2/3 vote of all members of the elected body or a 2/3 vote of all members of the elected body present and voting.

4 Applicability. Any municipal charter provision adopted, amended, or revised prior to the effective date of this act which authorizes a 2/3 vote of the elected body to override any provision limiting the growth of budgets or taxes shall remain in effect on the effective date of this act.

See N.H.H.R. Jour., March 16, 2011, pp. 912–13. In delivering the recommendation of the House Committee on Municipal and County Government (the "House CMCG") that HB 341, as amended, "ought to pass," Representative Betsey L. Patten explained, "[s]ince there have been lawsuits prohibiting the tax caps, this bill is required to declare local spending caps are lawful." *Id.*

While considering HB 341, the legislature was also considering SB 2, and weighing the relative merits of the two bills. As of March of 2011, SB 2 would have amended RSA 49-B:13 ("Separability; Preservation") as follows (adding the bolded, italicized language, and removing the language that is struck through):

³ As set forth below, this legislative history provides insight into the legislature's intent when passing SB 2. Because the Court must resolve an apparent conflict between the statutory changes resulting from SB 2 (specifically, the addition of paragraph II-a to RSA 49-B:13) and the New Hampshire Supreme Court's holding in *City of Manchester*, 161 N.H. at 133–34, the Court looks to the legislative history of SB 2 to aid in its analysis. *Cf. Hogan v. Pat's Peak Skiing, LLC*, 168 N.H. 71, 73 (2015) ("In the event that the statutory language is ambiguous," courts "resolve the ambiguity by determining the legislature's intent in light of legislative history.").

II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby **endorsed, ratified, validated, and legalized**, [~~provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state~~] **and are fully enforceable**.

See Amendment to SB 2, #2011-1149s (March 22, 2011). After SB 2 was sent over for consideration by the House of Representatives, the House CMCG recommended that an amended version of SB 2 "ought to pass." The recommended amendment eliminated the proposed changes to paragraph II of RSA 49-B:13 in exchange for the addition of the following new paragraph:

II-a. All town or city charters which have been adopted, revised, or amended to include a tax or spending cap of any kind and all charter commissions which have been properly established and elected; all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken.

See Laws 2011, 234:7 (emphasis in original to indicate that it is an addition to the existing law). In delivering the House CMCG's recommendation to the full House of Representatives, Representative Franklin W. Sterling explained:

The purpose and intent of SB 2 is to provide a process by which any municipality may adopt a tax/spending cap. The bill amends RSA 49-C and RSA 49-D so that cities or towns that are governed by a town or city council can amend their charters to include spending caps. The legislation provides a clear process by which a charter can be amended and it provides the language necessary to comply with [the] recent supreme court ruling. Further SB 2 includes amendments to RSA 32 that contain a process and rules governing the adoption of a tax cap by municipalities that have a traditional town meeting form of government and those towns which have adopted the official ballot form of government.

Also included in the legislation is a provision to ratify and declare valid other spending caps adopted prior to the enactment of this bill.

See N.H.H.R. Jour., June 1, 2011, pp. 1649–54 (emphasis added). This amended version of SB 2, which added paragraph II-a to RSA 49-B:13, was ultimately passed, while HB 341 was “laid on the table.” See N.H.S. Jour., September 7, 2011, pp. 747–49. The statutory changes enumerated in SB 2 became effective on July 5, 2011.

As enacted, SB 2 also included several other amendments to RSA chapter 49-C. One such change was the addition of paragraph III to RSA 49-C:12, which provides:

I. . . . The elected body shall establish its own rules, and a majority shall constitute a quorum for the transaction of the business of the board. The mayor shall have the right to introduce bills and initiate other measures at the meetings and to speak at meetings upon pending measures without resigning the chair. In cases where the mayor is directly elected, the mayor shall not be counted to make a quorum of such board, nor vote as a member of the board except in case of equal division.

II. Notwithstanding paragraph I, a city may, pursuant to the procedures for adoption of charter amendments and submission to the voters under RSA 49-B:5 and 49-B:6, vote to allow the mayor to vote and be counted for purposes of a quorum at meetings of the city council, despite such mayor having been directly elected.

III. Notwithstanding any contrary provision in paragraph I, the adoption of an override threshold provision to a tax cap included in a charter pursuant to RSA 49-C:33, I(d) **shall** provide for a supermajority vote of the elected body to adopt the annual budget.

RSA 49-C:12 (emphasis added). In addition, SB 2 amended RSA 49-C:33, I, by inserting new subparagraph I(d):

I. City charters may include provisions relating to . . .
(d) A limit on the annual spending increases that increase the amount raised by taxes under the city budget adopted pursuant to RSA 49-C:23. **Such a tax cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a**

supermajority as determined in the charter. A tax cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.

RSA 49-C:33, l(d) (emphasis added).

Facts Giving Rise to This Action

On April 11, 2017, by a vote of 9 to 6, the BOA passed O-17-031, thereby exempting the entire "wastewater system fund (sewer fund)" from the CAMB. See Pls.' Ex. 5, at 2; compare Moriarty's Pet., ¶ 20 (alleging that the BOA passed O-17-031 "by a vote of 9 to 6") with Court Index # 4 in case number 226-2017-CV-00221 (Defendants' Answer), ¶ 20 (admitting "[t]he allegations of section 20" of Moriarty's Petition). Prior to April of 2017 (and since April of 2007), the "wastewater treatment . . . enterprise fund[]" had been split in two, with the sewer use fees excluded from the CAMB and wastewater treatment operation and management enterprise funds ("wastewater treatment funds") included in the CAMB. Compare Pls.' Ex. 4, at 2 with Defs.' Ex. A, at 1.⁴

On April 25, 2017, the Mayor proposed a budget to the BOA for fiscal year 2018. This budget utilized the recently enacted amendment under O-17-031, removing the entire wastewater treatment fund (\$8.1 million) from the spending cap calculations. In comparing the 2018 CAMB to the 2017 CAMB, the Mayor did not adjust for the fact that the 2017 CAMB included \$8.1 million of wastewater treatment funds which were not included in the 2018 CAMB. This had the effect of permitting the Mayor to allocate a significant amount of additional funds to other areas without running afoul of the

⁴ Prior to April of 2007, the entire "wastewater treatment . . . enterprise fund[]" had been included in the CAMB. See Defs.' Ex. 1.

spending cap. In other words, if no other changes were made to the 2017 CAMB when setting the 2018 CAMB, the 2018 CAMB would have been \$8.1 million lower than the 2017 CAMB because that was the amount of the wastewater treatment funds that had just been exempted from the CAMB. Instead, the 2018 CAMB was \$265,598,979, whereas the 2017 CAMB was \$263,823,554, and thus the 2018 CAMB was \$1,775,425 more than the 2017 CAMB. Pls.' Ex. 8, at 15 of 321.

On the surface, the 2018 CAMB appeared to comply with the spending cap, as the reported "Maximum Budget Allowed" for 2018 was \$267,517,084. See Pls.' Ex. 1 (limiting the upcoming fiscal year's budget to an amount no more than the previous year's budget plus a specified "factor"); Pls.' Ex. 8, at 15 of 321 (noting that the "factor" for the 2018 budget was 1.4%, and thus the "Maximum Budget Allowed" for 2018 was \$267,517,084 [$\$263,823,554 \times 1.014$]). Having been presented with a proposed budget for the 2018 fiscal year that purported to be \$1,918,105 below the spending cap, on June 13, 2017, the BOA voted, ten to five, to adopt that budget. Cf. id.; Pls.' Ex. 12 (BOA Resolution adopting the proposed 2018 budget and noting that "[t]he FY2018 dollar amount under the limit established by City Charter Section 56-c is \$1,918,105").

Analysis

As noted above, the plaintiffs contend that the defendants violated the spending cap by impermissibly exempting certain funds from the limits set by the spending cap (which only applies to amounts included in the CAMB), and by failing to account for that

exemption when calculating the maximum permissible CAMB for the 2018 budget year.⁵ In essence, the plaintiffs ask the Court to enforce the spending cap (consistent with their promulgated interpretation thereof). The defendants contend that O-17-031 was validly enacted and applied according to the Charter, but that even if the Court finds that O-17-031 violates the spending cap (as set forth in the Charter), the 2018 budget is valid because a supermajority of ten aldermen implicitly voted to override the spending cap in the BOA's June 13, 2017 vote to adopt the Mayor's proposed budget.⁶ Lastly, the defendants argue that the plaintiffs lack standing to bring this action.

I. Whether the Plaintiffs Have Standing to Bring this Action

If (as the defendants argue) the plaintiffs do not have standing in this matter, then the Court cannot reach the merits of the case. See Birch Broad. v. Capitol Broad. Corp., 161 N.H. 192, 199 (2010) (explaining "[t]he requirement that a party demonstrate harm to maintain a legal challenge"). Thus, the Court addresses that issue first.

⁵ Specifically, the plaintiffs argue that O-17-031 violates the Charter because it removes the wastewater treatment fund from the spending cap calculations under Charter section 56-c, but the wastewater treatment fund does not qualify for an exemption under section 56-d, which states that only debt repayment and capital improvements are eligible for such exemptions. The plaintiffs further argue that even if the wastewater treatment fund was eligible for such an exemption, section 56-d still requires that such an exemption be made only by an annual vote of a supermajority of ten aldermen. Because the BOA adopted O-17-037 by a vote of 9 to 6, that vote would not satisfy this supermajority requirement. ⁶ In the plaintiffs' view, although ten members of the BOA voted to adopt the Mayor's proposed 2018 budget on June 13, 2017, this did not amount to a valid vote to exempt the wastewater treatment fund from the spending cap calculations, because the vote was not labeled as such. Rather, as noted above, the 2018 budget purported to be \$1,918,105 under the applicable cap. The Court finds the plaintiffs' arguments on that point persuasive. Even if the BOA could have cured a spending cap violation by exempting additional funds pursuant to Charter section 56-d, the Court could not reasonably construe the BOA's vote to adopt a budget which purported to be more than \$1 million below the spending cap as a vote to cure a spending cap violation by "exempt[ing]" additional "municipal bond" "principal and interest payments" or "capital expenditures." See Charter § 56-d; see also Stamper v. Selectmen, Town of Hanover, 118 N.H. 241, 243 (1978) (declining to "read into" a town "voice vote" "an intention to withdraw the powers previously delegated to" the town's selectmen where "[t]he original motion clearly did not purport to withdraw that power" and "[t]he amendment which was passed only 'advised' the selectmen of the 'sense of the meeting'").

"[S]tanding . . . requires parties to have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress." Duncan v. State, 166 N.H. 630, 642 (2014) (citations omitted) (explaining that, "Part II, Article 74" of the New Hampshire Constitution "imposes standing requirements that are similar to" federal standing requirements). "In evaluating whether a party has standing," courts "focus on whether the party suffered a legal injury against which the law was designed to protect." O'Brien v. NH Democratic Party, 166 N.H. 138, 142 (2014) (quotation omitted). In order to "keep[] the Judiciary's power within its proper constitutional sphere, [courts] must put aside the natural urge to proceed directly to the merits of an important dispute and to 'settle' it for the sake of convenience and efficiency." Id. (quotation omitted); see Duncan, 166 N.H. at 643 ("The requirement that" plaintiffs have "personal . . . rights . . . capable of being redressed by the court tends to assure that the legal questions . . . will be resolved . . . in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." (quotations and citation omitted)); Lujan v. Defenders of Wildlife, 504 U.S. 555, 561 (1992) ("[I]t must be 'likely,'" not "merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" (citation omitted)).

Here, the plaintiffs claim that the defendants have violated the spending cap. Even if the Court were to issue "a favorable decision" on that point, see Lujan, 504 U.S. at 561, such a decision would only provide "redress" for the plaintiffs' claimed injuries—that is, their respective higher tax burdens—if the spending cap itself is enforceable. See Duncan, 166 N.H. at 642. In other words, if the spending cap is unenforceable,

then the Court could not provide the plaintiffs a remedy for the defendants' alleged spending cap violation(s). For the reasons set forth below, the Court finds that the current version of the spending cap, as enumerated in Charter sections 56-c and 56-d, violates State law and is therefore unenforceable. Accordingly, the Court cannot provide any redress for the plaintiffs' claims, and thus the plaintiffs lack standing to pursue their claims in the context of this action. See id.

A. A Spending Cap Must Include Certain Provisions to Comply With State Law

As set forth above, in City of Manchester, the New Hampshire Supreme Court "interpreted RSA 49-C:12, I to require a simple majority vote unless otherwise specified by statute," City of Manchester, 161 N.H. at 133–34, and therefore "conclude[d] that [Manchester's] proposed charter amendment [wa]s inconsistent with state law" because it "constrain[ed] the board [of aldermen] to either abide by the spending cap or act by a two-thirds majority to override it," in direct conflict "with the board's authority to adopt a budget, see RSA 49-C:23, by the vote of a simple majority, see RSA 49-C:12, I." Id. at 134. In response, the legislature "specified by statute"—RSA 49-C:12, III—that "the adoption of an override threshold provision to a tax cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget." (Emphasis added); see also RSA 49-C:33, I(d) ("City charters may include provisions relating to any or all of the following matters . . . [a] limit on the annual spending increases that increase the amount raised by taxes under the city budget adopted pursuant to RSA 49-C:23. **Such a tax cap shall provide for an override threshold . . . which shall be by a supermajority as determined in the charter.**")

(emphasis added)). These clear statutory provisions squarely address the issues identified in City of Manchester and therefore permit municipalities to lawfully adopt a spending cap so long as the adopted spending cap “provides for an override threshold . . . by” “a supermajority vote of the elected body.” RSA 49-C:33, I(d); RSA 49-C:12, III; cf. Ocasio v. Fed. Exp. Corp., 162 N.H. 436, 443 (2011) (noting that “[t]he legislature’s response to” decisions of the New Hampshire Supreme Court, “although not controlling, is instructive”); Polizzo v. Town of Hampton, 126 N.H. 398, 402 (1985) (noting that “[t]he legislature” had enacted a new statute “only one year after” a particular New Hampshire Supreme Court decision, “and evidently in response to” that decision”).

In addition to authorizing such spending caps on a prospective basis, the legislature further sought to “ratify and declare valid other spending caps adopted prior to the enactment of” SB 2. See N.H.H.R. Jour., June 1, 2011, pp. 1649–54; see also RSA 49-B:13, II-a (“All town or city charters which have been adopted, revised, or amended to include a tax or spending cap of any kind and all charter commissions which have been properly established and elected; all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken.”). The defendants contend that this language did not ratify, validate, or legalize existing spending caps “without regard to whether they have now been authorized,” and thus “such previously adopted tax or spending caps must” comply with “RSA 49-C:33[, I](d)” —i.e., pre-existing spending caps must include an

override provision in order to be valid. See Defs.' Req. Findings and Rulings ¶¶ 31–34. This contention is in furtherance of the defendants' claim that, because ten aldermen voted to adopt the Mayor's proposed budget for the 2018 fiscal year, the BOA implicitly voted to override the spending cap.

In order to assess the merits of the defendants' argument, the Court must determine the correct interpretation of RSA 49-B:13, II-a. "Statutory interpretation is a question of law." Hogan, 168 N.H. at 73 (quotation omitted). When interpreting a statute, courts determine "the intent of the legislature" by examining "the words of the statute considered as a whole." Id. (quotation omitted) (explaining that courts "construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result"). In doing so, courts "first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." Id. (quotation omitted) (noting that courts "interpret legislative intent from the statute as written"). Courts "do not consider words and phrases in isolation, but rather within the context of the statute as a whole." Id. (quotation omitted). "In the event that the statutory language is ambiguous," courts "resolve the ambiguity by determining the legislature's intent in light of legislative history." Id. (citation omitted); see also State v. Lambert, 119 N.H. 881, 884 (1979) (finding that the relevant "[l]egislative history" made "it clear that the purpose of" a particular statutory change "was to promote public health, safety and welfare"). In addition, if there is a conflict between multiple statutory provisions, "the specific statute controls over the general statute." In re Pennichuck Water Works, Inc., 160 N.H. 18, 34 (2010) (citation omitted).

As set forth above, the plain language of RSA 49-B:13, II-a appears quite sweeping, purporting to endorse, ratify, validate, legalize, and render "fully enforceable" all previously-adopted "tax or spending cap[s] of any kind. . . ." However, this sweeping, general language necessarily gives way to the specific language of RSA 49-C:23 and RSA 49-C:12, I (as interpreted by the New Hampshire Supreme Court in City of Manchester, 161 N.H. at 134). See City of Manchester, 161 N.H. at 133–34 (finding that these two statutory provisions empowered a board of aldermen "to adopt a budget . . . by the vote of a simple majority" "unless otherwise specified by statute"); see also In re Pennichuck Water Works, Inc., 160 N.H. at 34 (explaining that where statutory provisions conflict, "the specific statute controls over the general statute"). In short, any spending cap that does not contain the "override" provision mandated by RSA 49-C:33, I(d) would impermissibly restrict the elected body's authority to adopt a budget by a simple majority, because there is no other statute which "specifie[s]" that such a restriction is permissible. See City of Manchester, 161 N.H. at 133–34.

In light of the foregoing, although the language of RSA 49-B:13, II-a does not expressly require pre-existing spending caps to include the override provision mandated by RSA 49-C:33, I(d), the above-described "statutory scheme" compels the Court to interpret the sweeping language of RSA 49-B:13, II-a narrowly, as follows: RSA 49-B:13, II-a applies the other statutory changes resulting from SB 2 retroactively, but does not exempt pre-existing spending (or tax) caps from complying with current laws. SB 2 did not alter the language of RSA 49-C:23 or RSA 49-C:12, I (as interpreted by the court in City of Manchester, 161 N.H. at 134), and because the current language of those

provisions remains the same as it was when the New Hampshire Supreme Court decided City of Manchester, this Court must follow that court's interpretation of those provisions. See City of Manchester, 161 N.H. at 133–34. Having done so, the Court finds (consistent with the holding in City of Manchester) that spending and/or tax caps may not infringe upon the elected body's ability to adopt a budget by a simple majority "unless" such a restriction is "specified by statute." Id. at 134.

RSA 49-C:33, I(d) affirmatively authorizes a city charter to infringe upon the elected body's ability to adopt a budget by a simple majority via a tax cap, but it requires any such cap to "provide for an override threshold on a vote to exceed the limit on annual increases." See also RSA 49-C:12, III ("Notwithstanding any contrary provision in paragraph I, the adoption of an override threshold provision to a tax cap . . . shall provide for a supermajority vote of the elected body to adopt the annual budget."). Absent any statutory provision which expressly authorizes a tax or spending cap to infringe on the above-described power of the elected body without an override provision, the Court finds that only those pre-existing spending and/or tax caps which included the override provision required by RSA 49-C:33, I(d) were rendered "valid[]" and otherwise enforceable through the enactment of RSA 49-B:13, II-a.^{7,8}

⁷ The Court is mindful that the retroactive provision in HB 341 expressly required the inclusion of an override provision, see N.H.H.R. Jour., March 16, 2011, pp. 912–13 ("Any municipal charter provision adopted, amended, or revised prior to the effective date of this act which authorizes a 2/3 vote of the elected body to override any provision limiting the growth of budgets or taxes shall remain in effect on the effective date of this act."), whereas the retroactive provision in SB 2—the bill the legislature chose to enact—did not. However, apart from this difference in the language of the two bills, nothing in the legislative history suggests that the legislature intended to exempt pre-existing spending caps from the override requirement and/or the New Hampshire Supreme Court's holding in City of Manchester. See N.H.H.R. Jour., June 1, 2011, pp. 1649–54 (Representative Franklin W. Sterling explaining, inter alia, that SB 2 "provides a clear process by which a charter can be amended and it provides the language

B. The City's Spending Cap is Missing an Essential Provision

The next logical question the Court must consider is whether Nashua's spending cap contains the requisite override provision. (For the reasons outlined above, if it does not contain such an override provision, then the spending cap is not valid under State law.) In order to answer this question, the Court must again employ the above-described principles of statutory construction. See Bd. of Ed. of Nashua v. Vagge, 102 N.H. 457, 460 (1960) ("Applying [a] principal of statutory construction" when interpreting Nashua's "city charter"); City of Portsmouth v. Ass'n of Portsmouth Teachers, NEA-N.H., 134 N.H. 642, 649 (1991) (explaining that if a charter amendment's "language clearly and unambiguously conflicts with [a] statute," the New Hampshire Supreme Court "will not engage in judicial construction to modify the amendment so as to make it

necessary to comply with recent supreme court ruling. . . [a]lso included in the legislation is a provision to ratify and declare valid other spending caps adopted prior to the enactment of this bill."). Rather, it appears that the relevant language contained in SB 2 was based upon the then-existing version of RSA 49-B:13, II. See Amendment to SB 2, #2011-1149s (March 22, 2011) (which would have amended RSA 49-B:13, II as follows: "II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby **endorsed, ratified, validated, and** legalized, [~~provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state~~] **and are fully enforceable.**") (alteration in original, as noted *supra*). Ultimately, the language in that proposed amendment formed the basis of the newly-created RSA 49-B:13, II-a, and thus the language used in the enacted legislation does not evince a legislative purpose to do anything other than render the other changes resulting from SB 2 retroactive. Furthermore, even if the legislature had intended to ratify all pre-existing restrictions on the elected body's budgetary powers (regardless of the type or scope of such pre-existing restrictions), for the reasons outlined above, the broad, general language used by the legislature would be insufficient to effectuate such a purpose. See In re Pennichuck Water Works, Inc., 160 N.H. at 34; cf. State v. Brosseau, 124 N.H. 184, 193 (1983) (Douglas, J. and Batchelder, J., concurring specially) (noting that because the legislature "ha[d] not responded satisfactorily to the problems that cases such as the ones" before the court "represent[ed] . . . the time for judicial deference ha[d] passed"); Hogan, 168 N.H. at 73 (explaining that courts "construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result").

⁸ During his October 23, 2017 hearing testimony, the Mayor indicated that he had presented the BOA with a budget that exceeded the spending cap because he did not believe he could provide the City with all necessary services while keeping the budget under the spending cap. This concern illustrates the reason why an override provision is an essential component of a valid spending cap.

consistent with the law.”).

As noted above, Nashua’s spending cap is set forth in Charter section 56-c. A plain reading of the relevant language reveals that the Charter does not expressly contain an override provision. See Charter § 56-c; see also Hogan, 168 N.H. at 73 (noting that courts “interpret legislative intent from the statute as written”). Indeed, the only clause in Charter section 56-c which could theoretically be construed as permitting a spending cap override states: “This provision shall not prevent the [M]ayor and the [BOA] from appropriately funding any programs or accounts mandated to be paid from municipal funds by state and federal law.” Id. Assuming dubitante that this provision intended to authorize a spending cap override (as opposed to simply requiring the BOA to make adjustments to the CAMB so that, while complying with the spending cap, the CAMB included such “mandated” funding), this clause would nevertheless fail to satisfy RSA 49-C:33, I(d) and RSA 49-C:12, III because it does not “provide for an override threshold on a vote to exceed the limit on annual increases . . . by a supermajority as determined in the charter.” See RSA 49-C:33.

Although the defendants concede that the spending cap must contain an override provision, see Defs.’ Req. Findings and Rulings ¶¶ 30–34, they suggest that the “exceptions” or exemptions listed in Charter section 56-d satisfy that requirement because the BOA can “exempt so much of the expenditures for bonded debt service or capital improvements,” id. at ¶ 39.⁹ Charter section 56-d does specify that a

⁹ During his October 23, 2017 hearing testimony, the Mayor referred to the exemption/exception process outlined in Charter section 56-d as an override. Moriarty’s legal counsel challenged the Mayor’s characterization, asking the Mayor where the Charter permitted an override. The Mayor thereafter

supermajority of the BOA—specifically, “at least ten” out of a total of 15 “aldermen”—may exempt certain classes of expenses from the CAMB. However, the plain language of RSA 49-C:33, I(d) illustrates that the power to make certain “exclusions” from the CAMB is not the same as the power to override a spending cap. See RSA 49-C:33, I(d) (providing that city charters may include tax caps, but that when they do, such charters “shall provide for an override threshold . . .” and “may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts. . . .” (emphases added)). Because the legislature plainly indicated that an override provision is **required** whereas a list of specific exclusions is **merely permissible**, see Town of Nottingham v. Harvey, 120 N.H. 889, 895 (1980) (“The general rule of statutory construction . . . is that the word ‘may’ makes enforcement . . . permissive and that the word ‘shall’ requires mandatory enforcement.”), the Court cannot construe those two opportunities as being one in the same. See Cook v. Town of Sanbornton, 118 N.H. 668, 671 (1978) (“When possible,” courts must “interpret a statute so that all the words have meaning.”). Thus, the Court finds that Charter section 56-d, which empowers the BOA to exempt certain classes of funds from the CAMB, does not satisfy the override requirement of RSA 49-C:33, I(d).

C. The Court Cannot Read the Missing, Essential Provision into the City’s Existing Spending Cap

The Court is unaware of any other provision in the Charter which could arguably

acknowledged that this provision is not technically an override provision, but asserted that it has been treated as such for years, and that Charter section 56-d is commonly called “an override provision.” Indeed, early in the hearing, Teeboom himself referred to the process outlined in Charter section 56-d as an override.

satisfy the override requirement of RSA 49-C:33, I(d). Accordingly, the Court finds that the Charter does not currently contain an override provision. For the reasons outlined above, unless the Court were to read such a provision into the Charter, the spending cap violates State law. The Court declines to read such a provision into the Charter. Pursuant to RSA 49-C:33, I(d), an override provision must require a "supermajority" vote, but each charter may "determine[]" what constitutes a supermajority for this purpose. In other words, RSA 49-C:33, I(d) permits each municipality to specify in its charter the precise supermajority—i.e., two-thirds, three-fifths, etc.—required to override the spending cap. Because the statute does not require a specific "supermajority" margin, it would be inappropriate for this Court to set such a margin on behalf of the voters of the City. Indeed, it is clear from the legislative history of SB 2 and HB 341 that the purpose behind the relevant statutory changes was to empower municipal voters to determine whether a spending or tax cap was a sound limitation on their local government's spending. Cf. Lambert, 119 N.H. at 884. Against that legislative backdrop, which plainly favored voter choice, this Court cannot deprive the City's voters of their statutorily-mandated opportunity to "determine[]" the requisite "supermajority" for themselves.


Conclusion

Consistent with the foregoing, because the City's spending cap does not contain an override provision, it violates State law and is therefore unenforceable. Thus, even if the Court were to issue a favorable decision" with respect to the plaintiffs' claim that the defendants have violated the spending cap, see id., such a decision

would not provide any "redress" for the plaintiffs' claimed injuries.¹⁰ See Duncan, 166 N.H. at 642. Accordingly, the plaintiffs lack standing to pursue their claims in the context of this action, see id.,¹¹ and the plaintiffs' claims are therefore **DISMISSED**.

So ordered.

Date: February 12, 2018



Charles S. Temple,
Presiding Justice

¹⁰ Notwithstanding this conclusion, the Court declines, at this juncture, to affirmatively strike down the spending cap. Neither party has requested such relief, nor have the parties fully litigated the relevant legal issues. Accordingly, the Court "must put aside the natural urge to proceed directly to the merits of [this] important dispute and to 'settle' it for the sake of convenience and efficiency." O'Brien, 166 N.H. at 144 (quotation omitted). However, the Court notes that, according to the defendants, the BOA adopted multiple ordinances purportedly aimed at "mak[ing] clear how some matters should be considered" in relation to the spending cap. See Defs.' Req. Findings and Rulings ¶¶ 10-14; see also id. at ¶ 15 (opining that the spending cap is "still not a model of clarity"). During the October 23, 2017 hearing, the defendants' legal counsel even suggested that a literal, word-for-word application of the spending cap would lead to "an absurd result." In addition, it was suggested during the hearing that, if he so chose, the Mayor could circumvent the spending cap by reorganizing City departments to remove certain divisions from the list of departments covered by the spending cap (as enumerated in Charter section 56-d). In light of these concerns, it appears that if an override provision is put before the voters of the City, some additional changes to the spending cap should also be considered in conjunction with that process in order to provide clarity and consistency.

¹¹ The Court notes that, even if the plaintiffs' claims were "capable of being redressed by the [C]ourt" in this action, see Duncan, 166 N.H. at 643, it is unclear that the plaintiffs have "articulate[d] a personal injury" as opposed to "the same, indistinguishable, generalized wrong allegedly suffered by the public at large." See id. at 646. Although the plaintiffs are able to identify the precise amount of their respective higher tax burdens, that ability is merely a function of the fact that "the City's tax rate" is set "by the Department of Revenue Administration," and thus the amount of taxes owed by each taxpayer "is calculated as the tax rate multiplied by the assessed value" of his or her property. See Moriarty's Mem. Standing 1; see also RSA 21-J:35. The Court is not convinced that the availability of such a "straightforward mathematical calculation" renders the plaintiffs' injuries "personal" as opposed to being "the same, indistinguishable, generalized wrong allegedly suffered by" all taxpayers in the City. See Duncan, 166 N.H. at 646. Nevertheless, because the Court has found that the plaintiffs lack standing for other reasons, the Court need not (and affirmatively declines to) reach this issue. See Canty v. Hopkins, 146 N.H. 151, 154 (2001) (declining to "reach" an issue that did "not alter" the court's "conclusion").

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

FILE COPY

Case Name: **Fred S Teeboom v City of Nashua**
Case Number: **226-2017-CV-00160 226-2017-CV-00221**

Please be advised that on March 07, 2018 Judge Temple made the following order relative to:

Motion for Reconsideration (Teeboom); MOTION DENIED. THE COURT HAS NOT OVERLOOKED OR MISAPPREHENDED ANY POINTS OF LAW OR FACT IN ITS ORDER DATED FEBRUARY 12, 2018. SEE SUPERIOR COURT RULE 12(e)

Plaintiff (Teeboom) Motion for Evidence Sanction on Defendant for Failure to Provide Discovery; MOTION DENIED. REQUESTS FOR FINDINGS OF FACT & RULINGS OF LAW WERE PROPERLY FILED BY THE CITY OF NASHUA AT THE HEARING ON OCTOBER 23, 2017. THERE IS NOT ANY DISCOVERY VIOLATION UNDER SUPERIOR COURT RULES 21 OR 22 FOR THE FILING OF THESE REQUESTS AT THE HEARING. THESE REQUESTS DO NOT IN ANY WAY CONSTITUTE DISCOVERY. THIS MOTION DOES NOT HAVE ANY BASIS IN FACT OR LAW.

Plaintiff's Moriarty Motion for Reconsideration; MOTION DENIED. THE COURT HAS NOT OVERLOOKED OR MISAPPREHENDED ANY POINTS OF LAW OR FACT IN ITS ORDER DATED FEBRUARY 12, 2018. SEE SUPERIOR COURT RULE 12 (e).

Plaintiff (Teeboom) Supplement to Motion for Reconsideration; THE COURT REVIEWED THIS SUPPLEMENT ON MARCH 7, 2018 AS PART OF ITS ASSESSMENT OF THE PLAINTIFF'S MOTION FOR RECONSIDERATION.

March 07, 2018

Marshall A. Buttrick
Clerk of Court

(293)

C: Fred S Teeboom; Steven A. Bolton, ESQ; Seth J. Hipple, ESQ

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

FILE COPY

Case Name: **Fred S Teeboom v City of Nashua**
Case Number: **226-2017-CV-00160 226-2017-CV-00221**

Please be advised that on March 22, 2018 Judge Temple made the following order relative to:

Plaintiff Moriarty's Motion to Supplement His Motion for Reconsideration; **MOTION DENIED. THE COURT DID NOT REACH THE STANDING ISSUE ADDRESSED IN THE KURK ORDER. (See FTN. 11-order dated 2/12/18). IT SPECIFICALLY FOUND THAT THE PLAINTIFF LACKED STANDING ON OTHER GROUNDS.**

March 23, 2018

Marshall A. Buttrick
Clerk of Court

(293)

C: Fred S Teeboom; Steven A. Bolton, ESQ; Seth J. Hipple, ESQ

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

File Copy

Case Name: **Fred S Teeboom v City of Nashua**
Case Number: **226-2017-CV-00160 226-2017-CV-00221**

Enclosed please find a copy of the court's order of January 08, 2018 relative to:

ORDER (FOR ADDITIONAL BRIEFING)

January 08, 2018

Marshall A. Buttrick
Clerk of Court

(564)

C: Fred S Teeboom; Steven A. Bolton, ESQ; Seth J. Hipple, ESQ

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

FRED S. TEEBOOM v. CITY OF NASHUA
226-2017-CV-160

and

DANIEL MORIARTY v. JIM DONCHESS, MAYOR OF THE CITY OF NASHUA,
and the CITY OF NASHUA
226-2017-CV-221

ORDER


The Court has been granted an extension to exceed the sixty (60) day administrative deadline for the issuance of a decision in this case. Due to the importance of this decision, the Court is carefully evaluating the evidence and the applicable law. The Court is now in the final stages of its decision-making process. As part of this process, the Court is ordering the parties to submit additional briefing (five pages or less) on the issue of standing under Duncan v. State, 166 N.H. 630 (2014), Carlson v. Latvian Lutheran Exile Church, ___ N.H. ___ (September 21, 2017), and any other applicable cases. Each party shall file a memorandum of law with the Court on or before January 19, 2018, addressing the standing issue under New Hampshire law.

The Court will consider the memorandums of law as it finalizes the decision in this case. It is of the utmost importance that the decision be made in an informed, deliberative, and careful manner. While the Court appreciates the need for finality by the parties, there are certain cases that demand additional time to insure that the deliberative process is a fair and just one. Again, the significance of the decision in this

case to the parties and the public interest simply demands the investment of additional time by the Court to insure that justice is served by its decision.

So ordered.

January 8, 2018


Charles S. Temple
Presiding Justice

CST/dmb

FRED S. TEEBOOM v. CITY OF NASHUA / 226-2017-CV-160
and
DANIEL MORIARTY v. JIM DONCHESS, MAYOR OF THE CITY OF NASHUA,
and the CITY OF NASHUA / 226-2017-CV-221

Page 2 of 2

ADDENDUM TABLE OF CONTENTS

1. Order For Additional Briefing, dated January 08, 2018 (Temple, J.)
2. Motion for Reconsideration by Moriarty
3. Motion for Reconsideration by Teeboom
4. Notice of Decision, dated March 07, 2018 (Temple, J.)
5. Notice of Decision, dated March 23, 2018 (Temple, J.)
6. Ordinance (O-17-031) Relative to the Wastewater System Fund
7. City of Nashua Organization Table
8. Ordinance 5-145 Preparation of Budget
9. Ordinance 5-145 Preparation of Budget (amended 2009)
10. Teeboom's Exhibit 13
11. HB 341 as Introduced
12. HB 341 as Amended
13. SB 2 as Introduced
14. Amendment to SB2
15. NHHR Jour. June 1, 2011
16. SB 2 - Final (Chapter 234)
17. SB 269 (Chapter 215) 2006
18. Question 1, November 6, 2018, Adopted

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT

FRED S. TEEBOOM v. CITY OF NASHUA
226-2017-CV-160

and

DANIEL MORIARTY v. JIM DONCHESS, MAYOR OF THE CITY OF NASHUA,
and the CITY OF NASHUA
226-2017-CV-221

ORDER

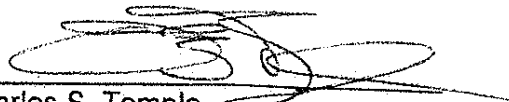
The Court has been granted an extension to exceed the sixty (60) day administrative deadline for the issuance of a decision in this case. Due to the importance of this decision, the Court is carefully evaluating the evidence and the applicable law. The Court is now in the final stages of its decision-making process. As part of this process, the Court is ordering the parties to submit additional briefing (five pages or less) on the issue of standing under Duncan v. State, 166 N.H. 630 (2014), Carlson v. Latvian Lutheran Exile Church, ___ N.H. ___ (September 21, 2017), and any other applicable cases. Each party shall file a memorandum of law with the Court on or before January 19, 2018, addressing the standing issue under New Hampshire law.

The Court will consider the memorandums of law as it finalizes the decision in this case. It is of the utmost importance that the decision be made in an informed, deliberative, and careful manner. While the Court appreciates the need for finality by the parties, there are certain cases that demand additional time to insure that the deliberative process is a fair and just one. Again, the significance of the decision in this

case to the parties and the public interest simply demands the investment of additional time by the Court to insure that justice is served by its decision.

So ordered.

January 8, 2018



Charles S. Temple
Presiding Justice

CST/dmb

FRED S. TEEBOOM v. CITY OF NASHUA / 226-2017-CV-160
and
DANIEL MORIARTY v. JIM DONCHESS, MAYOR OF THE CITY OF NASHUA,
and the CITY OF NASHUA / 226-2017-CV-221

Page 2 of 2

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS

SUPERIOR COURT – SOUTHERN DISTRICT

Daniel Moriarty v.
Jim Donchess, et al

Case No.: 226-2017-CV-00221

Fred Teeboom v.
City of Nashua

Case No. 226-2017-CV-00160

PLAINTIFF MORIARTY'S MOTION FOR RECONSIDERATION

1. Under Clerk's Notice dated February 13, 2018, this Court issued an Order on Standing (the "Order"). Plaintiff Moriarty moves for reconsideration as follows.

I. Nashua's Cap is Enforceable as Written

2. As noted in the Order, in 2011, the Legislature passed SB2, which made several changes to several statutes simultaneously. These changes include the addition of paragraph II-a to RSA 49-B:13, which states:

"All town or city charters which have been adopted, revised or amended to include a tax or spending cap of any kind ... are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken" (emphasis added).

3. Also included in SB2 was new language added to a separate statute (RSA 49-C:33) which states that "Such a tax cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined by the charter."
4. Additionally, SB2 added paragraph III to RSA 49-C:12, which states in part, "the adoption of an override threshold to a tax cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget" (emphasis added).

5. By choosing to limit its applicability to merely “the adoption” of an override provision “pursuant to RSA 49-C:33, I(d),” the language of RSA 49-C12, III makes clear that it applies only to future actions, as opposed to limiting override provisions that had already been adopted. Indeed, paragraph I(d) did not exist until inserted into RSA 49-C:33 in 2011 via SB2; as such, no tax cap could have been passed pursuant to RSA 49-C:33 prior to that date, and the Legislature in passing SB2 nonetheless made clear that such caps were still enforceable. This stands in sharp contrast to the Court’s Order, which holds that this paragraph vitiates the unequivocal endorsement of all then-existing caps.
6. Despite SB2’s clear and unambiguous statement that all then-existing caps “are fully enforceable,” the Court held that SB2, in fact, rendered Nashua’s cap unenforceable. This was in error, as the plain meaning of SB2’s provisions is that all then-existing caps are enforceable, but that future caps must contain a supermajority override provision.
7. Had the Legislature passed the provisions quoted in paragraph 2 prior to the provisions quoted in paragraphs 3 and 4, perhaps this Court’s reading would have some validity. But as the Legislature clearly and unequivocally authorized Nashua’s cap at the same time it passed the supermajority override provisions, it is clear that the Legislature intended that all then-existing caps be held enforceable without additional amendments, and that the language in paragraphs 3 and 4 above merely limited future actions. As such, the Court finding Nashua’s cap unenforceable is a gross misreading of the legislative intent and effect of SB2.

8. Going further, the override provisions in RSA 49-C:12, III¹ and RSA 49-C:33, I(d)² both refer specifically to tax caps, not spending caps. Yet the language in RSA 49-B:13, II-a, which ratifies and legalizes all then-existing caps, states clearly that it applies to “a tax or spending cap of any kind.” As Nashua has a spending cap, the Court was remiss in enforcing provisions of law that reference only tax caps while vitiating a provision that explicitly refers to spending caps.

II. **Even Assuming Arguendo That the Provisions of SB2 Require the Charter to Include an Additional Override Provision, the Charter Complies with Such a Requirement.**

9. RSA 49-C:33, I – as amended by SB2 – differentiates between override provisions for the cap, and specific exclusions from the cap.

10. While the Court held that § 56-d applied only to exclusions, it is clear that the provisions of Charter § 56-d are best described as budgetary overrides, whereas the budget line items excluded from the CAMB in Ordinance 5-145 are best described as exclusions.

11. The City’s Charter provides both for exclusions as well as for overrides. Indeed, City Ordinance 5-145 excludes certain line items from the CAMB, while Charter § 56-d provides for the Board of Alderman to exceed/override the cap in regards to two specific types of spending: bonded debt and capital improvements. As RSA 49-C:33’s override provisions do not require that there be a general override, Nashua’s specific override provisions satisfy its requirements.

¹ “Notwithstanding any contrary provisions in paragraph I, the adoption of an override threshold provision to a tax cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget.” RSA 49-C:12, III (2011).

² “Such a tax cap shall provide for an override threshold...” RSA 49-C33, I(d) (2011).

12. To the extent that the Court holds that the City's cap must contain a general supermajority override provision to comply with state law, the Court should have interpreted the Charter so as to avoid a conflict with State law and the State Constitution.³ *See, e.g., State v. Smagula*, 117 N.H. 663, 666 (holding that "It is a basic principle of statutory construction that a legislative enactment will be construed to avoid conflict with constitutional rights wherever reasonably possible").
13. It was reasonably possible to interpret Nashua's Charter so as to avoid the constitutional question raised in the Court's Order. Indeed, had this Court held that a general override was required and yet still interpreted the Charter so as to avoid a constitutional conflict, it could have interpreted Charter § 56-c to contain a general override provision when it states: "This provision shall not prevent the [M]ayor and the [BOA] from appropriately funding any programs or accounts mandated to be paid from municipal funds by state and federal law."
14. Nonetheless, this Court, in considering this provision in the Charter, held that this provision would "fail to satisfy RSA 49-C:33, I(d) and RSA 49-C:12, III because it does not 'provide for an override threshold on a vote to exceed the limit on annual increases ... by a supermajority as determined by the charter.'" *Order*, pg. 19, citing RSA 49-C:33.
15. In so holding, this Court overlooked the fact that the Charter already states the required supermajority to override the cap – namely 2/3, or 10 out of 15, as noted in Charter § 56-d. There is no reason the Court could not have applied this supermajority requirement to the general override provision noted above.

³ This Court made clear in its Order that it was relying on *City of Manchester v. Sec'y of State*, 161 N.H. 127 (2010), which notes that the Legislature's authority to restrict or authorize cities and towns to amend their charters is a constitutional question, citing N.H. Const. pt. 1, art. 39.

16. At the very least, the Court could have allowed the City time to repair any alleged infirmity in its spending cap policy. *See, e.g., Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) (Staying for 180 days a mandate rendering the State of Illinois gun control program unconstitutional so as “to allow the Illinois legislature to craft a new gun law...”).

17. As such, if the Court believed that SB2 required a general override provision, the Court could have – and should have – interpreted the City’s Charter as having such a provision, and that the override threshold for such an override was 10 out of 15 alderman.⁴

III. The Court’s Ruling that the Spending Cap is Unenforceable is Properly Described as a Ruling on the Merits, and Not as a Question of Standing.

18. As the Court notes, “standing...requires parties to have personal legal or equitable rights that are adverse to one another, with regard to an actual, not hypothetical, dispute, which is capable of judicial redress.” *Duncan v. State*, 166 N.H. 630, 642 (2014).

19. The Court then goes on to state that, because the spending cap is supposedly invalid under state law, that the parties’ dispute is not capable of judicial redress. Put another way, the Court ruled that because the defendants would prevail on the merits, the plaintiffs lack standing to reach the merits. This circular reasoning is not how standing analysis is properly conducted.

⁴ As noted in footnote 6 of the Order, the Court so holding would not have rendered the City’s disputed budget lawful, despite the fact that ten votes were garnered in its support, as said budget purported to be under the spending cap limitation, as opposed to purporting to override it.

20. The enforceability of the cap goes to the merits of the parties' underlying dispute, not to standing. Holding the cap unenforceable does not change that, prior to the Court *resolving the parties' dispute with such a ruling*, the parties had an actual dispute and that such dispute was capable of judicial redress. Whether by invalidating or enforcing the cap, the Court is capable of redressing the parties' dispute. As such, the Court's holding that the Plaintiffs lack standing was in error.

21. Indeed, were other courts to adopt this Court's method of standing analysis, every case that ended with the invalidation of a statute that either party sought to enforce would end with a party being ruled to lack standing. This is, of course, not what we see in our jurisprudence.

Conclusion

22. As Nashua's spending cap is enforceable as written due to SB2's unequivocal endorsement thereof; and as Nashua's Charter includes a specific override provision; and as Nashua's Charter could be read to include a general override provision; and as the Plaintiffs have standing to bring this claim, regardless of how the Court rules on the merits of said claim, this Court should provide further orders as described in the below Prayer for Relief.


Prayer for Relief

WHEREFORE, Daniel Moriarty requests this honorable Court to order the following relief:

- A. Find that Plaintiffs have standing to bring the above-captioned matter; *and*
- B. Find that Nashua's Spending Cap is enforceable as written; *and/or*
- C. Find that Nashua's Spending Cap contains the necessary override provisions;
and/or
- D. Allow the City time to repair any infirmities in its spending cap policy; *and/or*
- E. Grant any other relief this honorable Court deems just and proper.

Respectfully submitted,
Daniel Moriarty

February 21, 2018

By 
Seth J. Hipple, Esq.
Bar Number: 19555
The Law Offices of Martin & Hipple,
PLLC
22 Bridge St., Ste. 3
Concord, NH 03301
877-645-2909 (ext. 2)
SJHipple@NHLegalServices.com

Certificate of Service

Attorney Hipple certifies that on the above date a copy of this Motion was sent via U.S. Mail to

Steven Bolton, Esq.
P.O. Box 2019
Nashua, NH 03061

And

Fred Teeboom, electronically to <fredtee@comcast.net>.



Seth J. Hipple, Esq.

State of New Hampshire

HILLSBOROUGH, SS.
SOUTHERN DISTRICT

SUPERIOR COURT
No. 226-2017-CV-00160
No. 226-2017-CV-00221

Fred S. Teeboom

v.

City of Nashua

MOTION FOR RECONSIDERATION

NOW COMES Fred S. Teeboom, Plaintiff, and moves for reconsideration of the Court's Order on Standing of February 12, 2018 and says:

1. On February 12, 2018 the Court issued an Order on Standing dismissing plaintiffs' consolidated cases 226-2017-CV-00160 and 226-2017-CV-00221.
2. The Court reached this decision after finding the city's spending cap "*violates state law and is therefore unenforceable.*"
3. The issue of whether the city's spending cap violates state law was **not** explicitly raised by the Court or by the litigating parties; neither during the full hearing on October 23, 2017, nor during any of the prior hearings, nor in any of the motions filed in the consolidated cases, nor in the Court's response to these motions, nor in any previous orders.
4. On January 8, 2018 the Court ordered a Memorandum of Law from each party on the issue of Standing noting, "*It is of the utmost importance that the decision be made in an informed, deliberative, and careful manner...to insure that the deliberative process is a fair and just one.*"
5. Furthermore, the Court's order "*declined to affirmatively strike down the spending cap,*" noting "*neither party has requested such relief, nor have the parties fully litigated the relevant issues.*" (ref. footnote #10 on page 22).
6. The Court failed to request a Memorandum of Law from each party on the Court's central finding that the city's spending cap violates state law prior to its order for dismissal.
7. Failure "*to fully litigate the relevant issues*" is especially noteworthy since the city's spending cap has been in effect since 1994, predating RSA 49-C:12, III and 49-C:33, I(d) and having been explicitly and unconditionally grandfathered with the unambiguous language of RSA 49-B:13, II-a:

RSA 49-B:13, II-a "All town or city charters which have been adopted, revised, or amended to include a tax or spending cap of any kind,....all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken." Effective July 5, 2011 (emphasis added).

8. The Court cites City of Manchester v. Secretary of State, 161 NH 127 (2010) for the proposition that the Nashua spending cap may not be compliant with NH state law, despite the fact that the legislature, in response to this case, had explicitly affirmed that pre-existing chartered tax and spending caps are **“fully enforceable, without regard to whether.....authorized by law at the time they were established.”** (ref. RSA 49-B:13, II-a effective July 5, 2011).
9. Reviewing the legislative history, the Court notes that SB-2 (the bill the legislature chose to enact over HB341, thereby adopting RSA 49-B:13, II-a) contains no express requirement for an “override provision” for pre-existing spending caps. **The Court is in error to read this intent into this legislation retrospectively** (see footnote #7 on pages 17 and 18).
10. Regardless, Nashua Charter par 56-d titled Exception to Budget Limitation contains two specific “exceptions from the limitation” for the purpose of overriding the par. 56-c budget limitation with 10 affirmative votes. **For 24 years this has been the accepted budget override process in Nashua.** Declining to read the Nashua Charter par. 56-d supermajority exception vote as an “override” provision (see pages 20 and 21) is unreasonable.
11. For all of these reasons the Court’s order, in finding the Nashua spending cap lacks an “override provision” and therefore violates State law, **is neither supported by law nor by fact.**

WHEREFORE, Plaintiff prays that:

- (1) The Court reconsider and clarifies that the city’s spending cap pursuant to RSA 49-B:13, II-a and consistent with footnote #10 on page 22 of the order does not violate state law and **remains validated and enforceable, without prejudice**, unless fully litigated.⁽¹⁾
- (2) Finding the spending cap remains valid, the Court reconsider footnote #11 on page 22 for the purpose of deciding whether the plaintiffs have Standing and are entitled to redress for their injuries.
- (3) The Court makes such other and further order it deems fair and just.

February 20, 2018

Respectfully submitted,

By: Fred S. Teeboom

Fred S. Teeboom, Plaintiff
 24 Cheyenne Drive
 Nashua, NH 03063
 Phone: (603) 889-2316
 fredtee@comcast.net

I herewith certify that a copy of this motion for reconsideration was mailed by USPS to Steven A. Bolton, esq., attorney for the Defendants and to Seth J. Hipple, esq., attorney for Plaintiff Moriarty on February 20, 2018

Fred S. Teeboom
 Fred S. Teeboom, Plaintiff

⁽¹⁾ Mayor Donchess, citing the Court’s order, declared the spending cap “has been invalidated.”

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

FILE COPY

Case Name: **Fred S Teeboom v City of Nashua**
Case Number: **226-2017-CV-00160 226-2017-CV-00221**

Please be advised that on March 07, 2018 Judge Temple made the following order relative to:

Motion for Reconsideration (Teeboom); MOTION DENIED. THE COURT HAS NOT OVERLOOKED OR MISAPPREHENDED ANY POINTS OF LAW OR FACT IN ITS ORDER DATED FEBRUARY 12, 2018. SEE SUPERIOR COURT RULE 12(e)

Plaintiff (Teeboom) Motion for Evidence Sanction on Defendant for Failure to Provide Discovery; MOTION DENIED. REQUESTS FOR FINDINGS OF FACT & RULINGS OF LAW WERE PROPERLY FILED BY THE CITY OF NASHUA AT THE HEARING ON OCTOBER 23, 2017. THERE IS NOT ANY DISCOVERY VIOLATION UNDER SUPERIOR COURT RULES 21 OR 22 FOR THE FILING OF THESE REQUESTS AT THE HEARING. THESE REQUESTS DO NOT IN ANY WAY CONSTITUTE DISCOVERY. THIS MOTION DOES NOT HAVE ANY BASIS IN FACT OR LAW.

Plaintiff's Moriarty Motion for Reconsideration; MOTION DENIED. THE COURT HAS NOT OVERLOOKED OR MISAPPREHENDED ANY POINTS OF LAW OR FACT IN ITS ORDER DATED FEBRUARY 12, 2018. SEE SUPERIOR COURT RULE 12 (e).

Plaintiff (Teeboom) Supplement to Motion for Reconsideration; THE COURT REVIEWED THIS SUPPLEMENT ON MARCH 7, 2018 AS PART OF ITS ASSESSMENT OF THE PLAINTIFF'S MOTION FOR RECONSIDERATION.

March 07, 2018

Marshall A. Buttrick
Clerk of Court

(293)

C: Fred S Teeboom; Steven A. Bolton, ESQ; Seth J. Hipple, ESQ

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Hillsborough Superior Court Southern District
30 Spring Street
Nashua NH 03060

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

FILE COPY

Case Name: **Fred S Teeboom v City of Nashua**
Case Number: **226-2017-CV-00160 226-2017-CV-00221**

Please be advised that on March 22, 2018 Judge Temple made the following order relative to:

Plaintiff Moriarty's Motion to Supplement His Motion for Reconsideration; **MOTION DENIED. THE COURT DID NOT REACH THE STANDING ISSUE ADDRESSED IN THE KURK ORDER. (See FTN. 11-order dated 2/12/18). IT SPECIFICALLY FOUND THAT THE PLAINTIFF LACKED STANDING ON OTHER GROUNDS.**

March 23, 2018

Marshall A. Buttrick
Clerk of Court

(293)

C: Fred S Teeboom; Steven A. Bolton, ESQ; Seth J. Hipple, ESQ



ORDINANCE

RELATIVE TO THE WASTEWATER SYSTEM FUND AS A SEWER FUND

CITY OF NASHUA

In the Year Two Thousand and Seventeen

The City of Nashua ordains that the Nashua Revised Ordinances as amended, are hereby further amended as follows:

1. In Part II "General Legislation", Chapter 255 "Sewage Disposal", Article IX "Sewer Use Fees", delete the struck-through language and add the new underlined language as shown:

§ 255-60. Purpose.

This article provides for a system of sewer use fees to be paid by all users of the City wastewater system, the classification of users, and the creation of a wastewater system fund as a municipal enterprise and a legal and accounting entity. This wastewater system fund is the "sewer fund" required by NH RSA 149-I:10.

§ 255-61. Wastewater system fund.

- A. The wastewater system fund shall be a legal and accounting entity of the City. Pursuant to state law, the fund shall be kept as a separate and distinct fund, shall not be commingled with city tax revenues, and shall not be deemed part of the municipality's general fund accumulated surplus. All revenues from sewer use fees, connection charges and any other revenues related to the collection and treatment of wastewater will be credited to this fund and all expenditures for the operation and maintenance of the system, including contract summary and change orders as well as a scope of work for each contract or change order related to the EPA consent decree associated with the separation of wastewater and stormwater and/or storage facilities as well as other designs presented for approval shall contain only items related to the storage treatment and separation of wastewater or stormwater and conveyance systems. Submission of plans and/or change orders shall contain only what is necessary to complete and restore disturbed areas as deemed appropriate by the Board of Public Works and the Board of Aldermen.

ORDINANCE

O-17-031

Appropriate uses also include capital replacement and improvements will be charged to this fund. A detailed summary of these plans shall be updated yearly and submitted to the Board of Aldermen for review. The earnings and other reserves of the system will be retained in this fund. ~~Surplus retained earnings will not be used for any purpose other than those specified above without the prior approval of the Board of Public Works and the Board of Aldermen.~~ Pursuant to state law, the fund may be expended only for the cost of design, construction, expansion, replacement, management, maintenance, operation, and repair of sewer lines and systems and sewerage treatment and disposal works and facilities, as well as payment of the interest on any related debt incurred.”

2. In Part I “Administrative Legislation”, Chapter 5 “Administration of Government”, Article XXVIII “Municipal Budget Control”, Section 5-145 “Preparation of combined annual municipal budget and use of Northeast Consumer Price Index - Urban”, delete the struck-through language and add the new underlined language as shown:

“§ 5-145. Preparation of combined annual municipal budget and use of Northeast Consumer Price Index—Urban Gross Domestic Product Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment.”

- A. The combined annual municipal budget, prepared in accordance with Section 56-c of the City Charter, shall consist of accounts and line items of the City of Nashua annual municipal budget, to include all departmental revenue and department expenditures, contingency accounts, bonded debt service, capital reserve accounts, capital improvement accounts, and the solid waste management and wastewater treatment operation and maintenance enterprise funds.
- B. The combined annual municipal budget for purpose of Section 56-c of the City Charter does not include the following: the fund balance account, the special revenue funds, all prior-year escrow accounts, Hillsborough County taxes, the overlay assessment, all capital projects funded by bonds ~~or sewer user fees~~, the wastewater system fund (sewer fund), the capital reserve, conservation and trust funds, the reserve fund established pursuant to Section 56-e of the City Charter, and the public capital facilities impact fee accounts.
- C. When calculating the limitation on budget increases under Section 56-c of the City Charter, the ~~Northeast Consumer Price Index—Urban (CPI-U)~~ Gross Domestic Product Implicit Price Deflator for State and Local Government Consumption Expenditures and Gross Investment shall be used.”

All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

This legislation shall take effect upon passage.

LEGISLATIVE YEAR 2017

ORDINANCE: O-17-031

PURPOSE: Relative to the wastewater system fund as a sewer fund

ENDORSERS: Mayor Jim Donchess
ALDERMAN RICHARD A. DOWD
ALDERMAN BENJAMIN M. CLEMONS

COMMITTEE
ASSIGNMENT: ALDERMAN-AT-LARGE LORI WILSHIRE
ALDERMAN JUNE M. CARON
ALDERWOMAN MARY ANN MELIZZI-GOLJA
ALDERMAN-AT-LARGE MICHAEL B. O'BRIEN
BUDGET REVIEW COMMITTEE

FISCAL NOTE: This legislation removes the wastewater system fund (sewer fund) in the preparation of the combined annual municipal budget.

ANALYSIS

This legislation confirms that the city's "wastewater system fund" is the "sewer fund" required by NH RSA 149-I:10. Under state law, the city must retain and segregate all sewer use fees (called "sewer rents" in state law) and sewerage related expenses in a separate and distinct fund. This fund cannot be commingled with city tax revenue, surplus in the fund is not part of the city's general fund balance, and the fund cannot be spent on any purpose other than sewerage related expenses.

Given that both the revenues and expenditures of the wastewater system fund do not affect or impact tax rates for the city, the fund should not be subject to the Charter §56-c limitation on budget increases. Further, NRO §5-145 makes an indefensible distinction by currently including wastewater treatment operation and maintenance in the limitation on budget increases but not including wastewater capital projects in the limitation on budget increases, even though both are fully funded through sewer user fees.

In addition, the wastewater system fund functions as a special revenue fund (RSA 31:95-c). Special revenue funds are limited to activities funded primarily through user fees, and restrict revenues from a specific source to expenditures for specific purposes related to the purpose or source of the revenue. Special revenue funds are separate from the general fund and any surplus is not part of the general fund accumulated surplus. Recognizing that these funds do not impact the tax rate, NRO §5-145 already states that special revenue funds are not included in the charter limitation on budget increases, and the wastewater system fund is such a fund.

Also, the legislation updates the index used when calculating the limitation on budget increases under Section 56-c of the City Charter, pursuant to a voter-approved charter amendment.

Approved as to
account number and/or
structure, and amount:

Financial Services Division

By: 

Approved as to form:

Office of Corporation Counsel

By: 

Date: 

ORDINANCE 0-17-031

Relative to the wastewater system fund as a sewer fund

IN THE BOARD OF ALDERMEN

1ST READING JANUARY 24, 2017

Referred to:
BUDGET REVIEW COMMITTEE
A PUBLIC HEARING ON MONDAY,
FEBRUARY 27, 2017 AT 7:00 PM

IN THE ALDERMANIC CHAMBER

2nd Reading MARCH 21, 2017

3rd Reading APRIL 11, 2017

4th Reading _____
MARCH 21, 2017--RE-REFER TO
Other Action BUDGET REVIEW COMMITTEE

Passed APRIL 11, 2017

Indefinitely Postponed _____

Defeated _____

Attest: [Signature]
City Clerk

[Signature]
President

Approved [Signature]
Mayor's Signature

4/18/17
Date

Endorsed by _____ MAYOR

[Signature]

_____ DOWD

_____ CLEMONS

_____ WILSHIRE

[Signature]

_____ CARON

_____ MELIZZI-GOLJA

[Signature]

_____ O'BRIEN

Vetoed: _____

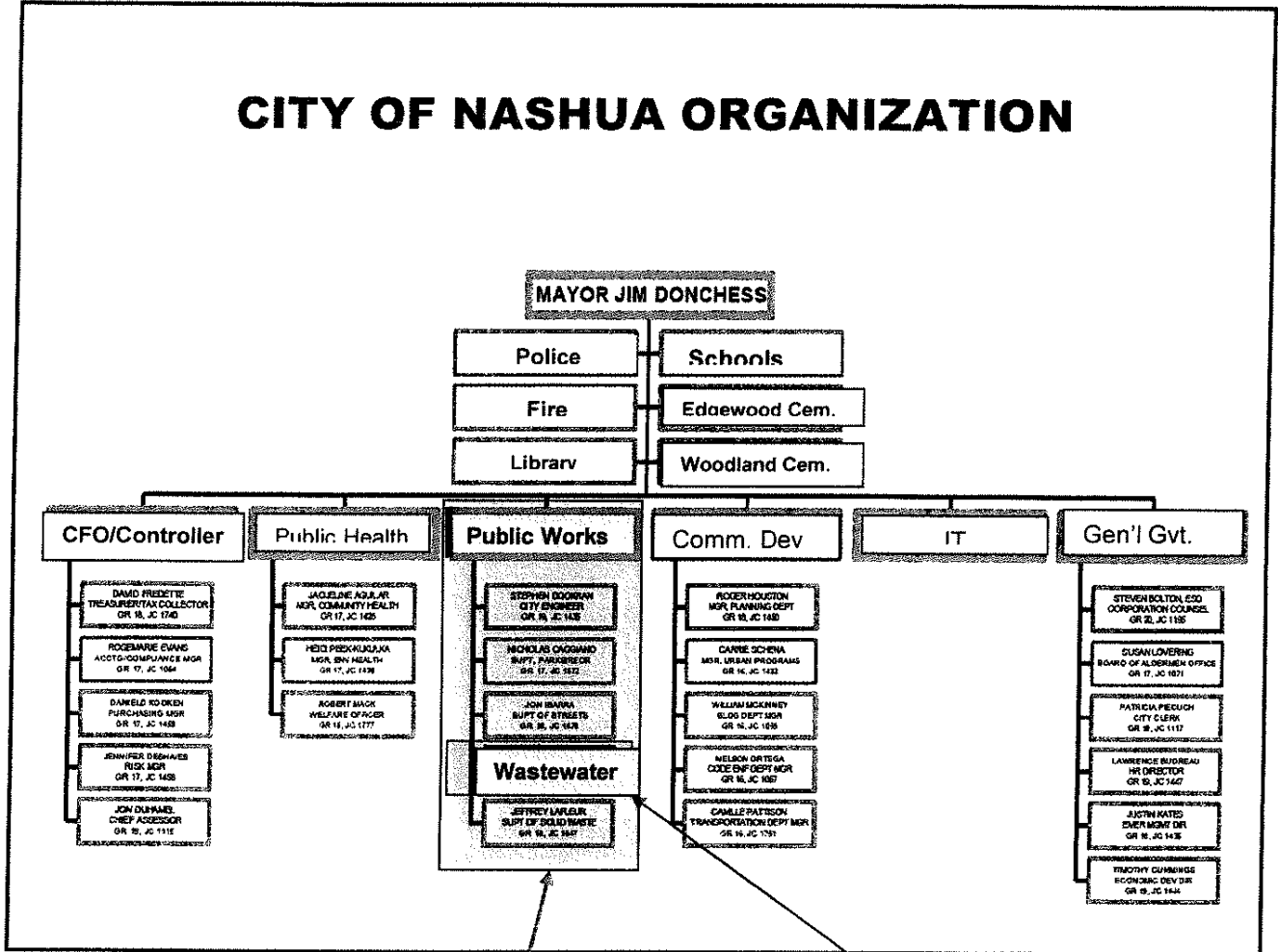
Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President

CITY OF NASHUA ORGANIZATION



Public Works Division

Wastewater is a department under the Public Works Division

Source: City of Nashua, Public Works Division

Part 8: Budgeting and Planning

Article XXVIII: Municipal Budget Control

[Added 3-28-1995 by Ord. No. O-94-76]

§ 5-142 Authority.

This Part 8 is adopted pursuant to Referendum Question No. 1 adopted by the voters of Nashua on November 2, 1993, reference Section 56-c through Section 56-f of the City Charter.

§ 5-143 Purpose.

The purpose of this Part 8 is to further define certain terms appearing in City Charter Sections 56-c through 56-f pertinent to municipal budget control.

§ 5-144 Definitions.

As used in this Part 8, the following terms shall have the meanings indicated:

APPROPRIATE

To set apart from the public revenue of a municipality a certain sum for a specified purpose and to authorize the expenditure of that sum for that purpose.

APPROPRIATION

An amount of money appropriated for a specified purpose by the legislative body.

BUDGET

A statement of recommended appropriations and anticipated revenues submitted to the legislative body.

§ 5-145 Preparation of combined annual municipal budget and use of Northeast Consumer Price Index-Urban.

[NRO 1987, § 2-838; amended 5-8-2007 by Ord. No. O-07-99; 6-24-2008 by Ord. No. O-08-20]

A. The combined annual municipal budget, prepared in accordance with Section 56-c of the City Charter, shall consist of accounts and line items of the City of Nashua annual municipal budget, to include all departmental revenue and department expenditures, contingency accounts, bonded debt service, capital reserve accounts, capital improvement accounts, solid waste management and wastewater treatment operation and maintenance enterprise funds.

[Amended 9-27-2011 by Ord. No. O-11-86]

B. The combined annual municipal budget for purpose of Section 56-c of the City Charter does not include the following: the fund balance account, the special revenue funds, all prior-year escrow accounts, Hillsborough County taxes, the overlay assessment, all capital projects funded by bonds or sewer user fees, the capital reserve, conservation and trust funds, the reserve fund established pursuant to Section 56-e of the City Charter, and the public capital facilities impact fee accounts.

[Amended 9-27-2011 by Ord. No. O-11-86]

C. When calculating the limitation on budget increases under Section 56-c of the City Charter, the Northeast Consumer Price Index - Urban (CPI-U) shall be used.

- D. The Mayor's proposed annual budget and the adopted annual budget, prepared and adopted according to City Charter Sections 56 et seq., shall state the sum of all appropriations of the combined annual municipal budget, to include the accounts and line items enumerated under Subsection A of this section. The dollar amount under or above the limit established by City Charter Section 56-c shall also be stated.

[Added 6-9-2009 by Ord. No. O-09-64]

- E. Resolutions to adopt the annual budget, and resolutions to supplement the budget, shall state the accumulated sum of all appropriations of the combined annual municipal budget and also state the dollar amount under or above the limit established by City Charter Section 56-c. If the dollar amount is above the allowed limit, requiring an exemption under City Charter Section 56-d, the maximum dollar amount eligible for exemption under City Charter Section 56-d shall also be stated.

[Added 6-9-2009 by Ord. No. O-09-64]

§ 5-146 Current fiscal year expenditures defined.

The total expenditures of the combined annual municipal budget for the current fiscal year shall consist of the sum of all approved appropriations of the combined annual municipal budget for the current fiscal year.

§ 5-147 Next fiscal year expenditures defined.

The total expenditures of the combined annual municipal budget for the next fiscal year shall consist of the sum of all proposed appropriations of the combined annual municipal budget for the next fiscal year.

§ 5-148 Limitation on spending increases; mandated and unmandated programs.

All federal and state mandated and unmandated programs and accounts shall be subject to the limitation of Section 56-c of the City Charter, except that in the event the proposed expenditures for the next fiscal year exceed this limit, the unmandated programs and accounts shall be reduced to bring the combined annual municipal budget for the next fiscal year within the expenditure limit while leaving the mandated programs appropriately funded.



ORDINANCE

REGARDING THE FORMAT OF THE COMBINED ANNUAL MUNICIPAL BUDGET AND BUDGET AND SUPPLEMENTAL APPROPRIATION RESOLUTIONS

CITY OF NASHUA

In the Year Two Thousand and Nine

The City of Nashua ordains that Part I “Administrative Legislation”, Chapter 5 “Administration of Government”, Part 8 “Budgeting and Planning, Article XXVIII “Municipal Budget Control”, § 5-145 “Preparation of combined annual municipal budget and use of Northeast Consumer Price Index-Urban”, is hereby further amended by adding the new underlined language as follows:

“§ 5-145. Preparation of combined annual municipal budget, and use of Northeast Consumer Price Index-Urban.

...

- D.** The mayor’s proposed annual budget and the adopted annual budget, prepared and adopted according to City Charter Sections 56 et seqq., shall state the sum of all appropriations of the combined annual municipal budget, to include the accounts and line items enumerated under subsection A of this section. The dollar amount under or above the limit established by City Charter Section 56-c shall also be stated.
- E.** Resolutions to adopt the annual budget, and resolutions to supplement the budget, shall state the accumulated sum of all appropriations of the combined annual municipal budget and also state the dollar amount under or above the limit established by City Charter Section 56-c. If the dollar amount is above the allowed limit, requiring an exemption under City Charter Section 56-d, the maximum dollar amount eligible for exemption under City Charter Section 56-d shall also be stated.”

All ordinances or parts of ordinances inconsistent herewith are hereby repealed. This ordinance shall take effect following its passage.

LEGISLATIVE YEAR 2009

ORDINANCE: 0-09-64

PURPOSE: Regarding the format of the combined annual municipal budget and budget and supplemental appropriation resolutions

ENDORSER(S): Alderman-at-Large Fred S. Teeboom

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE: None.

ANALYSIS

This legislation requires certain specific information to be included in the mayor's proposed annual budget, the adopted annual budget, the resolutions adopting the annual budget, and any supplemental appropriation resolutions.

Approved as to form: Office of Corporation Counsel

By: Dorothy Clarke

Date: May 5, 2009

"Traditional" Method for Calculating the Spending Cap

Plaintiff Exhibit #13
23 Oct 2017

	NRO 5-145 Year 2016	NRO 5-145 Year 2016	NOTES
	FY 2017 With Sewer Fund Partially Exempted	FY 2018 With Sewer Fund Partially Exempted	
	Adopted Budget	Proposed Budget	Adopted Budget for the current Fiscal Year is compared with the Proposed Budget for the next Fiscal Year.
General Fund Budget	\$ 247,886,768	\$ 258,493,971	Budget white pages
Enterprise Fund Budget - Solid Waste	\$ 6,843,568	\$ 7,105,008	Budget green pages
Enterprise Fund Budget - Wastewater	\$ 18,846,120	\$ 17,270,837	
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588	Budget pink pages
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265	
TOTAL APPROPRIATIONS	\$ 291,721,769	\$ 301,470,669	\$9.75 million increase
Exemptions			
Enterprise Fund - Wastewater Capital	\$ 4,390,185	\$ 2,206,622	Exemptions These exemptions have not been voted on under the "exception" of Charter Par.56-d. These are NOT valid exemptions.
Enterprise Fund - Wastewater Debt Service	\$ 5,362,717	\$ 5,029,899	
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588	
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265	
TOTAL EXEMPTIONS	\$ 27,898,215	\$ 25,837,374	
COMBINED ANNUAL MUNICIPAL BUDGET	\$ 263,823,554	\$ 275,633,295	Budget minus Exemptions
Spending Cap Calculation			
Prior Year Combined Annual Municipal Budget	\$ 263,823,554		
Add Prior Year Supplemental Appropriations	0		
Prior Year Combined Annual Municipal Budget Including Supplemental Appropriations	\$ 263,823,554		
Last 3-Years Annual Average S&L IPD	1.40%		
Allowable Spending Over Prior Year Combined Annual Municipal Budget	\$ 3,693,530		
Maximum Budget Allowed (Prior Year + Allowable Spending)	\$ 267,517,084	\$ 267,517,084	
Combined Annual Municipal Budget - Current Year		\$ 275,633,295	
Proposed Combined Annual Municipal Budget		\$ (8,116,211)	Proposed budget is \$8.1 million ABOVE the cap

Proposed budget is \$8.1 million ABOVE the cap

Mayor's Scheme for Calculating the Spending Cap

	NRO 5-145 Year 2016	NRO 5-145 Year 2017	NOTES
	FY 2017 With Sewer Fund Partially Exempted	FY 2018 With Sewer Fund Partially Exempted	
	Adopted Budget	Proposed Budget	
			<u>Adopted</u> Budget for the current Fiscal Year is compared with the <u>Proposed</u> Budget for the next Fiscal Year.
General Fund Budget	\$ 247,886,768	\$ 258,493,971	white pages
Enterprise Fund Budget - Solid Waste	\$ 6,843,568	\$ 7,105,008	green pages
Enterprise Fund Budget - Wastewater	\$ 18,846,120	\$ 17,270,837	
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588	pink pages
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265	
TOTAL APPROPRIATIONS	\$ 291,721,769	\$ 301,470,669	Proposed budget increase = \$9.7 million
Exemptions			
Wastewater Fund (renamed Sewer Fund)	---	\$ 17,270,837	Exemption per NRO 17-030
Enterprise Fund - Wastewater Capital	\$ 4,390,185	---	<u>Exemptions</u> These exemptions have not been voted on under Charter Par.56-d. These are NOT valid exemptions.
Enterprise Fund - Wastewater Debt Service	\$ 5,362,717	---	
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588	
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265	
TOTAL EXEMPTIONS	\$ 27,898,215	\$ 35,871,690	
COMBINED ANNUAL MUNICIPAL BUDGET	\$ 263,823,554	\$ 265,598,979	Budget minus Exemptions
Spending Cap Calculation			
Prior Year Combined Annual Municipal Budget	\$ 263,823,554		
Add Prior Year Supplemental Appropriations	0		
Prior Year Combined Annual Municipal Budget Including Supplemental Appropriations	\$ 263,823,554		
Last 3-Years Annual Average S&L IPD	1.40%		
Allowable Spending Over Prior Year Combined Annual Municipal Budget	\$ 3,693,530		
Maximum Budget Allowed (Prior Year + Allowable Spending)	\$ 267,517,084	\$ 267,517,084	
Combined Annual Municipal Budget - Current Year		\$ 265,598,979	
Proposed Combined Annual Municipal Budget		\$ 1,918,105	Proposed budget is \$1.9 million BELOW the cap

* O-17-030 Adopted by Board of Aldermen 9:6 on April 11, 2017

Proposed budget is \$1.9 million BELOW the cap

Compare "apples with apples"

	NRO 5-145 Year 2017		NOTES	
	FY 2017 With Sewer Fund Partially Exempted	FY 2018 With Sewer Fund Partially Exempted		
	Adopted Budget	Proposed Budget		
			Adopted Budget for the current Fiscal Year is compared with the Proposed Budget for the next Fiscal Year.	
General Fund Budget	\$ 247,886,768	\$ 258,493,971	white pages	
Enterprise Fund Budget - Solid Waste	\$ 6,843,568	\$ 7,105,008	green pages	
Enterprise Fund Budget - Wastewater	\$ 18,846,120	\$ 17,270,837		
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588		
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265	pink pages	
TOTAL APPROPRIATIONS	\$ 291,721,769	\$ 301,470,669	Proposed budget increase = \$9.7 million	
Exemptions				
Wastewater Fund (renamed Sewer Fund)	\$ 18,846,120	\$ 17,270,837	Exemptions These exemptions have not been voted on under Charter Par.56-d. These are NOT valid exemptions.	
Enterprise Fund - Wastewater Capital	---	---		
Enterprise Fund - Wastewater Debt Service	---	---		
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588		
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265		
TOTAL EXEMPTIONS	\$ 36,991,433	\$ 35,871,690		
COMBINED ANNUAL MUNICIPAL BUDGET	\$ 254,730,336	\$ 265,598,979	Budget - Exemptions	
Spending Cap Calculation				
Prior Year Combined Annual Municipal Budget	\$ 254,730,336			
Add Prior Year Supplemental Appropriations	---			
Prior Year Combined Annual Municipal Budget Including Supplemental Appropriations	\$ 254,730,336			
Last 3-Years Annual Average S&L IPD	1.40%			
Allowable Spending Over Prior Year Combined Annual Municipal Budget	\$ 3,566,225			
Maximum Budget Allowed (Prior Year + Allowable Spending)	\$ 258,296,561	\$ 258,296,561		
Combined Annual Municipal Budget - Current Year		\$ 265,598,979		
Proposed Combined Annual Municipal Budget		\$ (7,302,418)		
				Proposed budget is \$7.3 million ABOVE the cap

* Rejected by Aldermanic Budget Review Committee on April 4, 2017

Proposed budget is \$7.3million ABOVE the cap

No Exemptions

	Charter par. 56-c	Charter par. 56-c	NOTES
	FY 2017 With Sewer Fund Partially Exempted	FY 2018 With Sewer Fund Partially Exempted	
	Adopted Budget	Proposed Budget	<u>Adopted</u> Budget for the current Fiscal Year is compared with the <u>Proposed</u> Budget for the next Fiscal Year.
General Fund Budget	\$ 247,886,768	\$ 258,493,971	Budget white pages
Enterprise Fund Budget - Solid Waste	\$ 6,843,568	\$ 7,105,008	Budget green pages
Enterprise Fund Budget - Wastewater	\$ 18,846,120	\$ 17,270,837	
City Special Revenue Funds	\$ 11,851,785	\$ 12,433,588	Budget pink pages
School Special Revenue Funds	\$ 6,293,528	\$ 6,167,265	
TOTAL APPROPRIATIONS	\$ 291,721,769	\$ 301,470,669	\$9.75 million increase
Exemptions			
Enterprise Fund - Wastewater Capital	---	---	No Exemptions
Enterprise Fund - Wastewater Debt Service	---	---	
City Special Revenue Funds	---	---	
School Special Revenue Funds	---	---	
TOTAL EXEMPTIONS	---	---	
COMBINED ANNUAL MUNICIPAL BUDGET	\$ 291,721,769	\$ 301,470,669	(Budget) - (Exemptions)
Spending Cap Calculation			
Prior Year Combined Annual Municipal Budget	\$ 291,721,769		Proposed budget is \$5.7 million ABOVE the cap
Add Prior Year Supplemental Appropriations	0		
Prior Year Combined Annual Municipal Budget Including Supplemental Appropriations	\$ 291,721,769		
Last 3-Years Annual Average S&L IPD	1.40%		
Allowable Spending Over Prior Year Combined Annual Municipal Budget	\$ 4,084,105		
Maximum Budget Allowed (Prior Year + Allowable Spending)	\$ 295,805,874	\$ 295,805,874	
Combined Annual Municipal Budget - Current Year		\$ 301,470,669	
Proposed Combined Annual Municipal Budget		\$ (5,664,795)	

Proposed budget is \$5.7 million ABOVE the cap



HB 341 - AS INTRODUCED

2011 SESSION

11-0073
06/04

HOUSE BILL **341**

AN ACT relative to local spending caps.

SPONSORS: Rep. Vaillancourt, Hills 15; Rep. Bettencourt, Rock 4; Rep. Greazzo, Hills 17;
Rep. Simmons, Hills 17; Rep. Newton, Straf 1; Sen. De Blois, Dist 18;
Sen. Lambert, Dist 13; Sen. Luther, Dist 12

COMMITTEE: Municipal and County Government

ANALYSIS

This bill authorizes cities and towns to adopt charter provisions establishing limitations on the growth of budgets and taxes.

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.

HB 341 - AS INTRODUCED
- Page 2 -

1 including but not limited to aviation, water and sewer services, and parks and recreation, from
2 limitations imposed by the charter. Any charter adopting such limitations shall authorize the
3 elected body to override any such limitation by a 2/3 vote of all members of the town council.

4 II. Any town that by charter has adopted the official ballot town council form of government
5 authorized under RSA 49-D:3, I-a, may adopt, amend, or revise its charter to provide for limitations
6 on the growth of one or more of the following: the annual town budget, the annual school budget if
7 the school district is contained entirely with the town, or taxes assessed by the town. Such charter
8 may exclude self-sustaining entities which are funded through user charges, known as enterprise
9 funds, including but not limited to aviation, water and sewer services, and parks and recreation,
10 from limitations imposed by the charter. Any charter adopting such limitations shall authorize the
11 elected body to override any such limitation by a 2/3 vote of all members of the town council. No
12 matter to be voted on by official ballot may be subject to a supermajority voting requirement.

13 III. Any town that by charter has adopted the representative town meeting form of
14 government authorized under RSA 49-D:3, III, may adopt, amend, or revise its charter to provide for
15 limitations on the growth of one or more of the following: the annual town budget, the annual school
16 budget if the school district is contained entirely with the town, or taxes assessed by the town. Such
17 charter may exclude self-sustaining entities which are funded through user charges, known as
18 enterprise funds, including but not limited to aviation, water and sewer services, and parks and
19 recreation, from limitations imposed by the charter. Any charter adopting such limitations shall
20 authorize the elected body to override any such limit by a 2/3 vote of all members of the
21 representative town meeting.

22 4 Applicability. Any municipal charter provision adopted, amended, or revised prior to the
23 effective date of this act which authorizes a 2/3 vote of the elected body to override any provision
24 limiting the growth of budgets or taxes shall become effective on the effective date of this act.

25 5 Effective Date. This act shall take effect 60 days after its passage.

HB 341 – AS AMENDED BY THE HOUSE

16Mar2011... 0570h

2011 SESSION

11-0073

06/04

HOUSE BILL 341

AN ACT relative to local spending caps.

SPONSORS: Rep. Vaillancourt, Hills 15; Rep. Bettencourt, Rock 4; Rep. Greazzo, Hills 17; Rep. Simmons, Hills 17; Rep. Newton, Straf 1; Sen. De Blois, Dist 18; Sen. Lambert, Dist 13; Sen. Luther, Dist 12

COMMITTEE: Municipal and County Government

ANALYSIS

This bill authorizes cities and towns to adopt charter provisions establishing limitations on the growth of budgets and taxes.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

16Mar2011... 0570h

11-0073

06/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to local spending caps.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Local Option – City Charters; Meetings. Amend RSA 49-C:12, I to read as follows:

I. The mayor shall preside over all meetings of the elected body, and the city clerk shall act as a clerk of the body. All meetings of the elected body shall be public in accordance with RSA 91-A. Regular meetings shall be held at such hours on such days of the week, at such intervals, as the charter may designate and special meetings upon such notice as is required in the charter. The elected body shall establish its own rules, and a majority shall constitute a quorum for the transaction of the business of the board. The mayor shall have the right to introduce bills and initiate other measures at the meetings and to speak at meetings upon pending measures without resigning the chair. In cases where the mayor is directly elected, the mayor shall not be counted to make a quorum of such board, nor vote as a member of the board except in case of equal division *where a simple majority is required. A larger majority vote may be required by statute.*

2 New Section; City Charters; Limitations on Growth of Budgets and Taxes. Amend RSA 49-C by inserting after section 23 the following new section:

49-C:23-a Limitations on the Growth of Budgets and Taxes. A city charter may provide for limitations on the growth of one or more of the following: the annual city budget, the annual school budget if the city and the school district have the same legislative body, or taxes assessed by the city. Such charter may exclude certain expenditures or appropriations from limitations imposed by the charter. Any charter adopting such limitations shall authorize the elected body to override any such limitation by a 2/3 vote of all members of the elected body or a 2/3 vote of all members of the elected body present and voting.

3 New Section; Town Charters; Limitations on the Growth of Budgets and Taxes. Amend RSA 49-D by inserting after section 5 the following new section:

49-D:6 Limitations on the Growth of Budgets and Taxes.

I. Any town that by charter has adopted the town council form of government authorized under RSA 49-D:3, I, may adopt, amend, or revise its charter to provide for limitations on the growth of one or more of the following: the annual town budget, the annual school budget if the town and school district have the same legislative body, or taxes assessed by the town. Such charter may exclude certain expenditures or appropriations from limitations imposed by the charter. Any charter adopting such limitations shall authorize the elected body to override any such limitation by a 2/3 vote of all members of the town council present and voting.

II. Any town that by charter has adopted the official ballot town council form of government authorized under RSA 49-D:3, I-a, may adopt, amend, or revise its charter to provide for limitations on the growth of one or more of the following: the annual town budget, the annual school budget if the town and school district have the same legislative body, or taxes assessed by the town. Such charter may exclude certain expenditures or appropriations from limitations imposed by the charter. Any charter adopting such limitations shall authorize the elected body to override any such limitation by a 2/3 vote of all members of the town council present and voting. No matter to be voted on by official ballot may be subject to a supermajority voting requirement.

III. Any town that by charter has adopted the representative town meeting form of government authorized under RSA 49-D:3, III, may adopt, amend, or revise its charter to provide for limitations on the growth of one or more of the following: the annual town budget, the annual school budget if the town and school district have the same legislative body, or taxes assessed by the town. Such charter may exclude certain expenditures or appropriations from limitations

imposed by the charter. Any charter adopting such limitations shall authorize the elected body to override any such limit by a 2/3 vote of all members of the representative town meeting present and voting.

4 Applicability. Any municipal charter provision adopted, amended, or revised prior to the effective date of this act which authorizes a 2/3 vote of the elected body to override any provision limiting the growth of budgets or taxes shall remain in effect on the effective date of this act.

5 Effective Date. This act shall take effect upon its passage.

SB 2 – AS INTRODUCED

2011 SESSION

11-0413

10/01

SENATE BILL 2

AN ACT relative to adoption of spending caps by municipalities.

SPONSORS: Sen. Boutin, Dist 16; Sen. Bradley, Dist 3; Sen. Bragdon, Dist 11; Sen. Gallus, Dist 1; Sen. Odell, Dist 8; Sen. Barnes, Jr., Dist 17; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Sanborn, Dist 7; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Greazzo, Hills 17; Rep. Gagne, Hills 13; Rep. Gonzalez, Hills 17; Rep. W. Hutchinson, Hills 9

COMMITTEE: Public and Municipal Affairs

ANALYSIS

This bill allows cities and towns under a charter, and towns, school districts, and other political subdivisions under the municipal budget act to adopt an annual limit on increases to the municipal budget.

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.

11-0413

10/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to adoption of spending caps by municipalities.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Paragraph; City Charters; Vote. Amend RSA 49-C:12 by inserting after paragraph II the following new paragraph:

III. Notwithstanding any contrary provision in paragraph I, the adoption of an override threshold provision to a spending cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget.

2 New Subparagraph; City Charters; Optional Provisions; Spending Cap Added. Amend RSA 49-C:33, I by inserting after subparagraph (c) the following new subparagraph:

(d) A limit on the annual increases to spending under the city budget adopted pursuant to RSA 49-C:23. Such spending cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. A spending cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts.

3 Town Charters; Optional Matters; Spending Cap. Amend RSA 49-D: 3, I(e) to read as follows:

(e) Other matters of local concern may be included in a charter including, but not limited to, conflict of interest provisions which shall be at least as strict as those established in the general laws, citizen powers of initiative, referendum and recall as described in RSA 49-C, ~~and~~ *the adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy, and the adoption of a spending cap limiting the annual increases in spending under the town budget which shall include an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter and provided that such spending cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or accounts.*

4 Municipal Budget Law; Application. Amend RSA 32:2 to read as follows:

32:2 Application. RSA 32:1-13, shall apply to all towns, school districts, cooperative school districts, village districts, and any other municipal entities, including those created pursuant to RSA 53-A or 53-B, which adopt their budgets at an annual meeting of their voters, *except RSA 32:5-b, which shall apply only in those towns or districts adopting that section pursuant to RSA 32:5-c.* RSA 32:14-23, concerning budget committees, shall apply only in those towns or districts

adopting that section pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that section.

5 New Sections; Local Spending Cap; Adoption of Local Spending Cap. Amend RSA 32 by inserting after section 5-a the following new sections:

32:5-b Local Spending Cap.

I. This section shall be known as the local spending cap act.

II. In this section, "inflation rate" means the Consumer Price Index for all Urban Consumers (CPI-U), Northeast urban, as determined by the Bureau of Labor Statistics, for the 12-month period ending the fifth month prior to the annual meeting of the local subdivision or, for local subdivisions that have adopted RSA 40:13, the fifth month prior to the second session of the annual meeting.

III. In any local subdivision that has adopted this section, the total fiscal year appropriation shall not exceed the total appropriation for the prior fiscal year by more than the spending cap authorized when this section was adopted unless the legislative body approves exceeding the spending cap by an affirmative vote of those present and voting greater than or equal to the override threshold authorized when this section was adopted. The "spending cap" shall be a fixed dollar amount, a fixed percent, or a percent derived from the inflation rate.

IV. Exceeding the local spending cap shall be valid only if the vote meeting the override threshold occurs on an article placed on the warrant of the annual meeting reading, "Shall we exceed the local spending cap?"

V. If the legislative body approves total appropriations greater than the amount allowed under this section but does not approve exceeding the spending cap, the governing body shall make the adjustments necessary to reduce the total appropriations to a level allowed by this section.

32:5-c Adoption of Local Spending Cap Act.

I. The provisions of RSA 32:5-b may be adopted by any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting. A 3/5 majority of those voting on the question shall be required to adopt the provisions of RSA 32:5-b. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

II. The local subdivision shall place the question on the warrant of the annual meeting under the procedures set out in RSA 39:3 or RSA 197:6, and the question shall be voted on by official ballot in accordance with the procedures established in

RSA 669:19-29, RSA 670:5-7, and RSA 671:20-30, including all requirements pertaining to absentee voting, polling places, and polling hours.

III. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

IV. The wording of the question shall be: "Shall we adopt the provisions of RSA 32:5-b, known as the local spending cap act, and limit annual spending increases to (spending cap), with (override threshold) vote required to exceed that limit?" The "spending cap" shall be a fixed dollar amount, a fixed percent or a percent derived from the inflation rate. The "override threshold" shall be no less than one-half and no more than two-thirds.

V. If a 3/5 majority of those voting on the question vote "yes," RSA 32:5-b shall apply within the local subdivision for the fiscal year next following. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

VI. Any local subdivision which has adopted RSA 32:5-b may consider rescinding its action in the manner described in paragraphs I through IV. The wording of the question shall be: "Shall we rescind the provisions of RSA 32:5-b, known as the local spending cap act, as adopted by the (local subdivision) on (date of adoption), so that there will no longer be a limit on annual spending increases?" A 3/5 majority of those voting on the question shall be required to rescind the provisions of this section, except in the case of repeal by charter enactment under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

6 Municipal Budget Law; Limitation on 10 Percent Increase. Amend introductory paragraph of RSA 32:18 to read as follows:

32:18 Limitation of Appropriations. In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. *Provided, however, that in any town or district which has adopted the provisions of RSA 32:5-b, any increase which would exceed the spending cap may only be adopted according to the procedures for exceeding the spending cap in RSA 32:5-b.* In official ballot referendum municipalities, the recommendation of the budget committee made for the first session of the meeting shall be used for determining the 10 percent limitation. These totals shall include appropriations

contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for:

7 Home Rule Municipal Charters; Preservation. Amend RSA 49-B:13 to read as follows:

49-B:13 Separability; Preservation.

I. The provisions of this chapter and of charters created under this chapter are separable. If any portion of this chapter, or of any charter adopted under the provisions of this chapter, or if the application of the chapter or such charter to any person or circumstance shall be invalid, the remainder of the chapter or such charter or the application of such invalid portions to other persons or circumstances shall not be affected by such invalidation.

II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby legalized, provided that such charters [~~at the time of their adoption were~~] *are* not contrary to the general laws and constitution of the state.

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting, official ballot town meeting, an official ballot town council, or representative town meeting pursuant to RSA 49-D:3, I-a, II, II-a and III. *Except that a municipality may adopt a spending cap as provided in RSA 49-C:33, I(d) or 49-D:3, I(e), notwithstanding the provisions of RSA 32:5-b and RSA 32:5-c.*

8 Effective Date. This act shall take effect 60 days after its passage.

Public and Municipal Affairs
March 22, 2011
2011-1149s
10/09

Amendment to SB 2

Amend the bill by replacing all after the enacting clause with the following:

1 New Paragraph; City Charters; Vote. Amend RSA 49-C:12 by inserting after paragraph II the following new paragraph:

III. Notwithstanding any contrary provision in paragraph I, the adoption of an override threshold provision to a spending cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget.

2 New Subparagraph; City Charters; Optional Provisions; Spending Cap Added. Amend RSA 49-C:33, I by inserting after subparagraph (c) the following new subparagraph:

(d) A limit on the annual increases to spending under the city budget adopted pursuant to RSA 49-C:23. Such spending cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. A spending cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.

3 Town Charters; Optional Matters; Spending Cap. Amend RSA 49-D: 3, I(e) to read as follows:

(e) Other matters of local concern may be included in a charter including, but not limited to, conflict of interest provisions which shall be at least as strict as those established in the general laws, citizen powers of initiative, referendum and recall as described in RSA 49-C, ~~and~~ **the adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy, and the adoption of a spending cap limiting the annual increases in spending under the town budget. Such spending cap shall include an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. Such spending cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.**

4 Municipal Budget Law; Application. Amend RSA 32:2 to read as follows:

32:2 Application. RSA 32:1-13, shall apply to all towns, school districts, cooperative school districts, village districts, and any other municipal entities, including those created pursuant to RSA 53-A or 53-B, which adopt their budgets at an annual meeting of their voters, **except RSA 32:5-b, which shall apply only in those towns or districts adopting that section pursuant to RSA 32:5-c.** RSA 32:14-23, concerning budget committees, shall apply only in those towns or districts adopting that section pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that section.

5 New Sections; Local Spending Cap; Adoption of Local Spending Cap. Amend RSA 32 by inserting after section 5-a the following new sections:

32:5-b Local Spending Cap.

I. This section shall be known as the local spending cap act.

II. In this section, the following terms shall have the following meanings:

(a) "Inflation rate" means the Consumer Price Index for all Urban Consumers (CPI-U), Northeast urban, as determined by the Bureau of Labor Statistics, for the 12-month period ending the fifth month prior to the annual meeting of the local subdivision or, for local subdivisions that have adopted RSA 40:13, the fifth month prior to the second session of the annual meeting.

(b) "Net fiscal year appropriation" means all appropriations approved by the legislative body for the fiscal year, including the operating budget and all amounts appropriated pursuant to special warrant articles and other individual warrant articles, less estimated revenues and credits.

(c) "Estimated revenues and credits" means the estimated revenues and credits for the ensuing year as shown on the budget certified by the governing body or budget committee and posted with the warrant for the annual meeting pursuant to RSA 32:5.

(d) "Taxes raised for the prior fiscal year" means the property taxes raised for the prior fiscal year as shown on the budget certified by the governing body or budget committee and posted with the warrant for the annual meeting pursuant to RSA 32:5.

III.(a) In any local subdivision that has adopted this section, the net fiscal year appropriation as defined in paragraph II shall not exceed the taxes raised for the prior fiscal year by more than the spending cap authorized when this section was adopted except as provided in this paragraph.

(b) Once the legislative body has approved a net fiscal year appropriation that reaches the limit of the spending cap, each subsequent appropriation that increases the net fiscal year appropriation shall be deemed approved only if it receives an affirmative vote of those present and voting equal to or greater than the override threshold authorized when this section was adopted. If an appropriation that causes the net fiscal year appropriation to exceed the spending cap is approved by a simple majority but less than the override threshold, the appropriation shall be deemed approved only to the amount that is within the spending cap. If an appropriation is initially approved by the legislative body but subsequently disapproved upon reconsideration, that appropriation shall not be counted against the spending cap. Any subsequent appropriation that exceeded the spending cap when voted upon by the legislative body, but that would be within the spending cap when the reconsidered item is removed, shall be deemed approved if it has received a affirmative vote of a simple majority of the legislative body present and voting, even if it was initially deemed disapproved for failure to achieve the override threshold.

(c) For a legislative body that has adopted an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D, appropriations shall be deemed approved in the order that they appear on the official ballot.

(d) Any increase over the prior year's costs under a collective bargaining agreement entered into pursuant to RSA 273-A shall not be counted toward the spending cap.

IV. The governing body shall inform the legislative body of the maximum amount of appropriations that will result in a net fiscal year appropriation that complies with the spending cap. This information shall be contained in a notice placed conspicuously on the warrant or, in the case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D, on the official ballot. The governing body may, in its discretion, include an explanation of how the proposed appropriations compare to the amount permitted by the spending cap. Any reasonable explanation shall be sufficient, and any errors contained in such notice, if made in good faith and without an intent to mislead the legislative body, shall not be a basis for invalidating any actions of the legislative body.

V. A spending cap established pursuant to this section shall not apply to appropriations made at any special meeting held due to an emergency pursuant to RSA 31:5, I(a) or (b) or a disaster pursuant to RSA 31:5-a.

32:5-c Adoption of Local Spending Cap Act.

I. The provisions of RSA 32:5-b may be adopted by any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting. A 3/5 majority of those voting on the question shall be required to adopt the provisions of RSA 32:5-b. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

II. The question shall be placed on the warrant of the annual meeting by the governing body or by petition under the procedures set out in RSA 39:3 or RSA 197:6.

III. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

IV. The wording of the question shall be: "Shall we adopt the provisions of RSA 32:5-b, known as the local spending cap act, and limit annual spending increases to (spending cap), with (override threshold) vote required to exceed that limit?" The "spending cap" shall be a fixed dollar amount, a fixed percent or a percent derived from the inflation rate. The "override threshold" shall be either three-fifths or two-thirds.

V. Voting on the question shall be by ballot, but the question shall not be placed on the official ballot used to elect officers, except in the case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D. Polls shall remain open and ballots shall be

accepted by the moderator for a period of not less than one hour following the completion of discussion on the question. If a 3/5 majority of those voting on the question vote "yes," RSA 32:5-b shall apply within the local subdivision for the fiscal year and for all subsequent years until it is rescinded as provided in paragraph VI.

VI. Any local subdivision which has adopted RSA 32:5-b may consider rescinding its action in the manner described in paragraphs I through V. The wording of the question shall be: "Shall we rescind the provisions of RSA 32:5-b, known as the local spending cap act, as adopted by the (local subdivision) on (date of adoption), so that there will no longer be a limit on annual spending increases?" A 3/5 majority of those voting on the question shall be required to rescind the provisions of this section, except in the case of repeal by charter enactment under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

6 Municipal Budget Law; Limitation on 10 Percent Increase. Amend introductory paragraph of RSA 32:18 to read as follows:

32:18 Limitation of Appropriations. In any municipality electing this subdivision, or any district wholly within a town electing this subdivision, the total amount appropriated at any annual meeting shall not exceed by more than 10 percent the total amount recommended by the budget committee for such meeting. Provided, however, that in any town or district which has adopted the provisions of RSA 32:5-b, any increase which would exceed the spending cap may only be adopted according to the procedures for exceeding the spending cap in RSA 32:5-b. In official ballot referendum municipalities, the recommendation of the budget committee made for the first session of the meeting shall be used for determining the 10 percent limitation. These totals shall include appropriations contained in special warrant articles. Money may be raised and appropriated for purposes included in the budget or in the warrant and not recommended by the budget committee, but not to an amount which would increase the total appropriations by more than the 10 percent allowed under this paragraph. The 10 percent increase allowable under this paragraph shall be computed on the total amount recommended by the budget committee less that part of any appropriation item which constitutes fixed charges. Fixed charges shall include appropriations for 7 Home Rule Municipal Charters; Preservation. Amend RSA 49-B:13 to read as follows:

49-B:13 Separability; Preservation.

I. The provisions of this chapter and of charters created under this chapter are separable. If any portion of this chapter, or of any charter adopted under the provisions of this chapter, or if the application of the chapter or such charter to any person or circumstance shall be invalid, the remainder of the chapter or such charter or the application of such invalid portions to other persons or circumstances shall not be affected by such invalidation.

II. All town and city charters which have been adopted, revised or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby **endorsed, ratified, validated, and** legalized, ~~[provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state]~~ **and are fully enforceable.**

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting, official ballot town meeting, an official ballot town council, or representative town meeting pursuant to RSA 49-D:3, I-a, II, II-a and III. **Except that a municipality may adopt a spending cap as provided in RSA 49-C:33, I(d) or RSA 49-D:3, I(e), notwithstanding the provisions of RSA 32:5-b and RSA 32:5-c.**

8 Use of Official Ballot; Vote. Amend RSA 40:13, XIII to read as follows:

XIII. Approval of all warrant articles shall be by simple majority except for questions which require a 3/5 or 2/3 vote by law, contract, or written agreement.

9 Effective Date. This act shall take effect 60 days after its passage.

Senate Finance
March 24, 2011
2011-1221s
10/05

Amendment to SB 3-FN-A-LOCAL

Amend the bill by replacing sections 1 and 2 with the following:

HOUSE MUNICIPAL AND COUNTY GOVERNMENT

1 June 2011

SB 2, relative to adoption of spending caps by municipalities.

MAJORITY: OUGHT TO PASS WITH AMENDMENT.

MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. Franklin W Sterling for the **Majority** of Municipal and County Government: The purpose and intent of SB 2 is to provide a process by which any municipality may adopt a tax/spending cap. The bill amends RSA 49-C and RSA 49-D so that cities or towns that are governed by a town or city council can amend their charters to include spending caps. The legislation provides a clear process by which a charter can be amended and it provides the language necessary to comply with recent supreme court ruling. Further SB 2 includes amendments to RSA 32 that contain a process and rules governing the adoption of a tax cap by municipalities that have a traditional town meeting form of government and those towns which have adopted the official ballot form of government. ~~Also included in the legislation is a provision to ratify and declare valid other spending caps adopted prior to the enactment of this bill.~~ **Vote 12-4.**

Rep. Kris E Roberts for the **Minority** of Municipal and County Government: The minority believes that the real goal of many of the supporters of this bill is not to have cities, towns, school district adopt a tax cap to limit increases to the amount to be raised by taxes in the annual budget as an effective means of limiting growth in the local property rates; the goal is to give the minority the ability to have more power and authority to reduce education funding, shrink the size of local government, and combat the perceived power of the public sector unions. The committee was told that the deliberative session was a failed system; that in one recent local school budget session approximately 150 people voted in favor of the budget and about 50 voted against the budget. The committee was told that this happens all the time and that people of that community needed the ability to correct the faults in the current system. The minority asked where is the fault if 75% of the voters approve a budget increase? If there are faults in the current system this body should not be passing legislation that would give greater power to the minority at the expense of the majority. In Keene, with about 12,000 voters, rarely do more than 125 appear for the school budget session where they have the ability to make changes to the proposed budget, about 10-12% show up to vote and sometimes Keene is hard pressed to find three people willing to sign up for three school board positions. The minority believes that this body should be following the advice of Thomas Jefferson, a man who posed great confidence in the wisdom and discretion of the American people, who stated that a successful republic requires a well educated, well informed and a proactive citizenship, but once the vote was taken it was the responsibility of the minority to support the decisions of the majority. If the current system has failings it is due to the lack of public interest and the unwillingness of our citizens to take an active role in government. This bill will not solve that problem. All it will do is create an opportunity to replace one minority group with another minority group. History has repeatedly shown that minority interest, minority issue government has always resulted in real harm to our communities. This bill in many ways is a one size fits all approach to rising local property taxes and will not limit the growth of such taxes. A review of the past 10 plus years shows the largest factor in the rapid growth of local property taxes has not been an increase in local service and public payrolls, because the majority of New Hampshire communities have reduced both services and employees - governments at all level are shrinking - the greatest cause has been the downshifting of costs by the state to local communities and county governments. Many members of this body also serve as selectmen and city councilors. In many ways passage of this bill will not benefit the taxpayers, but will provide political cover at the local community level. Passage of this bill combined with our no income tax, no sales tax and no death tax policies, will ensure that NH remains one of the best states in which to retire as we support the special interests of people who have no children or grandchildren in our school systems. But it has the potential to ensure that New Hampshire remains as one of the fastest graying states and one of the states with the greatest out-migration of 18-30 year olds as we reduce funding for public education, public safety and other important quality of life programs.

CHAPTER 234

SB 2 – FINAL VERSION

03/30/11 1149s

1June2011... 1978h

06/22/11 2418EBA

2011 SESSION

11-0413

10/01

SENATE BILL 2

AN ACT relative to adoption of tax caps by cities, towns, and other political subdivisions.

SPONSORS: Sen. Boutin, Dist 16; Sen. Bradley, Dist 3; Sen. Bragdon, Dist 11; Sen. Gallus, Dist 1; Sen. Odell, Dist 8; Sen. Barnes, Jr., Dist 17; Sen. De Blois, Dist 18; Sen. Forsythe, Dist 4; Sen. Groen, Dist 6; Sen. Lambert, Dist 13; Sen. Sanborn, Dist 7; Sen. White, Dist 9; Rep. Infantine, Hills 13; Rep. Greazzo, Hills 17; Rep. Gagne, Hills 13; Rep. Gonzalez, Hills 17; Rep. W. Hutchinson, Hills 9

COMMITTEE: Public and Municipal Affairs

AMENDED ANALYSIS

This bill allows cities and towns under a charter, and towns, school districts, and other political subdivisions under the municipal budget act to adopt a tax cap to limit increases to the amount to be raised by taxes in the annual budget.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/30/11 1149s

1June2011... 1978h

06/22/11 2418EBA

11-0413

10/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to adoption of tax caps by cities, towns, and other political subdivisions.

Be it Enacted by the Senate and House of Representatives in General Court convened:

234:1 Findings; Intent. The general court finds that:

I. There is a need to enact enabling legislation to allow the citizens of New Hampshire to adopt a tax cap either in their charters or at their town meetings.

II. A simple process for towns and other political subdivisions to enact a tax cap is to limit the amount of money to be raised by taxes by the governing body at the local level.

III. The general court hereby proposes that in towns and districts adopting a tax cap the estimated amount of taxes to be raised for the fiscal year shall not exceed the taxes raised for the prior year by a percentage or fixed amount as determined by the legislative body.

234:2 New Paragraph; City Charters; Vote. Amend RSA 49-C:12 by inserting after paragraph II the following new paragraph:

III. Notwithstanding any contrary provision in paragraph I, the adoption of an override threshold provision to a tax cap included in a charter pursuant to RSA 49-C:33, I(d) shall provide for a supermajority vote of the elected body to adopt the annual budget.

234:3 New Subparagraph; City Charters; Optional Provisions; Tax Cap Added. Amend RSA 49-C:33, I by inserting after subparagraph (c) the following new subparagraph:

(d) A limit on the annual spending increases that increase the amount raised by taxes under the city budget adopted pursuant to RSA 49-C:23. Such a tax cap shall provide for an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. A tax cap provision in the city charter may provide for specific exclusions for dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.

234:4 Town Charters; Optional Matters; Tax Cap. Amend RSA 49-D:3, I(e) to read as follows:

(e) Other matters of local concern may be included in a charter including, but not limited to, conflict of interest provisions which shall be at least as strict as those established in the general laws, citizen powers of initiative, referendum and recall as described in RSA 49-C, ~~and~~ *the adoption and periodic review of an administrative code, a merit personnel system, a purchasing system, and a town investment policy, and the adoption of a tax cap limiting the annual increases in amounts raised by taxes under the town budget. Such tax cap shall include an override threshold on a vote to exceed the limit on annual increases which shall be by a supermajority as determined in the charter. Such tax cap may specifically exclude certain dedicated, enterprise, or self-supporting funds or accounts, capital reserve funds, grants, or revenue from sources other than local taxes.*

234:5 Municipal Budget Law; Application. Amend RSA 32:2 to read as follows:

32:2 Application. RSA 32:1-13, shall apply to all towns, school districts, cooperative school districts, village districts, and any other municipal entities, including those created pursuant to RSA 53-A or 53-B, which adopt their budgets at an annual meeting of their voters, *except RSA 32:5-b, which shall apply only in those towns or districts adopting that section pursuant to RSA 32:5-c.* RSA 32:14-23, concerning budget committees, shall apply only in those towns or districts adopting that subdivision pursuant to RSA 32:14, I, and shall apply automatically in school districts or village districts located wholly within towns adopting that subdivision.

234:6 New Sections; Local Tax Cap; Adoption of Local Tax Cap. Amend RSA 32 by inserting after section 5-a the following new sections:

32:5-b Local Tax Cap. Upon adoption under RSA 32:5-c, the following shall apply:

I. In a town or district that has adopted this section, the estimated amount of local taxes to be raised for the fiscal year, as shown on the budget certified by the governing body or the budget committee and posted with the warrant for the annual meeting pursuant to RSA 32:5, shall not exceed the local taxes raised for the prior

year, as shown on the same budget, by more than the tax cap authorized when this section was adopted.

II. The tax cap shall be either a fixed dollar amount or a fixed percentage applied to the amount of local taxes raised by the town or district for the prior fiscal year as reported to the department of revenue administration.

III. The legislative body may override the cap by the usual procedures applicable to annual meetings and deliberative sessions of the legislative body. The provisions of this section shall not limit the legislative body's authority to increase or decrease the amount of any appropriation or the total amount of all appropriations.

32:5-c Adoption of Local Tax Cap.

I. The provisions of RSA 32:5-b may be adopted by any local political subdivision of the state whose legislative body raises and appropriates funds through an annual meeting. A 3/5 majority of those voting on the question shall be required to adopt the provisions of RSA 32:5-b. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

II. The question shall be placed on the warrant of the annual meeting by the governing body or by petition under the procedures set out in RSA 39:3 or RSA 197:6.

III. A public hearing shall be held by the local governing body on the question at least 15 days, but not more than 30 days, before the question is to be voted on. In multi-town districts, a public hearing shall be held in each town embraced by the district, none of which shall be held on the same day. Notice of the hearing shall be posted in at least 2 public places in the town and at least 2 public places in each town of multi-town districts, and published in a newspaper of general circulation at least 7 days prior to the date of the hearing.

IV. The wording of the question shall be: "Shall we adopt the provisions of RSA 32:5-b, and implement a tax cap whereby the governing body (or budget committee) shall not submit a recommended budget that increases the amount to be raised by local taxes, based on the prior fiscal year's actual amount of local taxes raised, by more than _____ (insert either a fixed dollar amount or a fixed percentage)?"

V. Voting on the question shall be by ballot, but the question shall not be placed on the official ballot used to elect officers, except in the case of a legislative body that uses an official ballot form of meeting under RSA 40:13 or under a charter adopted pursuant to RSA 49-D. Polls shall remain open and ballots shall be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question. If a 3/5 majority of those voting on the question vote "yes," RSA 32:5-b shall apply within the local political subdivision beginning with

the following fiscal year and for all subsequent years until it is rescinded as provided in paragraph VI.

VI. Any local political subdivision which has adopted RSA 32:5-b may consider rescinding its action in the manner described in paragraphs I through V. The wording of the question shall be: "Shall we rescind the provisions of RSA 32:5-b, known as the tax cap, as adopted by the (local subdivision) on (date of adoption), so that there will no longer be a limit on increases to the recommended budget in the amount to be raised by local taxes?" A 3/5 majority of those voting on the question shall be required to rescind the provisions of this section, except in the case of repeal by charter enactment under RSA 49-D. Only votes in the affirmative or negative shall be included in the calculation of the 3/5 majority.

234:7 Home Rule Municipal Charters; Preservation. Amend RSA 49-B:13 to read as follows:

49-B:13 Separability; Preservation.

I. The provisions of this chapter and of charters created under this chapter are separable. If any portion of this chapter, or of any charter adopted under the provisions of this chapter, or if the application of the chapter or such charter to any person or circumstance shall be invalid, the remainder of the chapter or such charter or the application of such invalid portions to other persons or circumstances shall not be affected by such invalidation.

II. All town and city charters which have been adopted, revised, or amended; all charter commissions which have been properly established and elected; all elections properly held; and actions properly taken pursuant to such charters are hereby legalized, provided that such charters at the time of their adoption were not contrary to the general laws and constitution of the state.

II-a. All town or city charters which have been adopted, revised, or amended to include a tax or spending cap of any kind and all charter commissions which have been properly established and elected; all elections properly held; and all actions properly taken related to the tax or spending cap in such charters are hereby endorsed, ratified, validated, and legalized and are fully enforceable, without regard to whether such entities or actions were authorized by law at the time they were established or taken.

III. RSA 32 shall not apply to a municipality adopting, revising, or amending a charter under RSA 49-C or RSA 49-D unless that municipality adopts a budgetary town meeting, official ballot town meeting, an official ballot town council, or representative town meeting pursuant to RSA 49-D:3, I-a, II, II-a and III. *Except that a municipality may adopt a tax cap as provided in RSA 49-C:33, I(d) or*

RSA 49-D:3, I(e), notwithstanding the provisions of RSA 32:5-b and RSA 32:5-c.

234:8 Effective Date. This act shall take effect upon its passage.

Approved: July 5, 2011

Effective Date: July 5, 2011

CHAPTER 215

SB 269 – FINAL VERSION

19Apr2006... 1818h

05/11/06 2248eba

2006 SESSION

06-2810

08/10

SENATE BILL **269**

AN ACT ratifying all actions from the 1996 Seabrook annual town meeting, pertaining to the adoption of article 3, through September 12, 2006.

SPONSORS: Sen. Hassan, Dist 23; Sen. Fuller Clark, Dist 24; Rep. Weare, Rock 14

COMMITTEE: Public and Municipal Affairs

AMENDED ANALYSIS

This bill ratifies all acts, notices, votes, and proceedings from the 1996 Seabrook annual town meeting, pertaining to the adoption of article 3 regarding RSA 40:13, through September 12, 2006.

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.

19Apr2006... 1818h

05/11/06 2248eba

06-2810

08/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Six

AN ACT ratifying all actions from the 1996 Seabrook annual town meeting, pertaining to the adoption of article 3, through September 12, 2006.

Be it Enacted by the Senate and House of Representatives in General Court convened:

215:1 Ratification of Actions Since the 1996 Seabrook Annual Town Meeting. All acts, notices, votes and proceedings of the town of Seabrook since 1996 and until the effective date of this act are hereby legalized, ratified, and confirmed against any challenge arising out of the adoption of article 3 of the Seabrook town meeting held on March 12, 1996.

215:2 Effective Date. This act shall take effect September 12, 2006.

Approved: June 1, 2006

Effective: September 12, 2006

OFFICIAL BALLOT FOR
BOW
GENERAL ELECTION
NOVEMBER 6, 2018



SAMPLE

INSTRUCTIONS TO VOTERS

- To Vote.** Completely fill in the oval to the right of your choice. For each office vote for not more than the number of candidates stated in the sentence: "Vote for not more than _____." If you vote for more than the stated number of candidates, your vote for that office will not be counted.
- To Vote by Write-in.** To vote for a person whose name is not printed on the ballot, write in the name of the person in the "write-in" space. Completely fill in the oval to the right of your choice.

Offices	Republican Candidates	Democratic Candidates	Libertarian and Other Candidates	Write-in Candidates
For Governor Vote for not more than 1	Chris Sununu <input type="radio"/>	Molly Kelly <input type="radio"/>	Jillette Jarvis <input type="radio"/>	Governor <input type="radio"/>
For Representative in Congress Vote for not more than 1	Steven Negron <input type="radio"/>	Ann McLane Kuster <input type="radio"/>	Justin O'Donnell <input type="radio"/>	Representative in Congress <input type="radio"/>
For Executive Council Vote for not more than 1	Ted Gatsas <input type="radio"/>	Gray Chynoweth <input type="radio"/>	Richard Tomasso <input type="radio"/>	Executive Council <input type="radio"/>
For State Senator Vote for not more than 1	David Boulton <input type="radio"/>	Kevin J. Cavanaugh <input type="radio"/>		State Senator <input type="radio"/>
For State Representatives Vote for not more than 3	Paul Brassard <input type="radio"/> Richard E. Johnson <input type="radio"/> John F. Martin <input type="radio"/>	Samantha Fox <input type="radio"/> Mary Beth Walz <input type="radio"/> Gary L. Woods <input type="radio"/>		State Representatives <input type="radio"/> State Representatives <input type="radio"/> State Representatives <input type="radio"/>
For Sheriff Vote for not more than 1	Scott E. Hilliard <input type="radio"/>	Ricardo Rodriguez <input type="radio"/>		Sheriff <input type="radio"/>
For County Attorney Vote for not more than 1	Paul Halvorsen <input type="radio"/>	Robin Davis <input type="radio"/>		County Attorney <input type="radio"/>
For County Treasurer Vote for not more than 1	David H. Kidder <input type="radio"/>	Leo R. Bernier <input type="radio"/>		County Treasurer <input type="radio"/>
For Register of Deeds Vote for not more than 1	Charlene A. Brack <input type="radio"/>	Susan Cragin <input type="radio"/>		Register of Deeds <input type="radio"/>
For Register of Probate Vote for not more than 1	Jane Bradstreet <input type="radio"/>	Erica S. Davis <input type="radio"/>		Register of Probate <input type="radio"/>
For County Commissioner Vote for not more than 1	Peter J. Spaulding <input type="radio"/>	Jerome Duval <input type="radio"/>		County Commissioner <input type="radio"/>

2018 CONSTITUTIONAL AMENDMENT QUESTIONS

Constitutional Amendments Proposed by the 2018 General Court

- "Are you in favor of amending article 8 of the first part of the constitution to read as follows:
[Art.] 8. [Accountability of Magistrates and Officers; Public's Right to Know.] All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government. Therefore, any individual taxpayer eligible to vote in the State, shall have standing to petition the Superior Court to declare whether the State or political subdivision in which the taxpayer resides has spent, or has approved spending, public funds in violation of a law, ordinance, or constitutional provision. In such a case, the taxpayer shall not have to demonstrate that his or her personal rights were impaired or prejudiced beyond his or her status as a taxpayer. However, this right shall not apply when the challenged governmental action is the subject of a judicial or administrative decision from which there is a right of appeal by statute or otherwise by the parties to that proceeding."
(Passed by the N.H. House 309 Yes 9 No; Passed by State Senate 22 Yes 2 No) CACR 15 Yes No
- "Are you in favor of amending the first part of the constitution by inserting after article 2-a a new article to read as follows:
[Art.] 2-b. [Right to Privacy.] An individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."
(Passed by the N.H. House 235 Yes 96 No; Passed by State Senate 15 Yes 9 No) CACR 16 Yes No