



# Default Budgets and How They Work

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# The Annual Meeting Process: Key Players



- Legislative Body
- Governing Body
- Budget Committee

# SB2 Default Budget Historical Timeline

Since 1995, 72 towns and 81 school districts have adopted the SB2 form of annual meeting.

Source: DRA 12/31/2020

1995

- RSA 40:12-14 was created to provide an alternative to the traditional Town/school Meeting.
- The annual meeting cannot end until a budget is adopted, this provided a method to essentially finalize a budget in the event of a “no” vote.
- The default budget is necessary in the event that the voters reject the proposed operating budget at the second (ballot) session.

2004

- Default budget calculation clarified in SB 219.

- Several NH Court cases and over a dozen failed attempts to propose legislation to amend the default budget law, resulted changes passed in 2018.

2018 →

- Chapter 313 ( SB 342) and Chapter 241 ( HB 1307) re-defined how the default budget must be calculated.

Note: Bills are filed every session to amend the default budget calculation, including this year.



# Senate Bill 2 (SB2) Official Ballot Law RSA 40:13

Governing body calculates, unless delegated to budget committee through annual meeting authorization. ( RSA 40:14-b)

As long as statutory formula is used, default budget may be higher or lower than last year's budget

Default budget is amount of the same appropriations as contained in the operating budget authorized for the previous year . . .

reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and

reduced by one-time expenditures contained in the operating budget and by ***salaries and benefits of positions that have been eliminated in the proposed budget.***

RSA 40:13, IX(b).

# *The “default budget” defined*

## *What is the statutory definition of “default budget”?*

- "Default budget" means the amount of the same appropriations as contained in the operating budget authorized for the previous year, reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget and by salaries and benefits of positions that have been eliminated in the proposed budget.

# Default Budget Terms Defined

“One-Time Expenditures”: Expenditures not included in the default budget because they are appropriations not likely to recur in the succeeding budget, as determined by the governing body, unless the town meeting votes to delegate determination of the default budget to the budget committee.

“Contracts”: Contracts previously approved, in the amount so approved, by the legislative body in either the operating budget authorized for the previous year or in a separate warrant article for a previous year.

“Eliminated positions” does not include vacant positions under recruitment or position redefined in the proposed operating budget.

# 2018 Legislative Changes to the Default Calculation



The 2018 amendment to that law now makes clear which “contracts” can be used to adjust the default budget number.



(Chapter 241, HB 1307), “contracts” are limited to “contracts previously approved, in the amount so approved, by the legislative body in either the operating budget authorized for the previous year or in a separate warrant article for a previous year.”



Intent of this change is clear: an amount included in a contract cannot be used to adjust the default budget unless that amount was previously approved by the legislative body.

# 2018 Legislative Changes to the Default Calculation

***Discussion of operating and default budgets at deliberative session.*** The same new law, Chapter 241, amends RSA 40:13, IV, to say that the first session of the annual meeting in an SB 2 town “shall consist of explanation, discussion, and debate of each warrant article, ***including warrant articles pertaining to the operating budget and the default budget.***”



# 2018 Legislative Changes to the Default Calculation

***Default budget must be reduced for eliminated positions.***

Chapter 313 (SB 342), which states that, in addition to the other adjustments required by the statute, the default budget must now be reduced “by salaries and benefits of positions that have been eliminated in the proposed budget.”

The required reductions are only for positions that are eliminated in the proposed budget. “Eliminated positions” do not include “vacant positions under recruitment or positions redefined in the proposed operating budget.” (Those positions should still be included in the default budget.)

The new law also states, “In calculating the default budget amount, the governing body shall follow the statutory formula which may result in a higher or lower amount than the proposed operating budget.”

# 2018 Legislative Changes to the Default Calculation

*Adjustments to default budget must be presented in detail.*



Chapter 313 also requires that the default budget be “presented for questions and discussion at the first budget hearing.”



It now must be “presented,” which *suggests* something more than just having it available for review;

Questions and discussion must be permitted.



**Significant addition to the law:**

The default budget form must now identify the “specific items that constitute a change [from the prior year’s operating budget] by account code, and the reasons for each change.”

# The Annual Meeting

Approves all appropriations;

Votes to create and fund common municipal/district funds;

Citizen authority to propose appropriations by petition;

May amend separate articles to reduce or zero out appropriations;

May amend proposed budget to reduce (or increase) total bottom line appropriation;

Can zero out line -item appropriations in DRA proposed budget form.

Warrant articles “pertaining to the operating budget and the default budget” is subject to explanation, discussion and debate at the first session of the annual meeting. RSA 40:13, XI(b).



# Default Budget Procedure

- ❖ The preparation and determination of the default budget, including one-time expenditures, capital project appropriations, rests with exclusively with the governing body -unless it has been delegated to the budget committee.
- ❖ Disclosed and presented for questions and discussion at first budget hearing;
- ❖ Line-item changes must be available at budget hearing:
  - ❖ Appropriations in last year's budget;
  - ❖ Reductions and increases, including identification of specific items that constitute a change by account code and the reason for change
  - ❖ One-time expenditures
  - ❖ Reductions for eliminated positions
- ❖ Discussion and debate of default budget at deliberative session.
- ❖ **The default budget may not be amended by voters.**

# DRA PORTAL

The system will automatically populate the “Prior Year Adopted Operating Budget” from information provided during the previous tax year.

To make adjustments to the default budget the user can enter “Reductions or Increases” and “One Time Appropriations”. From these inputs the system will automatically calculate the “Default Budget Values”.

Explanatory text can be provided for each account code through the “Reason Field”.

Source: NH DRA

DRA FAQ: <https://www.revenue.nh.gov/mun-prop/mtrsp/documents/mtrsp-faqs.pdf>

## Default Budget

For Tax Year 2017 all SB-2 Entities will be required to prepare their Default Budget using the NHDRA Municipal Tax Rate Setting Portal (MTRSP). The interface will automatically populate your previous year operating budget figures and provide you with the tools to quickly and easily create a Default Budget.



### START DEFAULT BUDGET

To begin preparing your Default Budget, go to the Budget tab in the MTRSP. Below the warrant article table there will be a “Default Budget” button.

Default Budget

### ENTER NEW INFORMATION

The system will automatically populate the “Prior Year Adopted Operating Budget” from information provided during the previous tax year. To make adjustments to the default budget the user can enter “Reductions or Increases” and “One Time Appropriations”. From these inputs the system will automatically calculate the “Default Budget Values”. Explanatory text can be provided for each account code through the “Reason Field”.

Account Code	Propose	Prior Year Adopted Operating Budget	Reductions or Increases	Less One Time Appropriations	Default Budget	Reason
400-080	Collective Bargaining	\$0	\$0	\$0	(\$800)	
420-020	Executive	\$0	\$0	\$0	\$0	
430-040	Election, Registration, and Vital Statistics	\$0	\$0	\$0	\$0	
430-041	Financial Administration	\$0	\$0	\$0	\$0	
430	Resolution of Property	\$0	\$0	\$0	\$0	
430	Legal Expense	\$0	\$0	\$0	\$0	
435-400	Personal Administration	\$0	\$0	\$0	\$0	
430-080	Planning and Zoning	\$0	\$0	\$0	\$0	
434	General Government Building	\$0	\$0	\$0	\$0	
435	Comptroller	\$0	\$0	\$0	\$0	
Total		\$0	\$0	\$0	\$0	

# Default Budget Procedure- Common Questions

## *How is determination of the default budget delegated to the budget committee?*

- The town or district meeting voters may vote to delegate determination of the default budget to the budget committee, if one exists, instead of the governing body. RSA 40:14- b.
- This delegation of authority can be voted on at the time the official ballot referendum system is adopted, or-
- if the town or district already operates under the official ballot referendum system, the delegation of default budget authority can occur by an article in the warrant: “Shall we adopt the provisions of RSA 40:14-b to delegate the determination of the default budget to the municipal budget committee which has been adopted under RSA 32:14?”

## *When and how is the default budget presented to the annual town/district meeting?*

- The default budget must be disclosed at the first public hearing on the budget held under RSA 32:5 (towns) or RSA 197:6 (school districts).
- Unless determination of the default budget has been delegated to the budget committee, the governing body must complete the default budget form created by DRA.
- The purpose of the default budget form is to demonstrate how the default budget amount was calculated. The calculations must include appropriations contained in the previous year’s operating budget; reductions and increases to the previous year’s operating budget due to changes in debt service, contracts or other obligations; one-time expenditures as defined in RSA 40:13, IX(b); and capital project default amounts.
  - **Line-item detail changes must be available at budget hearing.**
- The governing body must post certified copies of the default budget form or any amended default budget form with the proposed operating budget and warrant. RSA 32:5, VII(b).

# *When does the default budget go into effect?*

- ✓ If the proposed operating budget does not pass, and if the governing body does not choose to call a special meeting to consider a revised operating budget (or if such a vote fails), then the default budget is deemed to have been adopted.



*What line- item transfer authority does the governing body have over a default budget?*

Sullivan v.  
Town of  
Hampton  
Board of  
Selectmen,  
153 N.H.  
690 (2006)



The default budget is a dollar amount which creates a bottom-line figure;



the governing body must remain within that figure;



the failure to pass the operating budget is a change in circumstances that allows the governing body to use their authority to transfer funds that are appropriated under RSA 32:10.



# Individual Warrant Articles

***Are there any warrant article appropriations that must be included in the default budget?***

- ***In most cases, a warrant article will be considered a one-time expense, unless it creates a contract.***
  - ***Examples include collective bargaining agreements, multi-year contracts and lease/purchase contracts as well as bond issues.***
- ***EXCEPTION:*** If an SB 2 town approves a multi-year appropriation for a capital project under RSA 32:7-a, for each year after the first year, the amount designated for that year as provided in the original warrant article is included in the default budget and deemed appropriated without further vote by the legislative body.
  - Once the meeting has authorized a capital project multi-year appropriation, no warrant article is needed in any other year of the term.
  - Each year's amount will be treated as appropriated automatically in future years of the term whether the proposed operating budget is passed.

# A Warrant Article vs. the Operating Budget

## What are the risks associated with putting the full term of the contract to the voters in a separate warrant article?

- The most obvious risk is triggering “no means no.” The voters could vote down the separate warrant article to approve the multi-year agreement and appropriations.
- When a separate article containing an appropriation is rejected by the voters, it generally means that no money can be spent on the purpose stated in that warrant article.
- A well-crafted warrant article may help reduce these risks, should the voters reject the article, so that the purpose of spending is not prohibited by a “no” vote on the article.

## What are the risks associated with putting the amount in the operating budget?

- Since there are many types of multi-year agreements signed by the select board, this is often the most efficacious approach—but it does mean that the default budget cannot include the increases that the select board may be on the hook to pay; the budget includes only the same “base” amount as included last year.
- In this case the governing body may use their authority to transfer funds that are appropriated under RSA 32:10.

# What are “contracts, and other obligations previously incurred or mandated by law” that are included in the default budget?



The annual cost of any multi-year contracts that had been approved by a prior town meeting would be included in the default budget, such as a collective bargaining agreement.



Any other multi-year contracts where the full, multi-year cost of the agreement was discussed and disclosed at the town/district meeting where the agreement was approved.



Other obligations mandated by law that would be included in the default budget would be such things as:

Workers' compensation insurance which is mandated by RSA Chapter 281-A, or payments to the New Hampshire Retirement System for town employees.

County Payments or payments to the State Treasurer.

# I Examples: Contracts



If the town meeting last year or two years ago approved the cost items in a collective bargaining agreement that was appropriately “Sanbornized,” and if that agreement includes increases that will apply in the coming year, those increases should be applied as an adjustment to last year’s operating budget to determine the default budget for town meeting. This is because those increases were “previously approved . . . by the legislative body.”



If the town’s budget for waste-hauling services was \$400,000 this year, and the governing body entered into a contract mid-year to pay \$450,000 for the same services next year, they cannot include the extra \$50,000 in the default budget. They may certainly include the full \$450,000 in the proposed operating budget for next year, but the default budget number must be the same as this year’s budget number—\$400,000.

# Salaries & Raises

- Hillsborough Superior Court, Northern District, found that annual salary increases included in an employment contract, entered into between a town employee and the select board, could not be included in future years' default budgets. The judge determined that because the appropriations in the contract were not previously approved by the voters, these amounts did not constitute "contracts . . . previously incurred by law." Neal Kurk v. Thomas Clow, et. al, Docket No. 261-2018-CV-00086, [Affirmed in part, Neal Kurk v. Thomas Clow, 2019 N.H. Lexis 90, NH Supreme Court (decided May 9, 2019)].
- This means that employee raises provided after the annual meeting, that are not disclosed and approved in the salary line item at the annual meeting should not be included in the default unless they are required by a legally binding and previously ratified contract obligating the municipality to fill positions or employ particular people at certain wages.
- Separate warrant articles containing merit raises, a COLA, or other compensation are considered one-time expenses and would not be included in the default unless the warrant article was carefully worded to carry forward those amounts in subsequent years.

# EXAMPLE: Contracts not approved at the Annual Meeting

What happens when the select board did not submit the contract to the voters in a separate warrant article?

## Example-

- The 2022 budget contained \$100,000 for waste hauling.
- The 2023 contract is set to increase by 5% to \$105,000.
- The 2023 default budget can contain only the \$100,000— as approved in last year’s operating budget—not the \$105,000 contained in the new contract signed by the select board.
- The select board can still pay \$105,000 for waste hauling in 2023, even if the town ends up with the default budget.
- This is because the budget—whether an adopted operating budget or a default budget—is a bottom-line budget, and the select board has the authority to transfer from line to line.
- The board must find the additional \$5,000 elsewhere in the budget. This, of course, means that another area of the budget may suffer, but this is part of the reality of being in a default budget year.



# *Default budget must be reduced for eliminated positions*

## **“Excluded Salaries”, Attrition vs. Retirement & Reorganization**

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2018 testimony indicated the intent that “excluded salaries” and specified the terms did not include vacant positions or reorganized/restructured positions.

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2018 testimony acknowledged that when a position is not eliminated but is replaced by new employees with a lower salary (e.g., due to retirement), those changes do not need to be adjusted/reflected in the default budget.

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Supporters of the 2018 law changes maintained that if a position remains open or is filled by a more junior employee, the default budget does not need to be adjusted.

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*Only if a position is eliminated through attrition/reorganization/restructuring does it have to be removed from the default budget.*

## EXAMPLE:

Annual salary increases -another commonly-debated issue with default budgets

Example, an employee whose salary plus benefits in the 2022 budget was \$100,000 (with a \$50,000 salary).

- The governing body had also entered into an agreement to pay this employee a 10% increase in the subsequent year.
- For the 2023 default budget, the board cannot include \$105,000 (\$55,000 increased salary plus benefits); it can put in just the \$100,000 approved by the legislative body in the 2022 budget.
- That doesn't mean the \$55,000 salary can't be paid to the employee—but it does mean that the board will need to move money around to “find” that extra \$5,000.
- Like any other multi-year agreement, the board could ask the voters to approve the full term of the employee's contract, including the pay increases, in which case the pay increases would be included in the default budget.



## EXAMPLES:

*default budget  
must be reduced  
for eliminated  
positions*

- ❖ Example : The Assistant Public Works Director retired, and a decision has been made that the position would not be filled—essentially, the position was discontinued when that employee retired. The amount of money in last year's operating budget that represents the salary, benefits, and costs associated with that position would not be included in the upcoming year's default budget.
- ❖ Example 2: If the town intended to fill the Assistant Public Works Director position, but it was just vacant while a search was conducted, the amount of money associated with that position would be included in the default budget.
- ❖ Example 3: If the town intends to fill the Assistant Public Works Director position, and a successful search was conducted but the employee was less experienced and will start at a lower salary, the total amount of money associated with that position in the approved line-items would be included in the default budget.

# EXAMPLE: One-Time Expenditures

Example: the town included money in the maintenance line of last year's operating budget to install new windows in the town hall/school building.

- ❑ Since the window installation was a discrete project that occurred last year, and not something to recur annually -that amount constitutes a onetime expenditure that must be taken out to calculate the default budget.
- ❑ The same would be true about a one-time exterior improvement to a town building or school, such as installing handicap access ramps.
- ❑ The purchase of a new backup electrical power generator for the fire station would not likely be a reoccurring capital expense and would be categorized as a one-time expenditure.



## EXAMPLES:

*Adjustments to default budget must be presented in detail.*

- ✓ Example: if the prior year's operating budget included an amount in the police budget to buy land for future expansion of the police station, the reduction for that one-time expenditure must be identified as a reduction in the police budget, with an explanation that the land has been purchased.
- ✓ Example: if a position in the highway department has been eliminated, that amount must be shown as a reduction in the highway department budget, with an explanation that the position has been eliminated for next year.



# EXAMPLE:

## Commodities & Utilities

- Example: While the per-unit cost for certain commodities may increase from one year to the next (such as the cost per kilowatt-hour of electricity or the cost per ton of asphalt), the default budget includes the “amount” of the money appropriated for that purpose the previous year, not the amount that will be required for the same number of units in the coming year.
- The default budget is limited not only to the same amount of the appropriations in the previous year’s operating budget, but also to those purposes for which appropriations were made in the previous year’s operating budget.

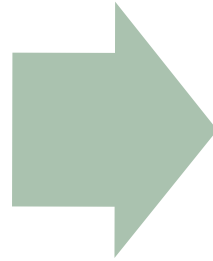
# EXAMPLES:

## No New Budget Line

- New budget line items cannot be added because they are not part of the appropriations contained in the previous year's operating budget.
- This means the only purposes that should be included in the default budget are the purposes (line items) that appeared in the previous year's operating budget.
- Example: if the previous year's operating budget had no appropriation for DRA's Account #4152, revaluation of property, that line cannot be added into the default budget because it does not fall within the definition of default budget under RSA 40:13, IX(b).

# Commonly Asked Questions

Q: Our annual meeting is in March, our Governing Body provided a 4% Cola to all employees in September due to inflation using line-item transfer authority. Can we include the COLA and associated payroll taxes and the increase to NH Retirement in the default budget under the salary lines?



A. Unfortunately, while this is legally permissible for the governing body to do, the COLA and the associated increases can not carry into the default, as they were not approved by the voters for that purpose. Those funds are in another line item and the default freezes the amount in the budget line and does not consider line-item transfers in the calculation.

*Practice Pointer: if there were adjustments made to salaries after the annual meeting, only the total amount approved in the line is available in the default.*

# Commonly Asked Questions



Q: We are a calendar year town. In 2022, the town voted to add a part-time employee to the transfer station beginning in July. If we go to default, can all 12 months of salary be included in the default since the position was approved by the voters?

A. In the 2023 default, note only the 26 weeks of salary was approved by the voter, therefore only the amount in the line budgeted at 26 weeks can be included in the default, despite the position being approved.

- The intention was for the position to begin in the second half of the year in 2022, and by only budgeting 26 weeks, the voter was only taxed on the associated salary expenses for 6 months. This presents a challenging scenario, because the default is based on a dollar amount, with no consideration for the position. However, the governing body has line-item transfer authority should the budget go into default.

# Future of the Default Budget

**Bills are filed every session to amend the default budget calculation, including this legislative session.**

- At the time SB2 was passed that it was not intended as a tax reduction mechanism but rather a formula for keeping the town/school running if the voters did not approve the proposed operating budget.
- Legislators are still looking for mechanisms to reduce the amount of the default budget so it can never be higher than the proposed operating budget.

Changes to the definition and wording of SB2 raise questions about whether SB2 as it now exists is what voters adopted.



## Upcoming Webinar

# 2023 Legislative Preview Webinar

**12:00 noon - 1:00 pm, Monday, January 9, 2022.** Join Executive Director Margaret Byrnes, Government Affairs Counsel Natch Greyes, and Government Finance Advisor Katherine Heck, for a look at what the 2023 legislative session has in store for cities and towns.

**REGISTRATION OPEN!**

**[REGISTRATION NOW OPEN!](#)**

# QUESTIONS?



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