

# **THE STATE OF NEW HAMPSHIRE**

**GRAFTON, SS.**

**SUPERIOR COURT**

No. 215-2020-CV-00128

Woodsville Fire District

v.

Town of Haverhill

## **ORDER ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

The plaintiff, the Woodsville Fire District ("District"), brought this action against the defendant, Town of Haverhill ("Town"), asking the Court to order the Town to distribute highway funds to the District. (Index #1.) Before the Court is the District's Motion for Partial Summary Judgment. (Indexes #17, 18.) The Town objects. (Index #20.) The Court conducted a hearing on September 21, 2021. For the following reasons, the District's Motion is GRANTED.

### **Facts**

The following facts are taken from the parties' final statement of material facts. (Index #25, Final Statement of Material Facts ("FSMF").) The District is a municipal corporation located in Woodsville, New Hampshire. The District is a region inside the Town. For over one hundred years, the Town raised and annually appropriated highway funds to the District for its highway maintenance. In 1990, the Legislature changed the formula for the distribution of highway funds to the District. That enacted legislation indicated that "money appropriated for the distribution of highway funds in the district which is attributable to the town of Haverhill shall not exceed 20 percent of the total amount of expenditures authorized at the town meeting." (Index #19, Ex. C, "1990 Legislation.")

After the enactment of the 1990 Legislation, the District and the Town entered into a Memorandum of Understanding (“1990 MOU”), which set forth the agreed-upon conditions relating to the expansion of the District’s boundaries. (Id., Ex. D.) Specifically, it indicated that the District will “receive [its] proportionate share on all special highway projects.” (Id.)

In 1995, the parties amended the 1990 MOU and reiterated that, based on “[t]he language of the Special Act authorizing and mandating such payment(s),” the District shall receive twenty percent of the “total amount of money budgeted for road maintenance by the Town.” (Id. at Ex. F, “First Amended MOU”; FMSF ¶ 16.) The First Amended MOU provided the following explanation for the calculation of that total amount: “The net operating budget of the Town of Haverhill Highway Department, including the budget for the Town Highway Garage, shall be divided by a factor of 80 [percent]. The resulting figure shall be the total amount of money budgeted for road maintenance by the Town of Haverhill.” (FMSF ¶16.) Of that total amount, the District received 20 percent. (Id.) The Town’s Manager, Glenn English, who served from September 1995 through March 2016 and again in November 2018 through May 2019, oversaw and administered the calculation of highway funds.

In 2008, the Town’s Board of Selectmen became concerned that Woodsville would secede from the Town. On September 16, 2008, the Board of Selectman and the Board of Commissioners drafted an Addendum Proposal to the First Amended MOU, which was revised on December 29, 2008.<sup>1</sup> (English Dep., Ex. 13, “Addendum Proposal.”) The Addendum Proposal states:

[T]he net operating budget of the Town of Haverhill Highway Department, including the budget for the Town Highway Garage, shall be divided by an annual

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<sup>1</sup> The parties dispute the publishing date of this document and whether the legislature considered this Addendum Proposal. For reasons stated later in this Order, it is clear to the Court that the Legislature used this Addendum Proposal because the Committee cited to it when discussing the passage of SB 75. (Index #19, Ex. G.)

percentage factor based upon the annual updated Woodsville Fire District property valuation percentage of the Town of Haverhill property valuation as determined from the Annual Town of Haverhill MS-1 Summary Inventory of Valuation. The resulting figure shall be the total amount of money budgeted for road maintenance by the Town of Haverhill with the annual percentage factor (determined from the above stated MS-1 report) of the total road budget returned to the Woodsville Fire District as the so-called "Woodsville Road Money" pursuant to said Special Act.

(Id.)

A few months after this Addendum Proposal, in February 2009, Roderick Ladd was serving as the Chair of the Town's Selectboard, as well as a representative to the New Hampshire State Legislature. During this time, Ladd co-sponsored Senate Bill 75 (2009) ("SB 75"), which would change the formula for distribution of highway funds to the District. When considering SB 75, the New Hampshire Senate Public and Municipal Affairs Committee (the "Committee") looked at the Addendum Proposal, original MOU, and First Amended MOU. (Index #19, Ex. G.). Ladd explained to the Committee that, based on the increase in property valuation in Woodsville, the amount of money the Town would provide to Woodsville "annually would be based on the property valuation, as [the Town has] annually on the MS-1 reporting form." (Id., Hr'g Rep. at 4.)

The Legislature enacted a final version of SB 75 in June 2009. (Id., Ex. H.) This version removed the language in the 1990 Legislation requiring that money attributable to the Town "shall not exceed 20 percent of the total amount of expenditures authorized at the town meeting." (Id.) In place of this language, the final version created a formula by which the money appropriated for the distribution of highway funds in the District that is attributable to the Town

shall . . . be determined by a fraction, the numerator of which shall be the assessed valuation of the properties in the district, and the denominator of which shall be the assessed valuation of the properties in the entire town of Haverhill as determined annually from the town MS-1 form. The town of Haverhill shall appropriate the

percentage represented by such fraction for distribution to the highway fund in care of the Woodsville fire district commissioners.

(Id.)

In 2019, the Town entirely changed the calculation of its highway funds from the method it had employed since 2009. (FMSF ¶¶ 58–60; Hr’g 3:11–12.) This change resulted in a re-calculation of funds to be distributed to the District and it received less funding than it had under the calculation used in previous years.

In July 2021, the Legislature passed House Bill 2 (“HB 2”), the purpose of which was to “modif[y] the law on the operation and funding of the Woodsville fire district and direct[] that appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted at each annual Haverhill town meeting.” Specifically, HB 2 removed the fraction in SB 75 and requires that “[a]ny appropriations to the Woodsville fire district shall be as directed by warrant articles duly voted by the voters present and voting at each annual Haverhill town meeting.”

### **Analysis**

The District moves for partial summary judgment, asking the Court to issue declaratory judgment to enforce the formula in SB 75 and require the Town to pay funds it withheld from 2019 through the passage of HB 2 in June of 2021. “Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits filed, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” RSA 491:8-a, III (2010).

#### **I. The Passage of HB 2 Does Not Make the District’s Claim Moot**

The Town objects to the District's Motion, arguing, as a preliminary matter, that the District's claim is moot after the passage of HB 2. The District, however, correctly asserts that HB 2 does not apply retroactively and the District seeks payments only from 2019 through the passage of HB 2 in June of 2021. There is a presumption that statutes are "intended to operate prospectively." Town of Bartlett v. Furlong, 168 N.H. 171, 179 (2015). "When the legislature is silent as to whether a statute should apply prospectively or retrospectively, as is the case here, [the Court's] interpretation turns on whether the statute affects the parties' substantive or procedural rights." Id.

To determine whether HB 2 adversely affects the Town's substantive rights, the Court will compare its rights before HB 2, when SB 75 was in effect, and after HB 2 passed. Autofair 1477, L.P. v. Am. Honda Motor Co., Inc., 166 N.H. 599, 602 (2014). Prior to HB 2 passing, the Town followed the formula set forth in SB 75 to determine the distribution of highway funds. HB 2, however, changed that formula and only required that the Town distribute money to the District for highway funds if approved at the Town meeting. HB 2, as the parties acknowledge, does not repeal SB 75; rather it only amends the way in which the Town distributes its highway funds. (Index #20 at 1; Index #24 at 4.) The New Hampshire Supreme Court has held that when the Legislature amends a prior law, that amendment cannot be applied retrospectively to bar existing causes of actions, regardless of whether suit has been filed. Martin v. Pat's Peak, Inc., 158 N.H. 735, 740 (2009). The Court follows this holding and concludes that HB 2 amended SB 75 so as to eliminate the Town's obligations of payment to the District and that it should not be construed to bar the District's claims for payment prior to the amendment. See New Hampshire Ass'n of Ctys. v. State, 158 N.H. 284, 292 (2009) (concluding the issue

was moot when the plaintiffs only sought declaratory relief for repealed and not reenacted legislation). Therefore, the District's claim is not moot.

## **II. The Interpretation of SB 75**

Turning to the District's arguments in favor of granting its Motion, it contends that declaratory judgment is appropriate because (1) the plain language of SB 75 mandates that the Town use the formula contained therein to determine the highway funds afforded to the District; and (2) the fund from which the Town distributes money to the District is clear from the statute.

The Town asserts that SB 75 cannot lawfully direct it to appropriate funds to Woodsville. Alternatively, the Town asserts that, if the language is plain and does create this obligation, SB 75 does not indicate to what that formula applies and is therefore meaningless.

Determining whether the language of SB 75 is plain and unambiguous requires that the Court engage in statutory interpretation. "In matters of statutory interpretation, [the Court is] the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole." State v. Proctor, 171 N.H. 800, 805 (2019). The Court will "first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning." Id. When a statute is ambiguous, however, the Court will use the legislative history to aid its analysis. Petition of Carrier, 165 N.H. 719, 721 (2013).

### **a. SB 75 Requires that the Town Distribute Money to the District**

First, regarding whether SB 75 unambiguously requires that the Town distribute money to the District for highway funds, the District contends that the Town must always

distribute the funds. The plain text of the statute, however, indicates that the Town is required to distribute funds to the District only if it created a highway budget and the Town's legislative body (the voters) appropriates monies for the same.

SB 75 instructs that "money appropriated for the distribution of highway funds in the district which is attributable to the town of Haverhill shall . . . be determined by a fraction." (Index #19, Ex. H) (emphasis added). Once that fraction is determined by the language in SB 75, "[t]he town of Haverhill shall appropriate the percentage represented by such fraction for distribution to the highway fund in care of the Woodsville fire district commissioners." (Id.) (emphasis added). The Legislature's use of the word "shall" indicates that distributing highway funds in this manner is mandatory. See In re State (State v. Johanson), 156 N.H. 148, 151 (2007) ("The use of the word shall is generally regarded as a command; although not controlling, it is significant as indicating the intent that the statute is mandatory."). Although the Legislature made this distribution mandatory only when the Town appropriates money "for the distribution of highway funds" that is "attributable to the [T]own," the Town agrees that it had a highway budget each year prior to the passage of HB 2. (Index #19, Ex. H.; See FMSF ¶ 8; Index #21, Ex. 4–5.) Therefore, SB 75 clearly and unambiguously mandates that payments are made to the District according to the formula therein at least up until the passage of HB 2 in 2021.

**b. The Formula in SB 75 is Plain and Unambiguous, but the Fund to which it Applies is Ambiguous**

The District contends that the statutory formula in SB 75 is also plain and unambiguous and applies to the total highway budget. The Town asserts that SB 75 is not clear as to what the fraction applies and that it should be applied to the net operating

budget. (Index #20, at 17–20.) The Court agrees that the fraction itself is plain, but concludes that the fund to which it applies is ambiguous and that the legislative history clarifies that the fraction applies to the Town's total highway budget.

SB 75 clearly creates a fraction, the “numerator of which shall be the assessed valuation of the properties in the district” and the “denominator of which shall be the assessed valuation of the properties in the entire town of Haverhill as determined annually from the town MS-1 form.” (Index #19, Ex. H.) This fraction unambiguously determines the way in which the Town allocates highway funds to the District. The plain meaning of SB 75, however, is not clear as to what the fraction applies.

The Town contends that the pertinent language in SB 75 is “meaningless without knowing what, exactly, it is to be applied against” and is therefore “ineffectual as a matter of law.” (Index #20, at 7.) This contention, however, runs counter to the settled principle of statutory interpretation that courts will not construe a statute so as to “render it a virtual nullity.” Wolfgram v. New Hampshire Dep’t of Safety, 169 N.H. 32, 36 (2016). Based on this settled principle, the Court will not adopt the Town's assertion, but will further examine the statute to best determine the Legislature's intent. Id. (explaining that courts will “construe statutes so as to effectuate their evident purpose”).

While SB 75 clearly creates a fraction to determine the District's highway funding, SB 75 only instructs that the “money appropriated for the distribution of highway funds in the district which is attributable to the town of Haverhill shall . . . be determined by a fraction.” (Id.) The Legislature's use of the term “attributable to the town” does not indicate to what fund the fraction will apply. Based on the language in SB 75, the fraction could be applied to the Town's overall, or total, highway budget for that year or to its net



highway budget. Therefore, SB 75 is ambiguous as to what the fraction it creates applies, which requires the Court to examine the legislative history of the statute. See Carrier, 165 N.H. at 721 (instructing the Court to examine legislative history when the plain text of the statute is ambiguous).

The legislative history confirms that the “distribution of highway funds” that is “attributable to the town” means that the fraction in SB 75 is applied to the Town’s total highway budget. The Committee, when it discussed passing SB 75 in 2009, held a hearing on February 5, 2009, which was memorialized in a report. (Index #19, Ex. G, Committee Hr’g Rep. (“Committee Hr’g”).) During that hearing, Ladd explained the formula used for highway funding distribution. (Id. at 4.) He demonstrated, using numbers from the Addendum Proposal, that if SB 75 passed, the Town would appropriate 27.7 percent of the Town’s “total budget,” approximately \$988,000 for that year, to Woodsville. (Id.) He explained that this percentage would more properly reflect the increase in property values in Woodsville, as compared to the 20 percent funding cap set in 1990. (Id.)

Ladd also distributed Attachment #1, the “Town of Haverhill information packet,” to the Committee members at that hearing. This information packet includes the Addendum Proposal and the First Amended MOU. (Id. at 3.) The Addendum Proposal provides an example of the budget against which the fraction in SB 75 is applied. It states that in the 2009 fiscal year, the “budgeted amount to operate the Town of Haverhill Highway Department is \$714,774. 72.3 [percent] (based upon the 2008 MS-1) divided into \$714,774 equals \$988,622 (Total Highway Budget). The Woodsville Fire District would receive 27.7 [percent] of the Total Highway Budget[] or \$273,848.” (Id. at Attach.

1) (emphasis added). By distributing and reading from the Addendum Proposal, Ladd, and the rest of the Committee, contemplated this calculation of the Total Highway Budget when discussing the passage of SB 75. (Id.) Furthermore, the Committee would have understood, based on the Addendum Proposal, that the fraction created in SB 75 would apply to this Total Highway Budget.

This calculation of the Total Highway Budget is also consistent with the First Amended MOU, which the Committee also received. The First Amended MOU states that the total amount budgeted to the Town Highway Department is \$359,436.00 and that number is divided by 80 [percent], which equals \$449,295.00 and that “Woodsville Fire District received 20 [percent] of that latter amount.” (Id.) (emphasis added). Therefore, by citing to both the Addendum Proposal and the First Amended MOU, which provide the same calculation for the Total Highway Budget, the Legislature intended the fraction created in SB 75 to be applied to this calculation of the Total Highway Budget.

Although not part of the legislative history, the Court is further persuaded that the parties intended the fraction in SB 75 to apply to this calculation of the Total Highway Budget because that is consistent with the actions of those who allocated funds. During his deposition, English testified that the formula in SB 75 is the same as that included in the Addendum Proposal. (English Dep. 117:13–23.) Moreover, when English administered the calculation, he used the 1990 Legislation, the 1990 MOU, and the First Amended MOU as his “guiding documents” during his tenure. (Id. at 165:15–21.) He also explained that he continued to rely on material drafted prior to the enactment of SB 75 because “some of the points in those documents were still relevant unless changed specifically by the latest legislation.” (Id. at 200:11–13.) As the Town conceded, from

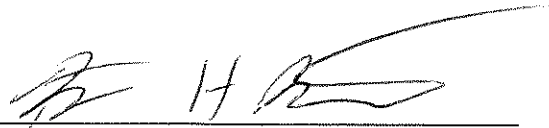
2009 to 2019, it consistently calculated the money distributed to the District with reference to the Total Highway Budget as exemplified in the First Amended MOU. (Hr'g 3:11–14; FMSF ¶ 21;) cf. Grayson v. LaBranche, 107 N.H. 504, 505–06 (1967) (“There is no surer way to find out what the parties meant, than to see what they have done.”).

Based on this history, the Court concludes that the Legislature intended to apply the fraction prescribed by SB 75 to the Total Highway Budget as exemplified in the Addendum Proposal and the First Amended MOU. The District is therefore entitled to partial summary judgment as a matter of law. RSA 491:8-a, III. Having determined that SB 75 sets forth a fraction that is applied to the Total Highway Budget, the Court need not consider the remaining claims raised by the Town. See Canty v. Hopkins, 146 N.H. 151, 156 (2001) (holding that the Court need not consider party's remaining arguments where one or more was dispositive of the case).

For the reasons stated in this Order, the District's motion for partial summary judgment is GRANTED.

So Ordered.

Dated: 10/29/2021

  
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Peter H. Bornstein  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 11/01/2021