

HB 999 - THE REAL BOTTOM LINE

Who won, and who lost, the "new" education money

TAX YEARS 1999-2001

"The one pervading evil of democracy is the tyranny of the majority..."
--Lord Acton

The Coalition Communities
February 2002

HB 999 – THE REAL BOTTOM LINE – TAX YEARS 1999-2001

Overview

In 1999 the Legislature passed tax bill HB 999, a purported effort to improve education and reduce taxes in communities that could not fund an adequate education.

In truth, it was an insidious, divisive and politically driven tax reallocation that in effect, has created a whole new class of citizens in New Hampshire based purely on where they live -- "Donors" who represent 20 percent of the State's communities and less than 10 percent of the population.

This report clearly shows the need to correct the gross injustice being done to our communities today, and threatening many more in the future. If the Coalition Communities' proposed "hold harmless" constitutional amendment were to pass, it would be a stopgap measure to protect towns from having to "donate" more than they are designated to receive under the State's current education funding formula. Further, this amendment would effectively cap the statewide property tax in the future.

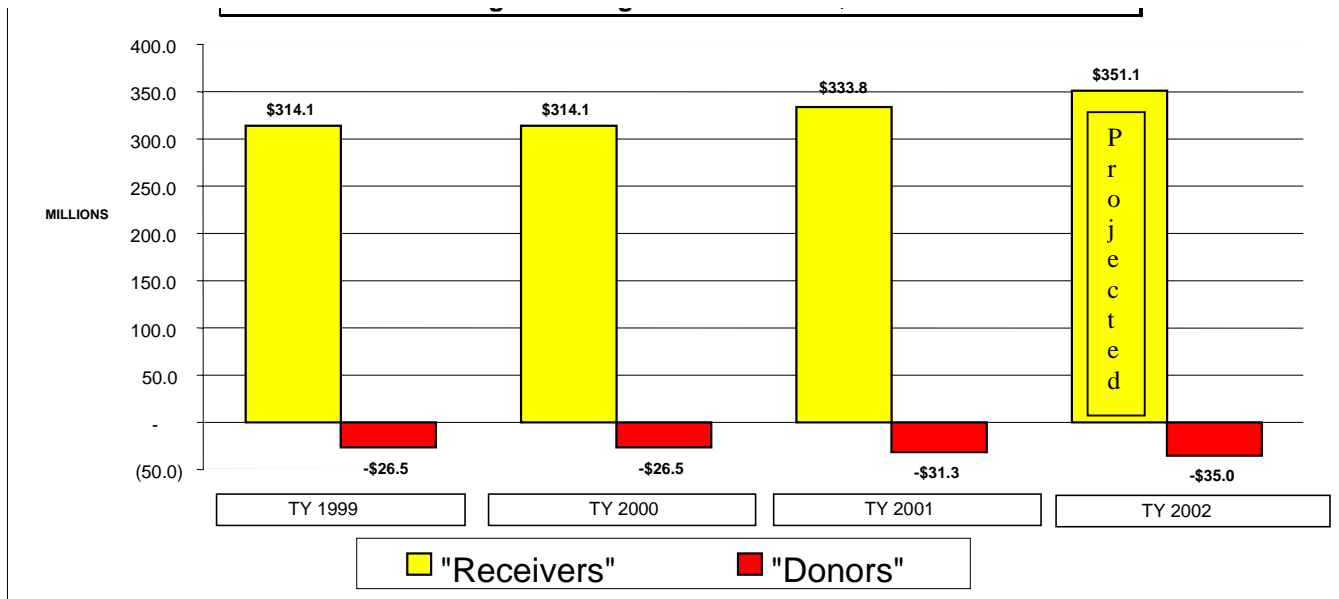
The biggest fallacy about HB 999 is that it instituted a "new" statewide property tax. In reality, local property taxes were simply renamed "state property taxes" in 80 percent of the communities (Receivers representing 90 percent of the population), while the other 20 percent of towns (10 percent of the population) were forced to provide an intergovernmental transfer of local property taxes to the State, thus becoming Donors.

To top it off, a permanent system was put in place that over the past three years has provided almost \$1 billion in "new" money to the same 90 percent, while less than 10 percent of the population not only did not receive any of that money -- they were penalized and taxed by over \$84 million simply on the basis of their zip codes.

Further, this grossly inequitable tax redistribution scheme is causing property tax rates to rise in Donor towns at a rate **seven times** higher than in the rest of the State.

And, as education costs rise in the future and the State continues to fail to find another source of funds, rates will be raised to fund education, thus creating new Donor towns as well as Receivers who will be receiving less. In FY 2003, for example, there will be 55 Donor towns and 57 "Receivers Receiving Less" than the year before.

In all other states that have faced the education funding challenge, money has been targeted to those communities in need while holding all others "harmless." In New Hampshire, we are not only penalizing towns that are rich in property even if their citizens are not, these citizens also are being forced to supplement the tax payments of wealthy taxpayers in such prosperous communities as Bedford and Amherst. The Coalition supports education funding but believes communities should be "held harmless" and not penalized in the process.



Receivers" represent 90% of the N.H. population in 80% of the communities; "Donors" represent less than 10% of the population in 20% of the communities)

The bar chart above shows the bottom line: In the last three years since the passage of HB 999, almost \$1 billion in "new" money has been provided to 90 percent of New Hampshire's taxpayers -- while less than 10 percent were penalized and taxed by over \$84 million -- purely on the basis of their zip codes.

Under pressure from the courts to solve the education funding crisis, the Legislature responded with HB 999 -- which raised a series of new taxes (business surcharges, real estate transfer, etc.) [1], cobbled together other revenue sources (tobacco settlement, surplus funds), and eliminated some school aid programs (kindergarten aid, foundation aid, and revenue-sharing). In addition, the Legislature simply renamed local property taxes to make them "state property taxes" to make up the remaining funding shortfall -- essentially a cosmetic change for everyone except taxpayers in Donor towns.

What's more, the Legislature never established a definition of an adequate education. Instead, the lawmakers had simply come up with a total, backed into a formula and in the interest of political expediency, redistributed the more than \$300 million in "new" revenue so that 80 percent of the towns would benefit.

In addition, the formula required that excess "state property taxes" -- that amount raised above what the State decreed was necessary to educate children in the other 20 percent of the towns -- be sent to Concord for redistribution. This meant the Donor towns not only had to "donate" to supplement taxpayers in other communities that might be wealthier or providing more services, the Donors also had lost their state education funds (kindergarten, revenue-sharing, etc.).

The Coalition Communities' proposed "hold harmless" amendment would finally bring some relief to these "Donor" communities, putting an end to their unjust burden of providing an intergovernmental transfer of property tax funds to the State. They would not receive any of the new funds provided in HB 999 nor the education (kindergarten, etc.) funds

that were lost. The proposed amendment also would not take any funds away from any communities and in effect, simply would cap the rate of the statewide property tax.

The Negative Financial Impact of HB 999

The facts clearly show that HB 999 has had a disastrous and unjust impact upon our State:

- ⇒ On average, property taxes in Donor towns are now 111 percent higher than in Receiver communities. This gap has more than doubled since the passage of HB 999. Further, this abrogation is expected to greatly widen next year, and in future years.
- ⇒ Almost \$1 billion in new money has been provided to 90 percent of the State's taxpayers (Receivers), while the other 10 percent (Donors) have not only been taxed by over \$84 million -- they also have lost millions in kindergarten and revenue-sharing funds. Further, this penalty will total \$35 million in FY 2003 and is expected to grow even further in future years.
- ⇒ Total property tax commitments -- local, county and state -- in Donor communities have increased by a staggering 35 percent, compared to an overall increase of only 5 percent in the rest of the State.
- ⇒ The median tax burden in Donor communities is 80 percent higher than in the rest of the State.
- ⇒ County property taxes, alone, have increased 50 percent more in Donor communities. This is partly due to the fact that the State of New Hampshire is forcing costs upon the counties that it once bore.
- ⇒ While this egregious inequity is continuing against Donor communities, and pitting Donors against Receivers, there is no basis in the contention that putting an end to Donor towns would gravely impact the State's financial bottom line. In actuality, the Donor "tax" is less than 1 percent of the State's budget.

Why the System is so Unfair

The City of Portsmouth is a "poster child" of why this system is so unfair. By most measures, Portsmouth is not a wealthy town and yet, in FY 2003 (Tax Year 2002) the city will be forced to send \$3.7 million -- or \$179 for every man, woman and child in Portsmouth -- to Concord for education funding under the statewide property tax. The passage of HB 999 has meant that by the end of FY 2003, Portsmouth will have sent a total of \$6.1 million to the state to redistribute to other communities that could have gone for police and fire protection, new roads, schools, and other services.

Some not-so-wealthy facts about Portsmouth:

- ☐ Over 50 percent of the housing units are rental -- second only to Manchester.
- ☐ Over 20 percent of Portsmouth's rental units receive some form of federal rent subsidy. Portsmouth ranks third in the State in this area, behind only Concord and Franklin.
- ☐ The median gross rent for a two-bedroom apartment in Portsmouth is over 20 percent higher than the New Hampshire state average of \$818.
- ☐ The Portsmouth area is one of the most expensive areas to find housing, according to a new survey by the National Association of Home Builders. In the Portsmouth-Rochester statistical metropolitan area, the median family income is \$56,100 while the median sales price was \$230,000 -- meaning only 23.4 percent of the homes are affordable for residents with the median income. Increased property taxes due to the statewide education-funding crisis are exacerbating the situation.
- ☐ Portsmouth has the third-highest percentage of free and reduced school meals of all New Hampshire cities.

Similar stories are being told in other Donor towns. Hart's Location, for example, doesn't even have a police force but must pay for education in other towns. Still other Donor communities cannot afford libraries and other basic services, while many of the highest-income communities are able to afford these services and more.

It's Time to Take Action

The facts undeniably demonstrate that the tax burden is rapidly and disproportionately increasing on less than 10% of our citizens who reside in 20% of our communities. While the problems of equitably funding an adequate education are complex and may take many years, legislatures, governors, and court challenges to resolve – it is clearly time to fix this gross injustice now, before this crisis spreads and more low and moderate income taxpayers are taxed out of their homes – purely on the basis of their zip codes.

Summary & Explanation of Proposed "Hold Harmless" Constitutional Amendment

This information was provided by Martin Gross of the Concord law firm of Sulloway & Hollis.

EXPLANATION OF PROPOSED AMENDMENT TO PART 2, ARTICLE 5:

The state shall not impose a real property tax to fund public education that requires the taxpayers in any political subdivision to provide funds in excess of the amount required to support the cost of public education for pupils in such political subdivision, nor shall the state require any political subdivision to impose, collect or remit such a tax.

Under current law (RSA 76:3 and 76:5), New Hampshire municipalities are required to assess and collect the Education Property Tax. The Education Property Tax is the principal source of revenue for funding state aid for educational adequacy under RSA 198:38-49. As required by decisions of the New Hampshire Supreme Court in the *Claremont* case, the Education Property Tax is imposed at a uniform rate throughout the state. Effective April 1, 2002, the uniform rate of the Education Property Tax is \$5.80 per \$1,000 of valuation.

The effect of forcing municipalities to collect the Education Property Tax at that rate is to require some municipalities to collect from their property taxpayers amounts that are larger than necessary to fund the State's distribution of "adequate education grants" to those municipalities, as determined under RSA 198:40. RSA 198:46, I, requires such municipalities to remit to the State the amount of Education Property Tax in excess of the municipality's adequate education grant entitlement. The statute refers to this as the "excess education property tax payment."

The purpose of the proposed amendment is, first, to modify Part 2, Article 5 of the New Hampshire Constitution so as to permit the State to use the Education Property Tax as a source of revenue for meeting its adequate education funding responsibility, but without requiring municipalities to collect more Education Property Tax than is needed by a municipality to support the cost of adequate education for its pupils. The effect would be to modify the decision of the New Hampshire Supreme Court in *Opinion of the Justices (School Financing)*, 142 N.H. 892 (1998).

The amendment would also effectively nullify RSA 198:46, I, which requires municipalities to remit "excess education property tax" to the State, but would not prohibit the State from continuing to use the Education Property Tax as a source of funds for adequate education grants. Also, the amendment would not affect any other education funding relationship, such as funding arrangements among municipalities participating in cooperative school districts. The amendment would apply only to property taxes used by the State to satisfy the State's obligation to provide adequate education.

The amendment also provides:

"That if the proposed amendment is approved by 2/3 of those voting on the amendment, it becomes effective when the governor proclaims its adoption and shall apply to tax years beginning on and after April 1, 2003."

This effective date means that the Legislature will not have to seek revenue replacement of the \$32 million the "Donor" towns are being forced to send to Concord for the second half (Fiscal Year 2003) of the already approved biennium budget.

^[i] The increased taxes were Business Profits, Business Enterprise, Communication, Real Estate and Tobacco. The Real Estate Transfer and Meals and Rooms taxes were extended. The utility property tax was the renamed local property tax and overall, the total property taxes paid by utilities were likely reduced by HB 999.