



# The Basic Law of BUDGETING



A Guide for Towns, Village Districts and School Districts  
**2022**

# TABLE OF CONTENTS

About this Publication .....	6
Introduction to the Municipal Budget Law.....	7
Glossary of Terms.....	9

## Seven Key Concepts

### Chapter 1. Appropriations

<b>First Key Concept 15 .....</b>	<b>12</b>
A. Appropriations Create Guiding Values.....	12
B. Appropriations Are Acts of Legislative Policy .....	12
C. The Proper Purposes of Appropriations.....	13
D. The Meaning of RSA 31:4 – Home Rule.....	13
E. A Power to Act Implies a Power to Appropriate.....	14
F. Public Purposes Only.....	14
G. How Specific Should a Proposed Appropriation Be?.....	16
H. Contingency Funds .....	16
I. Tax/Spending Caps.....	17
J. Procedural Requirements for Valid Appropriations .....	17
K. Inter-Municipal Agreements, Shared Services, and Voluntary Contributions .....	19

### Chapter 2. ‘Gross Basis’ Budgeting

<b>Second Key Concept.....</b>	<b>21</b>
A. Care in Drafting Warrant Articles.....	21
B. Examples of Mistakes.....	21
C. Comparative Columns.....	22
D. Individual Versus Special Articles .....	23
E. Special Articles and Recommendations .....	23
F. Numeric Tallies and Recommendations on Other Warrant Articles if Authorized by Town Meeting or Governing Body .....	23
G. Multi-Year Appropriations for Capital Projects .....	24
H. Estimated Tax Impact.....	25

## **Chapter 3. Warrant Notice and Permissible Amendments**

<b>Third Key Concept .....</b>	<b>26</b>
A. Voters' Ability to Amend Amounts.....	26
B. Later Transfers Cannot Be Restricted from the Floor .....	26
C. Amendment by Altering Mode of Funding .....	27
D. 'Stay-at-Home Test'.....	27
E. Appropriating Money at Special Meetings: The Requirement of 'Emergency' .....	27

## **Chapter 4. No Spending Without an Appropriation**

<b>Fourth Key Concept.....</b>	<b>29</b>
A. Basic Rule of Budget Accounting .....	29
B. Exceptions to the Rule.....	29
C. What About Spending Prior to Town Meeting?.....	30
D. Other Statutory Exceptions to No-Spending-Without-Appropriation Rule .....	31
E. Multi-Year Contracts.....	32

## **Chapter 5. When Do Appropriations Lapse?**

<b>Fifth Key Concept .....</b>	<b>35</b>
A. Source of the 'Lapse' Rule .....	35
B. Don't Confuse Appropriation Accounting with Cash Accounting or Tax Accounting .....	35
C. Lapsing to 'Fund Balance' – Not 'Surplus' .....	35
D. Unanticipated Revenue Is Not 'Lost' .....	37
E. Exceptions to the 'Lapse' Rule: RSA 32:7.....	37
F. Statutorily Nonlapsing Funds.....	40

## **Chapter 6. Transfers of Appropriations During the Year**

<b>Sixth Key Concept.....</b>	<b>45</b>
A. Special Warrant Articles Nontransferable .....	45
B. Maintaining Records of Transfers .....	45
C. Line Item Voting? .....	46
D. Failed Separate Article: 'No Means No' .....	47

## **Chapter 7. The Budget Committee**

<b>Seventh Key Concept.....</b>	<b>48</b>
<b>I. Composition and Creation of the Official Budget Committee .....</b>	<b>48</b>
A. Official v. Advisory Budget Committee .....	48
B. Adoption of an Official Budget Committee.....	48
C. Membership.....	49
<b>II. Role and Authority of the Budget Committee .....</b>	<b>50</b>
A. Official v. Advisory Budget Committee .....	50
B. Adoption of an Official Budget Committee.....	50

C. “The Budget” .....	51
D. Acquiring Information for Budget Preparation.....	51
E. The Default Budget.....	52
F. Reviewing (Not Controlling) Expenditures .....	52
G. Special Article Recommendations.....	53
H. Failure of Budget Committee to Propose a Budget.....	53
I. Limit on Appropriations.....	54
J. Right to Know Law.....	56

## **Chapter 8. Appropriations under the Official Ballot**

<b>Referendum (SB 2) System.....</b>	<b>57</b>
A. ‘Standardized’ Referendum System Versus ‘Customized’ Charter .....	57
B. Description of the SB 2 System.....	57
C. Different Deadlines.....	58
D. Default Budget .....	58
E. Recommendations/Altering Recommendations .....	62
F. Voting Issues.....	62
G. Special Meetings .....	64

## **Chapter 9. Basic Town, Village District and School District**

<b>Meeting Procedures .....</b>	<b>65</b>
A. Rules of Procedure .....	65
B. Wording of Articles, Motions and Amendments.....	66
C. Dividing a Question.....	67
D. Reconsideration and Limits on Reconsideration .....	67
E. Preventing Disorder.....	69
F. Separating Voters from Nonvoters.....	69
G. How Votes Are Counted and Declared .....	69
H. Requests for Secret Yes/No Ballot .....	69
I. Questioning a Vote.....	70

## **Chapter 10. Capital Improvements Plans: An Important Financial**

<b>Planning Tool .....</b>	<b>71</b>
A. Why Do We Need a Capital Improvements Program? .....	71
B. Where Does the CIP Fit Into Local Government?.....	72
C. Where Do We Begin?.....	73
D. What is a “Capital Improvement”?.....	73
E. What Goes Into a Capital Improvements Program?.....	74
F. Drafting, Revising and Adopting the CIP .....	77
G. Next Steps: Begin Again!.....	78

<b>Chapter 11. Understanding the Property Tax System.....</b>	<b>79</b>
A. Property Taxes Based on Appropriations.....	79
B. Valuing Property: The Appraisal Process .....	79
C. Increased Assessed Value Does Not Necessarily Mean Increased Taxes .....	80
D. Proportionality.....	80
E. The Assessing Process .....	81
F. The Equalization Process .....	82
G. Setting the Tax Rate.....	82
H. Property Tax Bill .....	83
I. How Much Will That Add to the Tax Rate? .....	83
<b>Appendix A: Custody and Expenditure of Common Town Funds.....</b>	<b>85</b>
<b>Appendix B: Fees, Licenses, Permits &amp; Penalties .....</b>	<b>86</b>
<b>Appendix C: Financing Options.....</b>	<b>89</b>
<b>Appendix D: Assessed Value Illustrations .....</b>	<b>93</b>
<b>Appendix E: Tax Rate Impact Worksheet .....</b>	<b>95</b>
<b>Appendix F: Timetable for Special Town Meeting.....</b>	<b>96</b>
<b>Appendix G: Due Dates for Municipal, School &amp; Village District Forms.....</b>	<b>98</b>
<b>Appendix H: Default Budget FAQ .....</b>	<b>102</b>
<b>Table of Statutes .....</b>	<b>107</b>

# ABOUT THIS PUBLICATION

This publication is intended for use in conjunction with the New Hampshire Municipal Association's (NHMA) Budget and Finance Workshops and as a reference throughout the year. We hope you find this survey of the Municipal Budget Law helpful as you carry out your duties as a municipal official. Other NHMA publications are available to provide more in-depth information on town meeting and other municipal law issues, including the *Town Meeting and School Meeting Handbook* and *Knowing the Territory: A Survey of Municipal Law for New Hampshire Local Officials*.

NHMA's Legal Services attorneys focus on the laws of towns, cities, and village districts, but the scope of their legal advice does not include school-specific issues. However, we recognize that in a town with an official budget committee, that committee also serves the local school district. Therefore, with the help of Attorney William J. Phillips of the New Hampshire School Boards Association, we have included some school-specific information, including information relevant to cooperative school districts, and we note that in many cases school budgeting laws are similar to town, city, and/or village district budgeting laws. For school tips, look for this icon throughout the book:



This edition also features a glossary to help you understand the “language” of budgeting law. The information presented is not intended as legal advice and is not a substitute for consulting your municipal attorney or calling on NHMA's Legal Services attorneys. Local officials in New Hampshire Municipal Association-member municipalities may contact NHMA's Legal Services attorneys with questions and to receive general legal assistance. Attorneys are available by phone at 603-224-7447 or by email at [legalinquiries@nhmunicipal.org](mailto:legalinquiries@nhmunicipal.org).

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including but not limited to photocopying, recording, posting on a website, or other electronic or mechanical methods, without prior written permission of the New Hampshire Municipal Association, except in the case of quotations that cite the publication as the source or other non-commercial uses permitted by law. The forms contained in this publication are available for your use

# INTRODUCTION TO THE MUNICIPAL BUDGET LAW

The information in this survey, in general, applies to the budget process in all towns, village districts and school districts governed by the Municipal Budget Law, RSA chapter 32. All principles covered here also apply to those towns and districts that have adopted the official ballot referendum system under RSA 40:13 (SB 2), except for some special considerations under SB 2 that are covered in Chapter 8. In general, the word “meeting” is used to mean action by the legislative body under either the traditional town meeting or the official ballot referendum system. The special provisions of municipal charters and cities are not covered in this publication.

## **RSA Chapter 32 Applies to All Annual Meeting Forms of Government**

The Municipal Budget Law governs in every town, village district and school district with an annual meeting form of government, including those with the official ballot referendum form of meeting (SB 2). The first half of the chapter, RSA 32:1 – :13, applies to all such towns and districts. *See* RSA 32:2, Application. RSA 32:14 – :24 apply only in the towns and districts that have established an official budget committee by vote of the legislative body under RSA 32:14. RSA 32:5-b applies only to those towns and districts which have adopted that section pursuant to RSA 32:5-c.

## **Advisory Committees**

The Municipal Budget Law explicitly recognizes unofficial or advisory budget and finance committees that exist in many municipalities. The law does not require any town or district without an official budget committee to have one. RSA 32:24. In this publication, the term “budget committee” means an official Municipal Budget Law budget committee adopted according to RSA 32:14, not an advisory finance/ budget committee. The role of the budget committee is covered in Chapter 7.

## **Removal from Office**

RSA 32:12 states that anyone who violates the provisions of the Municipal Budget Law may be removed from office by the superior court upon petition. This rule has been upheld in case law. For example, the New Hampshire Supreme Court held that a police chief who overspent his budget was properly dismissed under a “for cause” dismissal standard. *Blake v. Pittsfield*, 124 N.H. 555 (1984).

If the town has an official budget committee, the budget committee can file the removal petition. RSA 32:23. Removal is not automatic. In a case involving the Merrimack Village District, a superior court judge ruled that where an over expenditure of the budget’s bottom line occurred as a result of good faith ignorance and did not cause harm to the district, the court has discretion not to order removal. The New Hampshire Supreme Court summarily affirmed this ruling.

## **Biennial Budgeting**

Cities and towns can budget on a two-year cycle under the provisions of RSA 32:25. The idea is to reduce the amount of time local officials spend preparing budgets. The law must be adopted by vote of the legislative body. If adopted, the following year the legislative body enacts a budget for two distinct 12-month fiscal years or a single 24-month fiscal period. Each year’s budget has the same legal effect as a normal annual

budget, but the governing body can carry over appropriations from the first budget year to the second.

## **Key Concepts**

Some officials, particularly those new to municipal budgeting, find the Municipal Budget Law to be a complicated set of unrelated rules. The key to understanding the municipal budget process centers on seven fundamental budgeting and finance concepts. This survey highlights those seven concepts.



# GLOSSARY OF TERMS

**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.

**Agents to expend:** A public body or public official, usually the select board, given the authority to expend funds without further legislative body approval.

**Bottom line:** The total amount of all appropriations for the fiscal year.

**Budget:** A statement of recommended appropriations and anticipated revenues submitted to the legislative body by the budget committee, or the governing body if there is no budget committee, as an attachment to, and as part of the warrant for, an annual or special meeting.

**Contracts for Default Budget Purposes:** As used in RSA 40:13, 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.

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

**Capital improvement:** A high cost improvement with a useful life of several years, such as infrastructure projects, land acquisition, buildings, or engineering studies for any of those projects, as well as vehicles or highway maintenance equipment in some municipalities.

**Capital improvements program:** A planning tool used to aid the mayor or select board and the budget committee in considering the annual budget. The program must classify projects according to the urgency and need for realization, recommend a time sequence for their implementation, be based on information submitted by the departments and agencies of the municipality, and take into account public facility needs indicated by the prospective development shown in the master plan of the municipality or as permitted by other municipal land use controls. The program may also contain the estimated cost of each project and indicate probable operating and maintenance costs and probable revenues, if any, as well as existing sources of funds or the need for additional sources of funds for the implementation and operation of each project.

**Capital reserve fund:** A savings account established to fund a particular capital project or projects.

**Emergency (under RSA 31:5):** A sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt, or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.

**Encumbered funds:** Funds that a municipality has a legal obligation to pay, created by contract or otherwise, to any person for the expenditure of that amount.

**Escape clause:** See nonappropriation clause.

**Fiscal year:** For towns, January 1st to December 31st (RSA 31:94), unless the town has adopted the optional July 1st to June 30th fiscal year in accordance with RSA 31:94-a – :94-e; for school districts, the fiscal year begins on July 1st (RSA 194:15).

**Fixed charges:** Includes appropriations for principal and all interest and principal payments on bonds and notes, except tax anticipation notes, as well as mandatory assessments imposed on town by the county, state, or federal governments.

**Fund balance:** An account on the town's balance sheet, accounting for lapsed appropriations, assets, and liabilities; may be retained, used to reduce the tax rate, or appropriated by the legislative body.

**Gross basis budgeting:** The requirement that all anticipated revenue from all sources, not just tax money, must be shown as offsetting revenues to the amounts appropriated for specific purposes in the annual budget.

**Lapse:** The time at which an appropriation may no longer be spent, typically at “year's end” unless the appropriation is nonlapsing.

**Line Item:** A purpose for which money may be spent in the budget.

**Nonappropriation clause:** A provision in a contract that terminates the agreement automatically without penalty to the municipality if the requisite annual appropriation is not made. Commonly referred to as an “escape clause.”

**Official budget committee:** A budget committee adopted by the legislative body according to RSA 32:14 with the duties and authority set forth in RSA Chapter 32.

**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.

**Operating budget:** The “budget,” exclusive of “special warrant articles,” as defined in RSA 32:3, VI, and exclusive of other appropriations voted separately.

**Purpose:** A goal or aim to be accomplished through the expenditure of public funds. In addition, as used in RSA 32:8 and RSA 32:10, I(e), concerning the limitation on expenditures, a line on the budget form posted with the warrant, or form submitted to the department of revenue administration, or an appropriation contained in a special warrant article, shall be considered a single “purpose.”

**Public purpose:** As applied to appropriations, any purpose for which a municipality may act if such appropriation is not prohibited by the laws or the New Hampshire Constitution.

**Raise:** To collect or procure a supply of money for use; the source from which an appropriation is made.

**Revolving fund:** A fund established pursuant to RSA 31:95-h, into which fees and charges for certain services and facilities may be deposited and from which expenses for those services and facilities may be expended by a board or body designated by the legislative body at the time the fund is created.

**Sanbornizing:** A term of art derived from the case of *Appeal of the Sanborn Regional School Board*, 133 N.H. 513 (1990), meaning sufficient disclosure to the legislative body of the cost items in a collective bargaining agreement, such that the multi-year costs of the agreement become binding on the municipality.

**Separate warrant article:** An article containing an appropriation that is set apart from the operating budget.

**Special revenue fund:** A nonlapsing fund established pursuant to RSA 31:95-c, restricting revenues from specific sources to be expended for specific purposes by the legislative body.

**Special warrant article:** Any article in the warrant for an annual or special meeting which proposes an appropriation by the meeting and which (a) is submitted by petition; (b) calls for an appropriation of an amount to be raised by the issuance of bonds or notes pursuant to RSA 33; (c) calls for an appropriation to or from a separate fund created pursuant to statute, including but not limited to a capital reserve fund under RSA 35, or trust fund under RSA 31:19-a; (d) is designated in the warrant, by the governing body, as a special warrant article, or as a nonlapsing or nontransferable appropriation; or (e) calls for an appropriation of an amount for a capital project under RSA 32:7-a.

**Surplus:** *See* fund balance.

**Tax year:** April 1<sup>st</sup> – March 31<sup>st</sup>.

**Ten percent rule:** In towns and districts with an official budget committee, the total amount appropriated, including amounts appropriated in separate and special warrant articles, cannot exceed the total recommended by the budget committee by more than 10 percent. The 10 percent calculation is computed on the total amount recommended by the budget committee, less that part of any appropriation item which constitutes “fixed charges.”

**Town-funded trust fund:** A “savings account” established pursuant to RSA 31:19-a for the maintenance and operation of the town and for any other valid public purpose.

**Unanticipated revenue:** Revenue from an unexpected source, i.e., a source of money the municipality did not anticipate it would receive any funds from.

**Year’s end:** The end of the fiscal year.

# CHAPTER ONE

## APPROPRIATIONS

### First Key Concept

Once an understanding of the concept of an appropriation is mastered, the municipal budget process is easier to understand. The words “appropriate” and “appropriation” are defined in RSA 32:3, as follows:

- I. “Appropriate” means to set apart from the public revenue of a municipality a certain sum [of money] for a specified purpose and to authorize the expenditure of that sum for that purpose.
- II “Appropriation” means an amount of money appropriated for a specified purpose by the legislative body.

### A. Appropriations Create Guiding Values

An appropriation is a fundamental exercise of governmental power. Both taxing power and spending power flow directly from the power to make appropriations. Appropriations give a governmental unit purpose and direction. They form the guiding values of the governmental entity. When local officials make spending decisions, they are carrying out those policy values.

### B. Appropriations Are Acts of Legislative Policy

An appropriation is a policy decision to set aside a specific amount of public money, which typically has not been collected yet, for a specific stated governmental purpose. It is a legislative act. RSA 32:6 provides that appropriations can be made only by vote of the legislative body (the voters) at a properly noticed annual or special meeting.

Appropriation and spending should not be confused. An appropriation is not the actual spending of money. It is the underlying authorization to spend money. An appropriation is also different from the authorization to tax (raising money). “Raising” indicates the source of the revenue; “appropriating” indicates how the money will be spent. The New Hampshire Supreme Court has described the difference:

To ‘raise’ money, as the word is ordinarily understood, is to collect or procure a supply of money for use.... To ‘appropriate’ is to set apart from the public revenue a certain sum for a certain purpose. *Frost v. Hoar*, 85 N.H. 442 (1932).

A vote of the legislative body (assembled meeting or official ballot referendum vote) is required for a valid appropriation. A proposed budget or warrant article presented to the voters by the governing body or budget committee is only advisory. It is not final, and it is not an appropriation. Indeed, the only legally binding effect of a proposed budget or warrant article is that the warrant notice requirement does not permit any

new subject matter to be added by the voters (see Section J.) The budget prepared by the governing body or budget committee is similar to a legislative bill that has been introduced but not voted on yet.

## C. The Proper Purposes of Appropriations

“Purpose” means a goal or aim to be accomplished through the expenditure of public funds. RSA 32:3, V.

### 1. SCHOOL DISTRICTS

The state law setting the proper purposes of school appropriations, RSA 198:4, is an old statute. It limits school appropriations to “the support of the public schools, for the purchase of textbooks, scholars’ supplies, flags and appurtenances, for the payment of tuition of the pupils in the district in high schools and academies in accordance with law, and for the payment of all other statutory obligations of the district.”

### 2. VILLAGE DISTRICTS

A village district or precinct must be explicitly created for one or more of the specific purposes found in RSA 52:1, such as “the supply of water.” Once that happens, the district has “all the powers in relation to the objects for which it was established that towns have or may have in relation to like objects, and all that are necessary for the accomplishment of its purposes.” RSA 52:3, II.

### 3. TOWNS

While the purposes to which school district and village district money may be appropriated are limited, the statute governing town appropriations is broader. RSA 31:4 authorizes a town to appropriate money “for any purpose for which a municipality may act if such appropriation is not prohibited by the laws or by the constitution of this state.” However, as explained in the sections below, towns have only the powers that the State gives them. Therefore, it is important to find authorization somewhere in the law for a purpose, as well as to understand whether and how the state laws and/or Constitution limit the purposes for which towns may appropriate public funds. It is also useful to note that towns are not limited to the purposes printed on the MS-636 and MS-737 budget forms. The town budget forms required by the New Hampshire Department of Revenue Administration (DRA) contain line items for most valid public purposes. These items now correspond to the “uniform system of accounts” developed by DRA. It is, however, possible to insert numbered line items for purposes that are not on this chart of accounts, so long as the purposes are otherwise legal and are not prohibited by state law or the state constitution.

## D. The Meaning of RSA 31:4 – Home Rule

New Hampshire is not a home rule state in the constitutional sense. We have a long tradition of local control, but unlike many state constitutions, the New Hampshire Constitution does not grant power directly to towns and cities. It grants power only to the legislature. In New Hampshire, towns have “home rule” only if the legislature gives it to them, and the legislature is free to decline to grant that authority at any time.

Towns have only such powers as are expressly granted to them by the legislature and such as are necessarily implied or incidental thereto. *Girard v. Allentown*, 121 N.H. 268 (1981).

Under the ruling in cases like *Girard*, the most basic rule of local government in New Hampshire is that a town cannot undertake any action unless a statute authorizes that action. With that rule in mind, the legislature has granted authority for towns to appropriate money “for any purpose for which a municipality may act...” RSA 31:4. This means that a town may only appropriate money if there is

authority somewhere in the law for that purpose, and only if there is no law or constitutional principle that prohibits it.

The pre-1983 version of RSA 31:4 contained 43 separate paragraphs of permitted types of appropriations. This list is still found in the older, pre-1988 hardbound edition of the statute book. The legislature got tired of adding to the list to keep up with town needs. Now the list is open-ended. For example, can towns appropriate money to help with the expansion of a local nonprofit private hospital? The answer is yes. First, running a hospital is something the town or city itself could do, and many municipalities across the country do so. Second, the old version of RSA 31:4 contained a specific paragraph (VI) that allowed aid to hospitals and clinics. However, even this broad power to appropriate money has its limits. As explained in Section F, our state constitution requires public money to be appropriated only for “public purposes.”

## E. A Power to Act Implies a Power to appropriate

Any statute granting authority to municipalities also impliedly authorizes municipalities to appropriate money to carry out that action. For example, RSA 31:39 authorizes a town to pass ordinances. The power to appropriate money to enforce those ordinances is implied.

## F. Public Purposes Only

Receipt of public money entails an obligation to benefit the public. Under the New Hampshire Constitution, public money can be appropriated only for valid public purposes, but not to create a purely private benefit. This issue can be confusing at times because even something that may have a “public benefit” does not always constitute a “public purpose” as required by the New Hampshire Constitution. While the public might benefit from the use of municipal appropriations to a private entity, such as a private ambulance service, the “public purpose” requirement means that municipalities have to go one step further and secure the ability to enforce or obtain that benefit for the public. As a general rule, town money cannot be granted to a private person, company or organization unless that private person takes on some obligation to benefit the town. *Opinion of the Justices*, 88 N.H. 484 (1937). In other words, there must be a *quid pro quo* (literally, “this for that”). Often the obligation is contractual, as in the purchase of goods or services. Even where there is no express contract, the obligation must exist. For example, a grant to a private ambulance service is usually permitted under the law because the ambulance service knows and agrees that it is expected to use that money to provide a public service.

A written contract is not always necessary. Some legally enforceable obligations are not in writing, but a written agreement is a good idea. The governing body (select board, school board or village district commissioners) is responsible to the voters for making sure money is used for the appropriated purpose. If money does go to private parties or organizations, the governing body must do whatever is necessary to be assured that the voters’ directives are carried out and the money is not diverted to other purposes.

In drafting warrant articles for appropriations to private organizations, state the purpose of the money in the warrant article. Doing so creates an implied contract if a private organization accepts the money. The private organization becomes obligated to use it for the purpose stated in the article.

In a few specific cases, the legislature has carved out particular purposes of appropriation which may appear to benefit private parties, but which a statute declares to be a proper public purpose for which towns or cities may appropriate money. For example, if the legislative body votes to adopt the provisions of RSA 36-A:4-a, the conservation commission may expend funds to facilitate a conservation easement transaction, even if the municipality will not hold any interest in the property or the easement. RSA 36-A:4-a; RSA 36-A:5, II.

## 1. INCIDENTAL PRIVATE BENEFIT IS PERMITTED

The legal validity of an appropriation is not defeated if a private person incidentally benefits, so long as the main purpose of an appropriation is to promote the public welfare. *Hampton v. Hampton Beach Improvement Co.*, 107 N.H. 89 (1966). In *Hampton*, the town had granted a 99-year lease on town-owned beach land in 1897 to a private company because the land was otherwise not yielding any income to the town. The lease included an agreement that the town would pay the taxes on the leased land during the lease. By the 1960s the land had been improved and was extremely valuable, but the town was obligated to abide by the very low 1897 lease amount and its promise to pay the taxes. The lease was held valid, however, because at the time it was made, it was projected to serve a proper public purpose over its life, with private profit merely incidental.

## 2. SPECIAL TAX TREATMENT

The Hampton case implies that contracts for special tax treatment may be legal if a town (a) agrees to pay the tax and (b) is getting some benefit as quid pro quo. Therefore, giving a tax abatement to a particular profit-making business just to aid the local economy clearly violates the constitution because the town is not paying the tax and there is no specific quid pro quo benefit to the town.

RSA chapter 79-E was enacted to encourage the revitalization of downtown municipal areas. If the legislative body votes to adopt the program, a municipality may offer property tax incentives by not increasing taxes for a certain amount of time if a property owner substantially rehabilitates a structure in a downtown, central business district or town or village center area. "Substantial" rehabilitation costs at least 15 percent of the assessed value prior to the rehab, or \$75,000, whichever is less. In certain cases, this tax relief may also be available for the replacement of under-utilized structures in these areas. See RSA 79- E:1, II-a. This tax relief can remain in effect, at the discretion of the governing body, for up to five years with provisions for extensions for certain types of projects. Tax relief is granted only to assessment increases attributable to the rehabilitation of the property and is not available when more than 50 percent of construction costs are being funded through grant programs.

As of July 5, 2011, municipalities may also decide to extend the tax incentive to include the rehabilitation of buildings that have been destroyed by fire or act of nature, including buildings destroyed up to 15 years before the municipality adopts this incentive. RSA 79-E:2, II. In these cases, for the incentive period designated by the governing body, the property tax on the structure will not exceed the tax on the assessed value of the structure that would have existed if it had not been destroyed. RSA 79-E:13, I (b). Effective October 9, 2021 municipalities may designate a "residential property revitalization zone" and grant community revitalization tax relief under RSA 79-E to the owner of a residential property in the zone with not more than four units if the structure is at least 40 years old and if the owner significantly improves the quality, condition, or use of the structure. Effective April 1, 2022, municipalities may create "housing opportunity zones" and apply the community revitalization tax relief incentive to housing units constructed within a housing opportunity zone. To be eligible, at least one-third of the housing units constructed must be designated for households with an income of 80 percent or less of the area median income, or the housing units in a qualifying structure must be designated for households that are deemed to be of "very low, low, or moderate income" under RSA 204-C:57, IV.

The governing body must determine, for each property for which an exemption is sought, that there is a public benefit to granting the tax relief, that the public benefit is preserved through a covenant, and that the proposed use is consistent with the master plan or development regulations. The purpose of the covenant is to ensure that the structure is maintained and used in a way that furthers the public benefit for which the tax relief was granted. The covenant must be

at least coextensive with the tax relief period but can be up to twice the duration of that period. It must include provisions requiring the owner to maintain certain insurance coverage and can include a lien against the proceeds from insurance claims. All transferees and assignees are subject to the provisions of the covenant, so it is recorded in the registry of deeds and runs with the property. The applicant for tax relief is charged with the reasonable expenses in drafting, reviewing, and executing the covenant and there are provisions to protect the municipality should the property owner not live up to the agreement. A municipality's denial of the application for this tax relief is discretionary and may not be set aside by the Board of Tax and Land Appeals (BTLA) or a court except for bad faith or discrimination.

### **3. REIMBURSEMENT FOR PURELY PRIVATE BENEFIT**

If the town spends money in a way that benefits only private individuals (for example, plowing private roads or private driveways), the town's costs must be reimbursed by those who benefit so that no burden falls on the taxpayers. In addition, such work on behalf of private individuals is permissible only if it is incidental to work performed primarily for a public purpose. *Clapp v. Jaffrey*, 97 N.H. 456 (1952).

## **G. How Specific Should a Proposed Appropriation Be?**

When preparing the budget or separate warrant articles, always be sure the wording of an appropriation is clear enough to let the governing body know how much flexibility it has. The degree of specificity is up to the legislative body and is often based on political considerations. The amount of freedom the governing body has depends on how specific the purposes in the warrant article or on the budget form are.

For example, consider a special article which states: "... to raise and appropriate \$\_\_\_\_\_ for a new grader to be purchased from Town Graders, Inc. of Concord." This wording is probably too specific because it limits the options of the officials making the purchase. It could be construed to prohibit purchasing from another dealer. What if that vendor does not have any graders at that price? What if can be obtained for less money from another vendor? On the other hand, an article that says "equipment" instead of "grader" may not be specific enough and may lead voters to amend the article to more specifically define the action that may be taken by the governing body, thus keeping the reins on their officials.

As a general rule, a warrant article should be drafted to be specific enough to set the policy but broad enough to allow the governing body discretion on the details of carrying out that policy. The dollar amount must always be exactly specified, but it serves as an upper limit, not as a mandate for spending the entire amount.

It is also important to consider who legally is required to have custody of the funds being appropriated and which official(s) or board will have legal authority to spend those funds. See Appendix A for a chart outlining some of the more common types of funds created by towns, who may have custody of the funds and who may authorize expenditures of those funds.

## **H. Contingency Funds**

As of August 24, 2013, towns may establish a contingency fund by an article separate from the budget and all other articles in the warrant for the annual meeting. The fund may be used by the governing body during the year to meet the cost of unanticipated expenses that may arise during that year. The fund may not exceed one percent of the amount appropriated by the town during the preceding year, excluding capital expenditures and debt service. A detailed report of all expenditures from the contingency fund must be made each year by the select board and published in the annual report. RSA 31:98-a; RSA 32:11, V.





RSA 198:4-b, I authorizes school districts to establish contingency funds in like manner as towns. However, school contingency funds are not subject to the one percent rule that applies to towns.

## I. Tax/Spending Caps

Towns and cities (as well as school districts) may adopt limits on spending or tax increases. For a city, or for a town with a town council form of government, the charter may be amended to include a limit on annual increases in the amount raised by taxes in the city or town budget. The limit must include a provision allowing for override of the cap by a supermajority vote as established in the charter. RSA 49-C:12, III; RSA 49-C:33, I(d); RSA 49-D:3, I(e). Amendments effective August 20, 2021 provide that city and town charter exclusions, ordinances and accounting practices that have the effect of an override of a tax cap require a supermajority vote of the legislative body.

In other towns with traditional town meeting or official ballot referendum town meeting (SB 2), and other political subdivisions adopting a budget at an annual meeting of the voters, the voters may adopt a limit on annual increases in the estimated amount of local taxes in the governing body's or budget committee's proposed budget. RSA 32:5-b; RSA 32:5-c. The cap must be either a fixed dollar amount or a fixed percentage. If the taxes raised for the prior year were reduced by the use of fund balance (explained in Chapter 5), the amount of the reduction is added back and included in the amount to which the tax cap is applied. RSA 32:5-b, I-a (effective August 5, 2013). If a cap is adopted, the estimated amount to be raised by local taxes as shown on the proposed budget certified by the governing body or budget committee and posted with the warrant may not exceed the local taxes actually raised for the prior fiscal year by more than the cap. The cap does not, however, limit the amount the voters may actually appropriate at the meeting; it is only a limit on the budget submitted to the voters for consideration. In a traditional town meeting, the voters may still amend the proposed budget up or down in the same way they ordinarily would. In a town using the SB 2 form of town meeting, adoption of a cap does not prevent the voters at the deliberative session from amending one or more warrant articles (or all of them) to increase the amount of a proposed appropriation or the total amount of all proposed appropriations. It is important to note, of course, that in a town with an official budget committee, the ten percent limitation (explained in Chapter 7) will still apply and effectively cap the total amount that may be appropriated.

A cap can be adopted by a town with either traditional town meeting or an SB 2 meeting. In either case, the question of adopting a cap must be placed on the warrant by the governing body or by citizen petition under RSA 39:3. In a town with traditional town meeting, voting on the question is by ballot conducted at the business session of the meeting, not by official ballot with the election of officers. In an SB 2 town, the question is voted upon on the official ballot with all other questions. In either case, adoption of the cap requires a three-fifths majority of those voting. If a cap is adopted, it takes effect beginning with the subsequent fiscal year. A cap can be repealed in the same manner in which it is adopted.

The law also ratifies all tax or spending cap provisions previously adopted in any city or town charter. RSA 49-B:13, II-a.

## J. Procedural Requirements for Valid Appropriations

An appropriation must comply with several procedural requirements to be valid. Each procedural requirement is explained in more detail throughout this book. They include:

- a public budget hearing;
- disclosure of all purposes and amounts at the hearing;
- budgeting on a gross basis (See Chapter 2);

- recommendations of the governing body and, if there is one, the budget committee (See Chapter 2, sections D, E and F);
- warrant notice (See Chapter 3); and
- listing of all appropriations and separate warrant articles on the posted budget.

## **1. BUDGET HEARING**

All towns and districts must hold at least one public hearing on each budget not later than 25 days before any annual or special meeting. Additional hearings may be held fewer than 25 days before the meeting. RSA 32:5, I. In official ballot referendum (SB 2) towns and districts, the 25-day requirement does not apply; instead, the budget hearing is held on or before the third Tuesday in January for a March annual meeting. (See RSA 40:13, II-b and II-c for SB 2 hearing requirements for April and May town meetings.)

If there is a budget committee, that committee conducts the public hearing(s); otherwise, the governing body (select board, school board or village district commissioners) does so. RSA 32:5, I. Public notice of each hearing must be given at least seven days in advance, not counting the date of the hearing. The statute does not specify how the notice must be given, but the best practice is to give notice by both posting in two public places and publishing. If a public hearing is recessed to a later date or time, additional notice is not required for the next session if the date, time and place are made known at the original session. RSA 32:5, I.

## **2. DISCLOSURE OF ALL PURPOSES AND AMOUNTS AT HEARING**

After the public budget hearing, no new purpose or amount can be added to the proposed budget unless that purpose or amount was “discussed or disclosed” at that hearing, or unless a further hearing is held. RSA 32:5, II. This statute prevents the budget committee or governing body from adding new purposes to, or increasing amounts in, the proposed budget that were not discussed or disclosed at the hearing. The legislative body (the voters), however, may increase or decrease proposed amounts or delete (but not add) purposes of appropriation at the meeting. This topic is covered in more detail below.

The law does not require the proposed budget to be posted with the notice of the budget hearing, but without at least a draft proposal, the public has no realistic opportunity for input. Also, while the law does not technically require the proposed budget to be prepared in time for distribution at the hearing, all line items and amounts must be “disclosed or discussed” at the hearing. Having a prepared form helps ensure all items will be “disclosed.” However, effective September 21, 2021, if a town or district uses subaccounts to budget or track financial data it shall make that data available for public inspection at the public hearing.

The hearing requirement also applies to appropriations included in petitioned warrant articles. Therefore, at least one budget hearing must be scheduled after the final day for submitting petitioned articles. This is the fifth Tuesday prior to the meeting in traditional meeting towns (RSA 39:3), the second Tuesday in January for March SB 2 meeting towns (RSA 40:13, II-a), or 30 days prior to the meeting in traditional school districts (RSA 197:6). That leaves a very narrow window within which at least one of the budget hearings must be held.

The governing body or the budget committee, if there is one, is not required to vote on the final proposed budget at the public hearing. The law says the budget must be finalized “after the conclusion of public testimony.” That could mean immediately after, or several days later at a properly noticed public meeting.

If a member of the public, at the public hearing, makes a suggestion for a new appropriation, the governing body or budget committee can add it to the proposed budget without a second hearing because it was “discussed” at that first hearing.

RSA 32:5, IV specifically requires all appropriations to be listed on the posted budget, which includes special warrant article appropriations and other warrant article appropriations not included in the

operating budget. The DRA will invalidate any appropriation not included on the posted budget form (MS-636 and MS-737). Special warrant articles also require a notation of whether or not they are recommended by the governing body and, if there is one, the budget committee.

### 3. COLLECTIVE BARGAINING AGREEMENTS

RSA 32:19-a creates a submission date after which the cost items of a collective bargaining agreement (CBA) reached between employee unions and the governing body may not be included in the proposed budget. RSA 32:5-a requires a negotiated agreement on cost items by the final date for submitting petitioned warrant articles. Cost items not negotiated by that date cannot be submitted to the legislative body at the annual meeting, but may be submitted later at a special meeting held under RSA 31:5 or RSA 197:3. The law also allows a special town or district meeting, without the requirement of superior court permission, to consider CBA cost items rejected by the annual meeting, if authorization is included in the original warrant in the form of a contingent warrant article, inserted by petition or by the governing body, as follows: “Shall [name of municipality], if article \_\_\_ is defeated, authorize the governing body to call one special meeting, at its option, to address article \_\_\_ cost items only?” RSA 31:5, III and RSA 197:3, III. Cost items are defined by RSA 273-A:1, IV.

In budget committee towns, RSA 32:19 exempts CBA cost items from the 10 percent rule, but only that portion of the CBA cost items that is not recommended by the budget committee. See Chapter 7 for more information about budget committees and the 10 percent rule.

## K. Inter-Municipal Agreements, Shared Services, and Voluntary Contributions

RSA chapter 53-A authorizes municipalities to enter into agreements with other municipalities, counties, school districts, school administrative units (SAU’s), and village districts for the purpose of providing services and facilities in a cooperative manner that is mutually advantageous to all parties. It also authorizes the appropriation of funds necessary to carry out the contractual obligations that are incurred. Any powers, privileges, or authority exercised, or capable of being exercised, by a municipality may be exercised jointly with any other public agency of the state, such as providing water and sewer services or entering into public works mutual aid agreements. Several laws enacted in 2016 clarified and expanded this “joint exercise of powers,” granting specific authority to do the following:

- cooperate with school districts and SAU’s for activities such as, but not limited to, conducting financial, human resources, information technology, and other managerial and administrative functions. RSA 53-A:2, 53-A:3;
- enter into agreements with adjacent municipalities and nonprofit entities to provide suitable cemeteries. RSA 289:2; and
- voluntarily contribute funds, services, property, or other resources toward any county or state project, program or plan, subject to annual renewal of the voluntary contribution by the legislative body. RSA 44:1-b, RSA 31:103-a.

In 2019, the legislature passed legislation to allow two or more municipalities to enter into an agreement under RSA 53-A to issue bonds for any purpose permitted under RSA 33 as well as clarified that municipalities may enter into an agreement under RSA 53-A to jointly establish a tax increment financing district under RSA 162-K (regardless of a climate emergency).

RSA chapter 53-A outlines the statutory requirements and procedures for an inter-municipal agreement, including the purpose; duration and termination; creation of an administrative entity, administrator, or joint board; manner of financing; indemnification; manner of acquiring, holding, and

disposing of real and personal property used in the cooperative undertaking; filing requirements; and state agency approvals.

An important cautionary note is that the New Hampshire Retirement System (NHRS) strongly encourages participating employers to call for guidance with respect to enrollment, eligibility, creditable service, and earnable compensation for “shared personnel” in agreements with both other NHRS participating employers, as well as non-participating employers. NHMA is aware of at least one inter-municipal entity that has contacted NHRS and received guidance on this issue.

# CHAPTER TWO

## 'GROSS BASIS' BUDGETING

### Second Key Concept

RSA 32:5, III requires all appropriations to be stated on a “gross basis,” meaning that all anticipated revenue from all sources, not just tax money, must be shown as offsetting revenues to the amounts appropriated for specific purposes. Revenues other than taxes raised may include grants, gifts, bond issues and proceeds of the sale of municipal property. With a few exceptions revenues not appropriated cannot be spent. This rule follows logically from the principle that all expenditures—not just tax expenditures—must be supported by legislative body appropriations RSA 32:8.

#### A. Care in Drafting Warrant Articles

If the town wants to buy a new fire truck for \$360,000 and intends to pay for it with \$280,000 of tax money and \$80,000 from selling the old fire truck, the total amount of \$360,000 must be appropriated, disclosing both sources of revenue. In other words, always set forth the grand total in the “raise and appropriate” clause, and then go on to break it down by listing the amount to be drawn from each separate revenue source, including any non-tax revenue that is to be used. When drafting warrant articles, care should be taken to observe this requirement because DRA has the authority to invalidate appropriations that fail to follow it. It is helpful to have draft warrant articles reviewed well in advance by DRA and/or the town’s attorney.

#### B. Examples of Mistakes

Here are some examples of votes taken in recent years, collected by the DRA (names omitted to protect the innocent):

##### 1. TOTAL AMOUNT

“To see if [the town] will vote to raise and appropriate the sum of \$75,000 to renovate [a particular building] and to authorize the withdrawal of \$75,000 from the Capital Reserve Fund created for this purpose; and further to combine this \$150,000 with the \$20,600 appropriated last year for [another purpose] and to authorize the select board to apply for a matching amount from the CDBG program.”

**Problems:** First, the total amount of the appropriation was never stated. It is impossible to determine the total cost of the renovation project, and we cannot determine how much in matching CDBG funds to anticipate. Gross basis budgeting requires all anticipated revenues, whether from grants or other sources, to be included in the total amount appropriated. Second, DRA disallowed the \$20,600. The fact that it was appropriated last year for another purpose does not exempt it from the requirement of being appropriated this year for this new purpose (and the language that was used did not do this clearly enough). Remember that an appropriation

normally “lapses” at the end of the year. (Lapse is covered in more detail in Chapter 5.) The belief that a prior year’s appropriation has a continuing existence and need not be included in the new total appropriation is a common mistake.

## 2. APPROPRIATE REVENUES, TOO

“I move to raise and appropriate a supplemental appropriation of \$20,000 for the cost of replacing [the roof of a certain building]; and further to authorize the withdrawal of \$4,000 from the Building Capital Reserve Fund; the balance of \$14,500 is to be funded by current excess revenues received in the current year [an insurance settlement].”

**Problem:** Again, the total amount of this appropriation is impossible to determine. The \$14,500 insurance settlement may be revenue already received, but it must be appropriated to meet the gross basis appropriation requirement. Is the total amount of the appropriation \$34,500? \$20,000? \$18,500? The total amount of the appropriation should be stated first, so there is no misunderstanding. If the numbers within the article do not add up to the total stated at the beginning, there will be a problem.

## 3. INCLUDE THE APPROPRIATION, NOT JUST THE PURPOSE

“To see if the Town is in favor of the select board conducting a local resident survey on the manner and quality of street maintenance in the town, to assist the select board’s operation of the public works department.” The article was then amended on the floor of the meeting, so that the end of the last sentence said, “and to raise and appropriate the sum of \$10,000 for the cost of the resident survey.”

**Problem:** The original article contained no appropriation. Although the voters attempted to amend the article on the floor of the meeting to include an appropriation, it was not proper because all purposes of appropriation must be disclosed or discussed at the budget hearing, and all proposed purposes of appropriation must be included with the warrant that is posted before the meeting. In this case, it is likely that DRA would disallow the \$10,000 attempted appropriation in the amendment. Had the original article included an appropriation amount, the meeting could have amended that amount up or down.

## 4. PROPER WARRANT ARTICLE DRAFTING

Always set forth the grand total amount in the “raise and appropriate” clause, including any amount from trusts or capital reserve funds and any amount from anticipated revenue or existing fund balance. Then break it down. Be certain that the math works; all the component parts of the appropriation should add up to the grand total amount at the beginning of the article. An example of a well-worded article is as follows:

“To see if the town will raise and appropriate the sum of \$100,000 to repair the town’s war memorial statue; of this amount \$20,000 is authorized to be withdrawn from the War Memorial Statue Trust Fund, \$30,000 is anticipated revenue from a settlement with War Memorial Insurance Company, and the balance of \$50,000 is to be raised from general taxation.”

## C. Comparative Columns

RSA chapter 32 requires the budget to include comparative columns showing the prior year’s appropriations and prior year’s expenditures. DRA forms contain the information for the comparative columns. RSA 32:5, III and IV.

## D. Individual Versus Special Articles

Appropriations may be made in a variety of ways. Many appropriations are part of the line-item operating budget (that is, what appears on the MS-636 and MS-737 forms). Others may be part of warrant articles that propose an appropriation. These are referred to as individual or separate warrant articles because they separate out a proposed appropriation from the line item budget. Generally, the governing body may choose to propose an appropriation that would otherwise appear in the line item budget as an individual appropriations article instead.

There are five specific types of individual appropriations articles that are treated in a special way, and those are referred to as “special warrant articles.” Under RSA 32:3, VI, special warrant articles are defined as follows:

- petitioned warrant articles;
- articles calling for issuing bonds or notes;
- appropriations into or out of separate funds, such as capital reserves or trust funds;
- any other separate article designated and labeled by the governing body as “special,” “nonlapsing” or “nontransferable;” and
- an appropriation of an amount for a capital project under RSA 32:7-a.

Thus, all “special” warrant articles are separated out from the operating budget, but not all of these individual warrant articles are considered “special.”

Appropriations in special warrant articles are treated as nonlapsing at the end of the year. They cannot be transferred to other purposes under the transfer power of the governing body. (See Chapter 6.)

## E. Special Articles and Recommendations

All special warrant articles require a notation of whether or not they are recommended by the governing body. In budget committee towns and districts, special articles should contain both governing body and budget committee recommendations. RSA 32:5, V. Articles regarding cost items for collective bargaining agreements also require a statement of the recommendation or non-recommendation of the governing body and budget committee. RSA 32:19. However, RSA 32:5, V provides that “defects or deficiencies in these notations shall not affect the legal validity of any appropriation otherwise lawfully made.”

These statutes do not (nor does any other statute) expressly extend the recommendation requirements to non-money articles, and there has been debate over whether the select board has such authority. At least one superior court judge has determined that a select board does have the authority to place recommendations on non-money articles. *Olson v. Town of Grafton*, 168 N.H. 563 (2016). In *Olson*, the Superior Court sided with the town and decided that RSA 32:5, V-a gives a governing body the authority to insert recommendations after any warrant articles, not just non-budgetary articles. The N.H. Supreme Court agreed that the language in the statute permits the select board to place its recommendations on the warrant for any warrant article including non-money articles.

## F. Numeric Tallies and Recommendations on Other Warrant Articles if Authorized by Town Meeting, Governing Body or Official Budget Committee

RSA 32:5, V-a allows any town operating by traditional town meeting to require that the numeric tally of all votes of an advisory or official budget committee and all votes of the governing body be printed in the

warrant next to that article. A vote to include the numeric tally under this law also authorizes a town to include these recommendations on individual warrant articles, not just special warrant articles and those relating to cost items in a collective bargaining agreement.

RSA 40:13, V-a allows any town operating under the official ballot referendum (SB 2) town meeting to require that the numeric tally of all votes of an advisory or official budget committee and all votes of the governing body be printed on the ballot next to the affected article. A vote to include the numeric tally under this law also authorizes a town to include these recommendations on separate warrant articles as well as ballot questions, in addition to special articles and those relating to cost items in a collective bargaining agreement.

In either case, the town may authorize this by a vote of town meeting, or if the town has not voted to do so, the governing body **or an official budget committee** may take a vote at a public meeting on their own initiative. RSA 32:5, V-a. The “numeric tally” means the total result of the vote on the item, such as “Budget Committee recommends this article by a vote of 9 to 2. Select board does not recommend this article by a vote of 3 to 2.” Unless and until such a vote of town meeting or the governing body has occurred, recommendations should continue to appear without the numeric tally and only with special articles and cost items of collective bargaining agreements.

## G. Multi-Year Appropriations for Capital Projects

As of August 23, 2013, towns may make multi-year appropriations for “capital project.” RSA 32:7-a. A capital project for this purpose is one for which bonds could be issued under RSA 33:3 or RSA 33:3-a. These include:

- the acquisition of land;
- planning relative to public facilities;
- the construction, reconstruction, alteration and enlargement or purchase of public buildings;
- for other public works or improvements of a permanent nature including broadband infrastructure;
- for the purchase of departmental equipment of a lasting character;
- for the payment of judgments;
- for economic development (including public-private partnerships involving capital improvements, loan and guarantees); and
- preliminary expenses associated with proposed public work or improvement of a permanent nature (including public buildings, water works, sewer systems, solid waste facilities and broadband infrastructure).

The article authorizing the appropriation must (a) identify the specific project, (b) state the term of years of the appropriation (up to five years), (c) state the total amount of the appropriation, and (d) state the amount to be appropriated in each year of the term. The article must pass by a 2/3 vote (3/5 vote in official ballot referendum towns).

For each year after the first year, the amount designated for that year as provided in the original warrant article shall be deemed appropriated without further vote by the legislative body. In other words, once town 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 the future years of the term. In official ballot referendum towns, that year's amount is also automatically included in the default budget.

If the amount appropriated in any year is not spent in that year, it will not lapse. The money will remain available for use for the project during the term stated in the warrant article. However, a capital project appropriation does not create a capital reserve fund. It is simply accounted for as a nonlapsing appropriation from year to year. At the end of the term stated in the original warrant article, any unspent amounts will lapse into the fund balance.

At any annual meeting before the end of the term of the project, the legislative body may rescind the appropriation by a simple majority vote on a warrant article. If the project is rescinded, any unexpended appropriations for the project will lapse into fund balance immediately.

## **H. Estimated Tax Impact**

The legislative body (town, school or village district meeting) may vote to require that the annual budget and all special warrant articles having a tax impact include a statement of the estimated tax impact of that appropriation. RSA 32:5, V-b. The law specifies that it is up to the governing body (select board, school board, or village district commissioners) to determine whether an article has a tax impact. In addition, the determination of the estimated tax impact is subject to approval by the governing body, even if someone else actually performs the initial calculations.

It is important to remember that the estimated tax impact will always be just that: an estimate. The tax rate is set in the fall, many months into the fiscal year and many months after the annual meeting. During that time, several issues will be at play. Property tax rates are based on the amount of appropriations approved, less non-tax revenues that are received, divided by the equalized property value of the municipality. However, the municipality's property value is based on an assessment that does not occur until April 1 (and is not fully compiled for several months after that). The actual revenues received from sources other than taxes may be greater or less than the estimates on the budget forms voted on at the annual meeting. All of this means that the true amount to be raised by taxes, and the total property values on which the tax rate will be determined, may be quite different from the estimates used in March to determine the estimated tax rate.

Therefore, if the estimated tax impact is going to be included in the warrant and/or ballot, it is strongly advisable to explain to voters that it is only an estimate based on the information available at the time. Having said that, however, it can be useful to know if a particular proposed appropriation might have an impact of pennies, dimes, or dollars on the tax rate, even if the actual impact varies slightly.

# CHAPTER THREE

## WARRANT NOTICE AND PERMISSIBLE AMENDMENTS

### Third Key Concept

RSA 32:6 and RSA 39:2 prohibit an annual or special meeting from appropriating any amount for any purpose unless that purpose appears in the warrant or in the posted budget (whether as a line item in the budget or as a separate article). The posted budget can be thought of as part of the warrant for notice purposes. New line items — “purposes” — cannot be added from the floor of town meeting or under an “other business” article.

For traditional meetings, the warrant and budget must be posted in two public places in the town or district at least 14 days before the annual or special meeting, not including the day of posting or the day of the meeting. (The official ballot referendum law (SB 2) has its own schedule. See Chapter 8 for more information.) In the case of special meetings, the warrant and budget must also be published in a newspaper in circulation in the town or district within a week after the posting. RSA 39:4 and RSA 197:7 and :8.

#### A. Voters’ Ability to Amend Amounts

RSA 32:6, RSA 32:10 and RSA 39:2 give the voters authority to appropriate more or less than was stated on the warrant or posted budget, or to delete a line item entirely. This authority has long been established through case law. It is only new purposes that cannot be added from the floor. RSA 32:6; RSA 39:2.

In official ballot referendum towns or districts, any amendments are made at the first session, not at the official ballot session. However, the first session’s ability to amend articles has been sharply limited by the legislature. Under RSA 40:13, IV(c), “No warrant article shall be amended to eliminate the subject matter of the article. An amendment that changes the dollar amount of an appropriation in the warrant article shall not be deemed to violate this subparagraph.” In other words, an article may still be amended to change the dollar amount, including reducing it all the way to zero, but it may not be amended by deleting everything after the words “to see” as became the fashion over the past several years. For more information on amending warrant articles in official ballot referendum towns, please see Chapter 8, Section H.

Remember: In the school budget, there are particular line items that cannot be “zeroed out” (deleted) due to state and federal laws.

#### B. Later Transfers Cannot Be Restricted from the Floor

Note that the ability to amend warrant articles does not include the authority of the voters to designate an appropriation as nontransferable. *McDonnell v. Derry*, 116 N.H. 3 (1976). In other words, the voters cannot make a special article out of an appropriation that was not a special article in the original warrant, at least not without submitting a petitioned warrant article in advance. Only the governing body can designate

an article as “special,” “nontransferable” or “nonlapsing,” thereby prohibiting the transfer of all or a part of that appropriation to another purpose. RSA 32:3. See Chapter 6 for more on transfers.

## C. Amendment by Altering Mode of Funding

An appropriation to a capital reserve or trust fund (essentially, savings accounts) for a specific purpose is not the same as an appropriation to spend money now on that purpose. Voters often attempt to add or remove references to a capital reserve fund or trust fund on the floor of the meeting. For example, assume a warrant appropriates a certain amount to a capital reserve fund for a certain purpose, and a floor amendment attempts to appropriate the money to accomplish the purpose this year. DRA has held this type of amendment improper and has disallowed such expenditures as a change in purpose that fails the notice requirement.

However, DRA has found it generally acceptable when a clear-cut switch from one mode of funding to another is proposed, such as an amendment changing the funding source from a withdrawal from a capital reserve fund to funding by taxation.

## D. ‘Stay-at-Home Test’

In general, try analyzing the issue of proper amendments by using the “stay-at-home” test. In other words, suppose a voter had read the original article, decided he or she was not interested and stayed home instead of attending the meeting. The question then is, does the proposed amendment add a new subject matter, such that the voter might have reconsidered his or her decision not to attend? If so, the amendment is probably improper.

## E. Appropriating Money at Special Meetings: The Requirement of ‘Emergency’

Special meetings may be called by the governing body as a result of a board vote to do so, or to respond to a citizen petition for a special meeting. RSA 39:1; RSA 39:3. However, money cannot be appropriated at a special town or district meeting unless either 50 percent of all voters on the checklist attend the meeting or the superior court grants permission for the meeting. It is quite unlikely that 50 percent of the voters on the checklist will attend the meeting in any municipality and, therefore, most towns, village districts and school districts will need to seek superior court permission before holding the meeting. The judge must find that an “emergency” exists in order to authorize the meeting. RSA 31:5 and RSA 197:3.

1. **‘EMERGENCY’ DEFINED** RSA 31:5 defines “emergency” as “a sudden or unexpected situation or occurrence, or combination of occurrences, of a serious and urgent nature, that demands prompt, or immediate action, including an immediate expenditure of money. This definition, however, does not establish a requirement that an emergency involves a crisis in every set of circumstances.”

The superior court will consider several factors in determining whether a request for a special meeting shall be granted, and any petition to the court seeking a special meeting should address these factors. The factors, as provided in RSA 31:5, are:

- the severity of the harm to be avoided;
- the urgency of the petitioner’s need;
- whether the claimed emergency was foreseeable or avoidable;

- whether the appropriation could have been made at the annual meeting; and
- whether there are alternative remedies not requiring an appropriation.



Under RSA 197:3, I (d), the court may not grant permission for a special school district meeting if the emergency involves a collective bargaining agreement that was voted down at the annual meeting.

## **2. NO COURT PERMISSION NEEDED EXCEPT FOR MONEY ITEMS**

If the special town meeting is called for a purpose that does not involve appropriations of money, the requirement of either 50 percent attendance or permission of the superior court does not apply, nor does the requirement that an “emergency” exist. Those requirements apply only to special meetings at which money is to be appropriated.

## **3. NON-EMERGENCY SPECIAL MEETINGS FOR COLLECTIVE BARGAINING**

When a town or district enters into a collective bargaining agreement (CBA), the legislative body must vote on the “cost items” of the contract in order for the town or district to be bound by the contract. RSA 32:19-a. “Cost items” are any benefits acquired by a covered employee through collective bargaining whose implementation requires an appropriation. RSA 273-A:1, IV. RSA 31:5, III and RSA 197:3, III allow an annual meeting that has rejected the cost items of a CBA to authorize a later special meeting to act on a revised contract without court approval for a special meeting. This option is available only if a contract is ready for submission to the annual meeting on or before the submission date set by RSA 32:19-a, the date by which a negotiated agreement on CBA cost items must be completed. The article to authorize the special meeting should appear in the warrant immediately following the CBA article and should read: “Shall [the town or district], if article #\_\_\_\_\_ is defeated, authorize the governing body to call one special meeting, at its option, to address article #\_\_\_\_\_ cost items only?”

It is helpful to explain to the voters that a second vote on the same cost items is not being requested, but that a special meeting will be called only if the parties return to the bargaining table and reach an agreement for revised cost items.

When the cost items of the CBA are not agreed upon and submitted to the governing body or budget committee (as appropriate) by the budget submission date, the CBA cannot be voted upon at the annual meeting. RSA 32:19-a. The town or district will need to get permission from the superior court under the “emergency meeting” statute discussed above in order to have a special meeting to vote on the CBA.

See Appendix G for a timetable on appropriating money at a special meeting.

# CHAPTER FOUR

## NO SPENDING WITHOUT AN APPROPRIATION

### Fourth Key Concept

#### A. Basic Rule of Budget Accounting

Once the budget and other appropriations have been voted on, what is their legal effect? RSA 32:8 provides that no town, village district or school district official can spend any money for any purpose unless that amount was appropriated for that purpose by an annual or special meeting. This basic rule of budget accounting flows directly and logically from the very meaning of “appropriation.”

This requirement that no money be spent without an appropriation applies to all municipal expenditures, not just tax money. For example, if the town sells an item of equipment, the proceeds from that sale cannot be spent unless the amount of the proceeds from the sale has been included in an appropriation in the budget. This is “gross basis” budgeting, which is discussed in Chapter 2. This requirement also means that an official who overspends the budget improperly may be subject to dismissal. RSA 32:12; *Blake v. Pittsfield*, 124 N.H. 555 (1984).

#### B. Exceptions to the Rule

The statute allows for certain exceptions to the rule that no money can be spent without an appropriation. They include the following:

**1. TRANSFER**

The governing body may make transfers of amounts from an unexpended balance in some other appropriation to a purpose that is already in the budget. RSA 32:10. (See Chapter 6 for more on transfers.)

**2. LEGAL JUDGMENT**

RSA 32:9 permits a town to spend money to pay a legal judgment (ordered by a court) against the town without an appropriation. On the other hand, officials cannot agree to settle a claim by paying unappropriated funds (overspending the bottom line of the budget), unless the agreement is made conditional on voter approval.

**3. DRA Permission**

Permission may be granted by DRA for expenditure in excess of an appropriation that may result in over-expenditure of the budget’s bottom line, or for expenditure when no appropriation has been made by the town or district meeting for that purpose (emergency expenditure). This exception applies only “when an unusual circumstance arises during the year which makes it necessary” to overspend the budget or spend money on a purpose for which no appropriation has been made. School districts can apply for similar permission to the Department of Education commissioner. A special town or district meeting is not necessary. The governing body must

hold a public hearing on the request and, in towns with a budget committee, a majority of the committee must approve the application to DRA. The application must be made to and authority granted by DRA before the expenditure is made. In the case of a sudden or unexpected emergency, the application may be approved after the expenditure has been made, but DRA generally does not grant “after-the-fact” approval if there was reasonable time and opportunity to apply for permission before spending the money. Instructions, information, and application forms are available from DRA. In addition, DRA will only grant permission if the town or district designates a source of revenue for the expenditure. If there is no source of revenue, the only option is to petition the superior court for permission to hold a special meeting to raise money. Neither DRA nor the Department of Education can raise the tax rate to pay for such an “emergency” expenditure. RSA 32:11.

As a general matter, it is the better practice to contact DRA sooner rather than later if it appears the municipality may need to overspend the budget. DRA may be able to assist with finding alternative solutions, avoiding violation of the Municipal Budget Act, and navigating the approval process under RSA 32:11.

#### **4. CONTRACT OR MANDATE**

Municipalities have no special authority to overspend the budget to pay for contractual expenses or valid mandates. RSA 32:13 says, in essence, that if a municipality runs out of budgeted appropriations to pay obligations under a contract that the legislative body has previously ratified, the lack of funds is not a reason to be excused from the contract (and, as a result, the municipality may face a lawsuit for breach of the contract). Provided, however, that the agreement is “otherwise valid under the New Hampshire law of municipal contract.” In addition, a lack of budgeted appropriations to pay a validly mandated expense, such as local welfare assistance, does not excuse the municipality from responsibility for those expenses.

However, neither of these situations alone justifies overspending the budget. To remain in compliance with the Municipal Budget Law, local officials should consider the available legal options: transferring other appropriations to cover that expense (RSA 32:10); asking DRA for emergency spending authority (RSA 32:11); or holding a special town meeting to appropriate funds (RSA 31:5). RSA 32:13 underscores the importance of appropriating adequate funds to cover these expenses, because a municipality may find itself in the unenviable position of being unable to overspend the budget for an expense that a court may later impose upon the municipality as a legal judgment.

### **C. What About Spending Prior to Town Meeting?**

The governing body may spend money during the period between January 1 and the annual meeting when no amount has yet been appropriated. RSA 32:13, II says that expenditures during that period shall be “reasonable in light of prior year’s appropriations and expenditures for the same purposes during the same time period.” This means that the governing body can approve expenditures during that time that are generally the same as those that were approved and expended during the same period in the previous year. Under the official ballot referendum system (SB 2), RSA 32:13, II allows such “reasonable” expenditures until the “date a budget is adopted.” Thus, if a budget is not adopted at the annual meeting, government does not come to a halt. Even if the budget fails on the ballot, the default budget has thereby been adopted (as discussed in Chapter 8).

## D. Other Statutory Exceptions to No-Spending-Without-Appropriation Rule

### 1. UNANTICIPATED REVENUE

RSA 31:95-b, if the town has voted to adopt it (RSA 198:20-b for school districts), allows the governing body to apply for, accept and spend unanticipated money received from a federal, state or private source, so long as the money is spent in a way that does not require other unappropriated town funds to be spent. This can be problematic if the grant has a “matching fund” requirement under which the town must provide a certain amount of its own money toward the project in order to receive the grant. In those cases, the governing body may only accept the grant if the matching funds have been properly appropriated.

Other requirements include:

- If the amount of unanticipated revenue is \$10,000 or more, the governing body must hold a public hearing on the action to be taken and publish notice in the newspaper at least seven days prior to the hearing. Acceptance of the funds must occur in a public session of the governing body.
- If the amount of unanticipated revenue is less than \$10,000, the governing body must post notice of the funds in its meeting agenda and include notice in the minutes of the board’s meeting at which the funds are discussed. Acceptance of the funds must occur in a public session of the governing body. The statute seems to indicate that the governing body may establish an amount of less than \$10,000 at which it will hold a public hearing on acceptance of the funds, in addition to the required notice in the board’s meeting minutes.

In addition, RSA 202-A:4-c allows a town to adopt an article authorizing the library trustees to apply for, accept and expend unanticipated money from a federal, state or private source without any further action by town meeting. Just as with authorization for the select board under RSA 31:95-b, the authorization for library trustees continues until town meeting votes to rescind it, and the funds may not be spent in a way that requires other unappropriated funds to be spent. The same procedural requirements as those in RSA 31:95-b for public hearings and notice apply to library trustees under RSA 202-A:4-a.

RSA 198:20-b, II and RSA 198:48 make clear that funds disbursed from the state’s education trust fund (that is, the adequate education grants from the state education property tax) cannot be treated by school districts as unanticipated revenue and are subject to the normal appropriation requirements. The law also reiterates that these monies can only be spent for educational purposes.

### 2. CAPITAL RESERVE FUNDS OR TOWN-FUNDED TRUST FUNDS

If a town or district meeting has properly voted to name agents to expend a capital reserve fund or a town-funded trust fund, money that has already been appropriated to one of these funds may be spent without further appropriation. Agents may be named at the time the fund is created or at a later town meeting. See RSA chapter 35 for more on capital reserve funds and RSA 31:19-a for more on town-funded trust funds. Both are covered in more detail below.

### 3. SPECIAL STATUTORY FUNDS

Certain statutory funds, such as the conservation fund (RSA 36-A:5), heritage commission fund (RSA 674:44-d), airport fund (RSA 423:6 and :7) and recreation revolving fund (RSA 35-B:2, II), can be spent by those various bodies without a legislative appropriation. See RSA 41:29 for the treasurer’s authority to pay such funds.

### 4. WATER AND SEWER RESERVES

Money in a properly created sewer reserve fund (RSA 149-I:10, III and RSA 35:7) or water

reserve fund (RSA 35:7 and RSA 38:29, III) received from the collection of sewer or water rates may be spent without town meeting appropriation. However, funds appropriated to the sewer or water departments by the town or district meeting are fully subject to the Municipal Budget Law process. In addition, a sewer department run by a commission must also remit to the municipality those costs incurred by the municipality in support of sewer operations, including but not limited to financial audit, facility insurance, treasurer compensation and office support. RSA 149-I:10, II. These departments cannot overspend their legislative body appropriations, except in the case of excess funds collected in sewer or water rates placed in a capital reserve fund, created under RSA 149-I:10, III or RSA 38:29, III and held in the custody of the trustees of trust funds. The governing body (sewer/water commissioners or select board, as the case may be) may create these reserve funds without an annual meeting vote.

## 5. REVOLVING FUNDS

Recreation revolving funds established by town meeting vote under RSA 35-B:2, II accumulate from year to year and may be expended for recreation purposes upon order of the recreation or park commission, or other board or body designated by the legislative body at the time the fund is created. However, if the recreation revolving fund is rescinded by vote of the legislative body, any remaining amounts in the fund automatically become part of the general fund accumulated surplus. RSA 35-B:2, II.

Revolving funds established by vote of town meeting under RSA 31:95-h may be expended for the specific purpose for which the fund was created with no further approval of the legislative body. Permissible fund purposes include those designated for facilitating, maintaining or encouraging recycling activities; ambulance services or fire services or both; public safety service special details or other public safety purposes deemed appropriate by the municipality; cable access for public, educational or governmental use; creating affordable housing and facilitating transactions relative thereto; and financing energy conservation and efficiency and clean energy improvements by participating property owners in an energy efficiency and clean energy district established pursuant to RSA chapter 53-F, or, facilitating transactions relative to municipal group net metering. For each such fund, the legislative body can vote to place all or part of the revenue derived from that particular activity into the fund, along with any other revenues town meeting may approve for deposit into that fund. The money in the fund accumulates from year to year and may be spent on order of the governing body, or other board or body designated by the legislative body. However, at the time the fund is created or at any time thereafter, the legislative body may place limitations on expenditures from the fund, such as:

- restrictions on the types of items or services that may be purchased from the fund;
- limitations on the amount of any single expenditure; and/or
- limitations on the total amount of expenditures that may be made in a year.

## E. Multi-Year Contracts

Municipalities are set up to handle business one year at a time. So, it is not surprising that there is a good deal of uncertainty when it comes to authorizing contracts that will oblige a municipality to expend money for more than one year going forward. The most common examples are extended equipment leases and multi-year collective bargaining agreements (CBAs). For leases, typically the issue is whether the agreement constitutes long-term debt under RSA chapter 33. For CBAs, the problem is adequate disclosure of the financial terms of the agreement, the “cost items” under RSA chapter 273-A. The term for such disclosure is “Sanbornizing” the agreement, after the leading case, *Appeal of the Sanborn Regional School Board*, 133 N.H. 513 (1990).



## 1. COLLECTIVE BARGAINING AGREEMENTS

In *Sanborn*, the Supreme Court upheld the validity of multi-year collective bargaining agreements under RSA chapter 273-A, which comprehensively governs the public employee collective bargaining process. The statute provides that once an agreement is reached between the employer board and union, the “cost items” of the agreement, defined as “any benefit acquired through collective bargaining whose implementation requires an appropriation by the legislative body of the public employer with whom negotiations are being conducted,” must be submitted to the legislative body for approval. Although multi-year agreements are authorized by RSA chapter 273-A, the Court in *Sanborn* held that the school district was not bound to fund the second and third-year terms of the CBA because the voters at the district meeting who were supposed to ratify the cost items had not been adequately informed of the financial terms by the language of the warrant article or by other means. Accordingly, in *Appeal of Alton School District*, 140 N.H. 303, 309 (1995), a section of the CBA provided that a pay plan with periodic step increases based on experience would continue in effect after expiration of the agreement (an “evergreen clause”). The Supreme Court held that the provision was unenforceable against the school district because, under *Sanborn*, the cost of the evergreen clause had not been adequately disclosed to the voters. Under the new statute, such pay plans would typically continue to operate automatically after expiration for all CBAs, and it would seem that the cost of the built-in “evergreen clause” would need to be disclosed to the voters. Consult your municipal attorney on the important and complex issue of what is adequate Sanbornizing of the cost items of your CBA.

## 2. EQUIPMENT LEASES

RSA 33:3 authorizes municipalities to issue notes and bonds to finance, among other things, “the purchase of departmental equipment of a lasting character.” Issuance of debt requires a three-fifths vote, by ballot, of the legislative body. RSA 33:8. Multi-year lease-purchase agreements for equipment are regarded as long-term debt (like a bond, they require a stream of payments to pay principal and interest over time) and thus also require a three-fifths ballot vote. However, lease-purchase agreements with so-called “escape” or “nonappropriation” clauses, which terminate the agreement automatically if the requisite annual appropriation is not made, are not long-term debt and thus may be approved by majority vote. RSA 33:7-e. An amendment to RSA 35:15, effective August 30, 2021, allows a capital reserve fund to be used to make payments under a lease/purchase agreement, regardless of whether the agreement contains an “escape” or “non-appropriation” clause.

## 3. SOLID WASTE DISPOSAL

Under the provisions of RSA 149-M:17, IV, the legislative body can approve a contract with a term of up to 40 years with the owners or operators of solid waste disposal facilities for the disposal of solid waste. The legislative body may also transfer any land interest to the owner or operator of solid waste disposal facilities by deed or by lease with a term of not more than 40 years. RSA 149-M:17, V.

## 4. OTHER MULTI-YEAR AGREEMENTS

There are other types of multi-year expenditure agreements that a municipality may want to enter into that do not fall within the specific statutes governing CBAs or lease agreements. Naturally, these are the types of agreements that create the most questions, but there is case law that helps us determine how and when municipalities can enter into such agreements.

As a general principle, one legislative body cannot bind a successor legislative body on procedural matters. *Exeter v. Kenick*, 104 N.H. 168, 171 (1968). In addition, the rule of lapse means that appropriations are usually adopted on an annual basis. However, there is significant case law to support a municipality’s authority to enter into a multi-year contract. First, in *Blood v.*

*Manchester Electric Light Co.*, 68 N.H. 340 (1895), the New Hampshire Supreme Court held that towns and cities are authorized to make multi-year contracts under the basic statutory power to “make any contracts which may be necessary and convenient for the transaction of the public business of the town,” quoting what is now RSA 31:3. Second, the New Hampshire Supreme Court has upheld a governing body’s authority to bind the municipality to a multi-year contract as long as “it knew about the cost items for each year of the [contract] at the time it voted to appropriate money for the contract’s first year.” *Footte v. Manchester Sch. Dist.*, 152 N.H. 599 (2005) (quoting *Appeal of Franklin Education Assoc.*, 136 N.H. 332, 334 (1992)). See also *Childs v. Hillsboro Electric Light and Power Co.*, 70 N.H. 318 (1900); *Bedford Chapter-Citizens for a Sound Economy v. School Administrative Unit #25-Bedford School District*, 151 N.H. 612 (2005).

Based on these cases, as a general principle, a municipality can bind itself to a multi-year agreement as long as the total cost items for the full life of the agreement are fully disclosed and adopted by the legislative body. Essentially, this is the same process for Sanbornizing collective bargaining agreements that is discussed above. So, for example, imagine the select board has been offered a “great deal” to provide the town internet and IT services by a vendor, but the agreement must be for a three-year term. The select board could agree to the three-year term, contingent upon the legislative body agreeing to the total cost of years two and three. In the alternative, the agreement could provide an escape clause, requiring the cost of the subsequent years of the agreement to be submitted to legislative body for approval.

Another example, which is becoming more common, is the long-term energy contract. The duty to adequately inform the legislative body of all the financial terms of such a purchase power agreement would likely require that the yearly cost of energy be disclosed for each year of the agreement. The per kilowatt hour cost of electricity would be stated and fixed for the term of the contract, so that component is certain. However, the remainder of the energy cost equation would require some reasonable estimate of the municipality’s annual electrical energy consumption. So long as the estimated energy consumption was a reasonable approximation of the municipality’s energy consumption on an annual basis, combined with the fixed cost per kilowatt hour, this would permit the presentation of the probable total cost of the purchase power agreement for the full term of the agreement. Such information would likely constitute an adequate disclosure of the financial terms of the agreement and satisfy the requirement that the agreement be Sanbornized.

# CHAPTER FIVE

## WHEN DO APPROPRIATIONS LAPSE?

### Fifth Key Concept

RSA 32:7 contains the rules for when appropriations “lapse” and may no longer be spent. The general rule is that all appropriations lapse at the end of the fiscal year. The amount of any appropriation not expended generally lapses to fund balance. It may then be appropriated for the following year.

“Year-end” refers to the fiscal year. For towns, the fiscal year is January 1 to December 31 (RSA 31:94), unless the town has adopted the optional July 1 to June 30 fiscal year in accordance with RSA 31:94-a – :94-e.

For school districts, the fiscal year begins on July 1. RSA 194:15.

#### A. Source of the ‘Lapse’ Rule

The rule that appropriations lapse at year’s end follows logically from the principle that no town meeting can be bound by the votes of prior town meetings. All substantive votes can be reconsidered at a later meeting, unless action has already been taken giving someone a vested right. *Preston v. Gillam*, 104 N.H. 279 (1962). If it weren’t for the lapse rule, votes taken in one year could interfere in some binding way with the following year’s budget.

#### B. Don’t Confuse Appropriation Accounting with Cash Accounting or Tax Accounting

The tax year runs from April 1 to March 31. Although each year’s tax rate is calculated based on budget appropriations, there is no other relationship between appropriations and taxes. If the cash flow from taxes is insufficient to keep up with expenditure needs, a town may issue tax anticipation notes which will be repaid as soon as the tax revenue is received. RSA 33:7. Citizens are often confused by this, somehow thinking each penny of tax money can be traced to a specific expenditure. Some think their taxes can be pro-rated if they did not own the property for the entire budget year. That is not the way it works.

#### C. Lapsing to ‘Fund Balance’ – Not ‘Surplus’

Fund balance is not a ‘cash-account,’ instead, it is a measure of equity between revenues and expenditures resulting in a surplus or a deficit at year end. When an appropriation lapses, it is often said that the amount goes into “surplus.” However, the term “surplus” is a misnomer, since it gives the impression that excess money is in a fund and is available for expenditure. Actually, when an appropriation lapses, the unexpended balance of the appropriation becomes part of “fund balance,” which is an account on the town’s balance sheet. In addition to unexpended appropriations, any excess revenues received beyond those revenues budgeted also become part of the fund balance. Fund balance also accounts for assets, such as uncollected taxes, as well as liabilities, such as invoices not yet paid by year-end. The net

amount of these transactions results in a fund balance that is primarily used in municipalities for two purposes: (1) to retain a portion for cash flow and emergency expenditures and (2) to fund future years' appropriations.

See NHMA's publication, *Basic Financial Policies: A Guide for New Hampshire Cities and Towns* (currently out of print, look for a new edition in 2022).



RSA 198:4-b, II permits a school district to retain year-end unassigned general funds in an amount not to exceed 5% of the current year's net assessment. A vote of the legislative body is required to authorize the retainage. The authorization continues year-to-year until rescinded. Prior to expending such funds, the school board must hold a public hearing, with newspaper notice of at least seven days. An annual accounting of such funds must be published in the annual report.

### **1. FUND BALANCE—RETAIN OR REDUCE THE TAX RATE**

General government finance guidelines recommend that municipalities retain 5 percent to 15 percent of regular general fund operating revenues or 8 percent to 17 percent of regular general fund operating expenditures. The DRA concurs with these guidelines and amounts above these ranges are recommended for reducing the tax rate or for funding future appropriations. The town's governing body makes the decision regarding the amount of fund balance to retain and/or the amount used to reduce the tax rate at the time the tax rate is established in the fall. Any amount retained cannot be spent without an appropriation unless one of the exceptions applies, such as the payment of a legal judgment or DRA approval for overspending the budget under RSA 32:11. See NHMA's publication, *Basic Financial Policies: A Guide for New Hampshire Cities and Towns* for a detailed discussion on the appropriate balance of fund balance to retain within the recommended guidelines.

Appropriations using fund balance as all or part of the funding source should follow the rules regarding gross budgeting and should state the amount to come from fund balance. For example: "To see if the Town will vote to raise and appropriate \$54,000 for the replacement of the piling system and dock at the town pier, to be funded by \$20,000 from the December 31, 2013, fund balance with the remaining balance of \$34,000 to come from general taxation."

### **2. DISCLOSURE OF FUND BALANCE TO VOTERS**

While the term "fund balance" is an accounting term and is not defined in any statute, the law does require the "general fund balance sheet" from audited financial statements or from the financial report filed with DRA to be published in a town report or posted at the annual meeting. See RSA 41:9, IV for towns; RSA 189:28-a, I for school districts; RSA 52:3, II and RSA 52:3-a, I-a for village districts.

### **3. DEFICITS**

The DRA sets the tax rate based on appropriations, so towns are not supposed to have deficits. But, sometimes, due to overestimating revenues or sloppy bookkeeping, they do. In the event of a deficit, RSA 41:9 requires the general fund balance sheet for towns to be published in the report or posted at the place of the meeting so that if there is a deficit, the voters will know about it. For school districts, RSA 189:28-a, II imposes the same requirement upon school boards. In addition, RSA 41:9 (towns) and 189:28-a (school districts), also requires the governing body of any town or district that has a general fund deficit to insert a warrant article recommending "such action as they deem appropriate." Notice that neither law mandates deficit reduction. The "appropriate" action could conceivably be simply an audit into the problems of the deficit. Finally, RSA 31:4-a authorizes

towns and RSA 189:28-a authorizes school districts to raise, through taxation, an amount earmarked for reducing a deficit.

## D. Unanticipated Revenue Is Not ‘Lost’

This question is often asked by local officials: Suppose shortly before the end of the fiscal year, the town finally collects the \$125,000 the state had agreed to pay for the town gravel pit it condemned for a state highway. Local officials want that money to go into a reserve fund for future gravel needs. Can the money at this point be placed in a reserve fund? No. Putting money in a capital reserve fund requires an appropriation by the voters.

Does this mean the money will have to be used to reduce the tax rate and will be lost for the purpose the town wanted it for? No. If the town is on a January-to-December fiscal year with a March town meeting, there will be another town meeting to appropriate that money, which at this point has become fund balance. The fund balance is not applied against the amount to be raised by taxes until after the appropriations for the year have been made. The warrant can contain an article appropriating the sum of \$125,000 from surplus to a reserve or trust fund for future gravel needs. That article might include a phrase such as “such funds representing the amount received by the town in December 2021 from the State for the gravel pit condemned for a State highway.” This explanatory phrase can help voters understand where the money really came from.

If the unanticipated money comes in after the year’s appropriations have been made, a possibility for those towns on the July-to-June fiscal year, the amount may still be kept as part of “retained fund balance” at the time the tax rate is set. To avoid possible voter resistance to this solution (because they may think it has to be paid for by taxation), an explanatory note may be included in the warrant article stating that the appropriation “represents the amount received by the town from the state last December 21 for condemnation of the town’s gravel pit,” or something similar. Just because the amount is part of fund balance (or surplus) for accounting purposes does not mean the town is prohibited from identifying where it actually came from.

## E. Exceptions to the ‘Lapse’ Rule: RSA 32:7

### 1. CONTRACTUALLY ENCUMBERED FUNDS

“Encumbered funds” are those which the municipality has a legal obligation to pay. When this obligation arises before the end of the fiscal year but is not paid by the end of the fiscal year, it is referred to as an encumbered amount. Planning to spend the money is not enough; the obligation to pay must be legally enforceable. For example, suppose the recreation director has placed an order for recreation equipment. The goods and an invoice are received, but no payment is made before the end of the fiscal year. There is a legally enforceable obligation for the town to pay and the amount remains “encumbered” until paid. RSA 32:7, I. Conceptually, under accrual accounting principles, a liability exists at the time the obligation was created. **The N.H. Supreme Court has ruled that to prevent the lapse of the unspent portion of an appropriation two conditions must be satisfied. First, the unspent funds must be encumbered by a legally enforceable obligation for their expenditure. Second, the obligation must attach to the funds before the end of the fiscal year for which they were appropriated. *Monadnock Regional School District v. Monadnock District Education Association*, 173 N.H. 411 (2020)**

### 2. SPECIAL WARRANT ARTICLES: ENCUMBERING TO PREVENT LAPSE

Under RSA 32:7, V and VI, money appropriated by a special warrant article is treated differently under the lapse rule. Special warrant articles, as defined by RSA 32:3, VI, include petitioned

appropriations articles and any other article designated by the governing body as a “special” or “nonlapsing” article. The appropriations for these two types of special articles can be treated as “encumbered” (that is, nonlapsing) for one additional year. (Bond articles, capital project appropriations and capital reserve fund appropriations are also special warrant articles, but those appropriations do not lapse. See paragraph 3 below and Section F.) If the appropriation is part of a special warrant article, the governing body can “encumber” that amount (that is, prevent it from lapsing) for the extra year by voting at a properly noticed meeting held before the end of the fiscal year for which the amount was budgeted. If the fiscal year ends on December 31, the amount must be encumbered prior to that date. RSA 32:7, V.

In addition, if the warrant article itself so states, the amount in a special article can be encumbered for up to five years. If the governing body anticipates that it may wish to do this, it should first set the amount aside as an article separate from the general operating budget, and then make sure the article states the amount of time it can be encumbered. For example, “This appropriation shall be nonlapsing and may be encumbered by the select board for up to four years.” Setting a specific date limit—less than five years in the future—beyond which it cannot be spent, is an alternative way to word it.

If a special warrant article can encumber an amount for up to five years, why establish reserve funds? Clearly, they are needed to encumber an appropriation for more than five years. However, using encumbered funds can be unwieldy, because the governing body must renew its encumbrance vote every year before the fiscal year ends. Multi-year encumbered funds should not be used as a substitute for establishing reserve funds. This will only cause bookkeeping problems for municipal officials as well as their auditors.

It is important to note the difference between a special warrant article, which the governing body may vote to encumber, and the “contractually encumbered funds” discussed in section E (1) above, which can only be encumbered when there is a legally binding obligation to pay them which is created before the end of the fiscal year.

### **3. BOND ISSUES**

Under RSA 32:7, III, an amount raised through bonds or notes does not lapse until the purpose it was intended for is completed or unless bond authorization is rescinded by a vote of the legislative body (either at a time specified in the original vote to issue the bond or by later vote to rescind under RSA 33:8-f). If there is an amount remaining after the completion of the project, or for some reason no expenditure has been made, RSA 33:3- a, II permits the legislative body to authorize expenditure of the remaining funds for any purpose for which it is lawful to issue bonds or notes.

The procedure for authorizing and rescinding bonds or notes is contained in RSA chapter 33. As of September 27, 2020 the necessary majority for passage is three-fifths (3/5) for both traditional town meeting municipalities and those who have adopted the official ballot voting procedures under RSA 40:13 (SB2). In traditional town meeting municipalities voting is by paper ballot following discussion on the floor of town meeting, and only votes in the affirmative or negative shall be included in the calculation of any majority. RSA 33:8. The issue of notes or bonds by a municipality that has adopted an optional form of legislative body under RSA 49-D:3, I-a or RSA 49-D:3, II-a shall be authorized by either a 2/3 or 3/5 vote as adopted and provided for in the charter. If such charter does not specify which majority vote is required, then the required majority vote shall be three fifths (3/5).

Effective June 15, 2022, a municipality may authorize broadband infrastructure bonds at a special town meeting without court approval. RSA 33: 3 -g authorizes a municipality or a

communications district formed under RSA chapter 53-G to approve a bond for the purpose of financing the development, construction, reconstruction, renovation, improvement, and acquisition of broadband infrastructure in any locations within a municipality unserved by broadband as defined in RSA 38:38, I(c).

If the amount of the bond is more than \$100,000, there are some additional requirements under RSA 33:8-a:

- At least one public hearing must be held at least 15 days, but not more than 60 days, before the meeting where the bond will be considered. Notice of the hearing must be posted and published in a newspaper at least seven days before the hearing.
- The item must be acted on prior to any other business except zoning questions and other required official ballot items.
- Secret ballot voting must be open for at least an hour after discussion. The meeting may not vote to shorten this time period.
- A bond article vote cannot be reconsidered until at least seven days later, at a meeting noticed by publication in a newspaper at least two days prior to the meeting.

The one-hour balloting period may overlap with other business of the meeting so long as voters remain free to vote for one hour. If there is more than one bond issue, the one-hour periods can overlap. Most moderators wait until the majority of the voters have voted, then move on to discuss other articles while the polls remain open for voting on the bond issues. In every case, however, the polls must remain open for each article for at least one hour; do not, under any circumstances, close the polls in less than one hour or the bond vote will be declared invalid.

- a. Debt limits.** All municipalities have a limit on the total amount of debt that may be outstanding at any one time. This limit is calculated as a percentage of the total market value (equalized assessed value) of all taxable property in town. The percentage is 3 percent for towns, 1 percent for village districts and 7 percent for school districts. However, it is possible that the limit for any town, village district or school district may actually be less at any particular time, because the total debt limit for any municipality that contains an overlapping municipality (such as a school district and town that cover the same geographic area) can be limited to 9.75 percent. RSA 33:4-a and 33:4-b. There are debt limit exceptions for specific purposes outlined in the statutes. Under these exceptions, debt incurred is not included in the net indebtedness calculation for the purposes of determining its borrowing capacity. There are debt limit exceptions for sewer treatment plants ordered by NHDES (RSA 33:5) or water treatment facilities ordered by NHDES (RSA 33:5-a) or voluntary sewer projects (RSA 33:5-b) or solid waste site clean ups (RSA 33:6-e) and solid waste management districts (RSA 33:6-d). In addition, debt incurred for broadband infrastructure is also an exception if it meets the definition in RSA 38:38, I(e) (RSA 33:6-f).
- b. Tax anticipation notes.** Tax anticipation notes do not count as part of the municipality's debt limit total. In addition, the two-thirds ballot vote and prior public hearing required for bonds are not necessary to authorize tax anticipation notes. The total amount of tax anticipation notes cannot exceed the total tax levy of the preceding financial year. However, after the tax levy of the current year is determined, cities and towns may borrow an amount not exceeding the total tax levy for the current financial year. During the period from the beginning of the financial year to the date of the annual town meeting, towns may issue notes in an amount not exceeding 30 percent of the total tax receipts in

the preceding financial year. RSA 33:7. Note that under RSA 33:7, V, the authority to issue tax anticipation notes need not be inserted on the warrant each year but can be authorized “indefinitely until rescission.” Tax anticipation notes are used when the cash flow from tax revenues is insufficient for current needs because of the timing of tax bills. The notes are repaid with the tax revenue when it is received. Tax anticipation notes do not count as part of the municipality’s total debt limit.

#### **4. ANTICIPATED GRANTS**

If the amount is appropriated from moneys anticipated to be received from a state, federal or private source, the appropriation shall remain non-lapsing so long as the money remains available under the rules or practice of the granting entity or agency. RSA 32:7, IV.

## **F. Statutorily Nonlapsing Funds**

RSA 32:7, II, the “lapse rule,” does not apply to funds that have been properly created under a statute designating the fund as nonlapsing. There are four generic types of these funds:

### **1. CAPITAL RESERVE FUNDS**

Appropriating money to a capital reserve fund is like putting it into a savings account. In fact, the money is held and invested by someone other than the treasurer, namely the trustees of trust funds. Towns, village districts and school districts are permitted to establish and fund capital reserve funds for:

- the construction, reconstruction or acquisition of a specific capital improvement, or the acquisition of specific equipment;
- the construction, reconstruction or acquisition of a type of capital improvement or the acquisition of a type of equipment;
- a reappraisal of the real estate in the municipality for tax assessment purposes;
- the acquisition of land;
- the acquisition of a tax map of a town;
- extraordinary legal fees and expenses related to present or foreseeable litigation involving the town or its officers and employees; or
- municipal and regional transportation improvement projects including engineering, right-of-way acquisition and construction costs of transportation facilities and for operation and capital costs for public transportation

School districts may also establish a reserve fund to meet the expenses of educating children with disabilities. RSA 35:1-b.

Reserve funds may be created for non-capital items but note that each still must be for a specific purpose. RSA 35:1-c. This is not authority to create unspecified purpose reserves.

It takes two elements of action by the town meeting to create a capital reserve fund: action to create the capital reserve fund, “distinctly stating the purposes” for which the fund is being established, and an appropriation of a specific dollar amount into that fund. These functions can both occur in one warrant article and one vote, but both elements must be stated clearly in that article. RSA 35:3; RSA 35:5.



Fund balance (see Section C above) may be transferred to a reserve fund by warrant article vote. RSA 35:5.

RSA 35:5 and 35:12 permit towns and districts to fund capital reserve funds with monies “from any source other than money given to the town [or] district ... for charitable purposes.” Thus, any source for the funds is usually valid. However, all such appropriations to capital reserve must be by way of a special warrant article and appropriations by way of budget line item are now prohibited. *See* RSA 35:5.

When can capital reserve funds be spent? RSA 35:15 provides that capital reserve funds remain with the trustees of trust funds until town meeting votes to expend money from that fund for the purpose for which the fund was established. Alternatively, town meeting can vote to name agents for the expenditure of those funds. Although towns may wait to name agents in the year the fund needs to be spent, many towns name agents at the same time the fund is created, in which case no further town meeting action is necessary before spending from the fund. If a fund has been created for the acquisition of land, the select board members are the only town officials who may be named as agents to expend. RSA 35:15, II(b) and then only if the town meeting had previously adopted RSA 41:14-a.

In 2007, the legislature amended RSA chapter 35 to allow money in a capital reserve fund to be used for periodic debt payments in addition to payments under a lease/purchase agreement. “Capital reserve funds may be used for multiple payments under a financing agreement for the purpose for which the capital reserve was established.” RSA 35:15, III. An amendment to RSA 35:15, effective August 30, 2021, allows a capital reserve fund to be used to make payments under a lease/purchase agreement, regardless of whether the agreement contains an “escape” or “non-appropriation” clause. If agents have been named to expend the fund according to RSA 35:15, then no further vote of the legislative body is required to disburse funds for lease/purchase payments after the initial majority vote to approve the lease agreement under RSA 33:7-e.

## **2. TOWN-FUNDED TRUST FUNDS & SCHOOL DISTRICT EXPENDABLE TRUST FUNDS**

RSA 31:19-a authorizes towns to create trust funds for any valid public purpose. Similarly, RSA 198:20-c authorizes school districts to create trust funds for “specific purposes for the maintenance and operations of the schools.” An article to create a trust fund under either statute should have at least the following elements:

- Reference to the statute (i.e., RSA 31:19-a or 198:20-c).
- Specific dollar amount.
- Statement of the source of the funds (to be raised from taxes or from some other specific source).
- Statement of the purpose of the trust and any restrictions on spending, including a statement that both principal and interest may be expended. Calling it an “expendable trust fund” probably accomplishes this.
- Statement of who will have discretion over spending the money (agents) or a statement that it shall not be spent until a subsequent vote of the meeting.

Prior to 1994, it was confusing for officials to determine when to use a capital reserve fund and when to use a town-funded trust fund; since the statutes were amended, it does not matter whether the fund is labeled a “trust” or a “reserve” so long as it is created for a specific valid public purpose. Also, RSA 31:19-a, I clarifies that the procedure for naming agents as set forth

in the capital reserve fund law, RSA chapter 35, is the same procedure to use for town- funded trust funds. Trust funds created under RSA 31:19-a are subject to the same provisions regarding custody (that is, by trustees of the trust funds), investment, expenditure, change of purpose and audits as are capital reserve funds. RSA 31:19-a, III.

### 3. SPECIAL REVENUE FUNDS

RSA 31:95-c authorizes towns to create nonlapsing funds into which they will place the revenue from fee-generating facilities such as municipal airports and solid waste facilities. However, these funds are not exempt from the budget appropriation process. Special revenue funds, while exempt from lapse, cannot be spent without an appropriation. They can only be spent after a later town meeting vote, for a purpose connected with the facility or program generating the fees. There is no authority in the law to appoint agents to expend special revenue funds.

Capital reserve funds and special revenue funds differ in that the town meeting must vote a specific dollar amount into a capital reserve fund (or a town-funded trust fund established under RSA 31:19-a), while the town meeting must vote a specific dollar amount out of a special revenue fund.

**a. Highway and capital improvements funds.** These are types of special revenue funds authorized by RSA 31:95-c, II. A town can create a special nonlapsing fund for the purpose of local highway improvements or general capital improvements as set forth in the town's capital improvements program (CIP). See RSA 674:5--:8 for how to develop a CIP. The revenues that can be earmarked for local highway improvements include state highway block grants, parking meter fees and fines, motor vehicle registration fees or any non-tax revenue source.

**b. Special revenue fund procedure.** In order to create a special revenue fund, the governing body must hold a public hearing 15 to 30 days before the town meeting (first session in official ballot referendum towns) with notice posted in at least two places and published at least seven days in advance, and the following question placed on the warrant:

Shall we adopt the provisions of RSA 31:95-c to restrict [here insert portion as a fractional or dollar amount] revenues from [here insert source] to expenditures for the purpose of [here insert purpose]? Such revenue and expenditures shall be accounted for in a special revenue fund to be known as the \_\_\_\_\_ fund, separate from the general fund. Any surplus in said fund shall not be deemed part of the general fund. Any surplus in said fund shall not be part of the general fund accumulated surplus and shall be expended only after a vote by the legislative body to appropriate a specific amount from said fund for a specific purpose related to the purpose of the fund or source of the revenue.

The vote on a question to establish a Special Revenue Fund must be by ballot but cannot be on the official election ballot (unless the town is under the SB 2 system). In other words, it must be voted on at the business session of the town meeting. RSA 31:95-d.

Once the fund is established, future town meetings must vote specifically to spend the money accumulated in the fund and may only spend it on the purposes for which the fund was established. RSA 31:95-c, II.

The fund may be dissolved in a similar manner by a majority vote of the legislative body. If that occurs, any remaining amounts in the rescinded fund automatically become part of the general fund accumulated surplus. RSA 31:95-d, IV(b).

A two-thirds vote of the legislative body is required to change the purpose of a special revenue

fund, the source of the revenues or the fractional portion of the revenues being deposited into the fund. RSA 31:95-d, V.

#### 4. REVOLVING FUNDS

Towns may establish recreation revolving funds under RSA 35-B:2, II, into which all fees and charges for recreation services and facilities may be deposited. Money in the recreation revolving fund does not lapse and can be spent on the order of the recreation commission for recreation purposes under RSA chapter 35-B. However, if the recreation revolving fund is rescinded by vote of the legislative body, remaining amounts in the fund automatically become part of the general fund accumulated surplus. RSA 35-B:2, II.

Revolving funds may also be established under RSA 31:95-h for the following purposes:

- facilitating, maintaining or encouraging recycling as defined in RSA 149-M:4;
- providing ambulance services, or fire services, or both;
- providing public safety services by municipal employees or volunteers outside of the ordinary detail of such persons, including but not limited to public safety services in connection with special events, highway construction and other construction projects or for any other public safety purpose deemed appropriate by the municipality;
- Creating affordable housing and facilitating transactions relative thereto;
- providing cable access for public, educational or governmental use;
- financing of energy conservation and efficiency and clean energy improvements by participating property owners in an energy efficiency and clean energy district established pursuant to RSA chapter 53-F; or
- facilitating transactions relative to municipal group net metering.

These are the only stated purposes for which revolving funds may be established, although the statute states that towns are not precluded from establishing revolving funds “for any other purposes authorized by law.”

A revolving fund for the purposes provided for in RSA 31:95-h must be established by a vote of the legislative body, which at the time of establishment or at a later time may restrict expenditures from the fund by limiting the types of items or services that may be purchased, limiting the amount of any single expenditure, or limiting the total amount of expenditures to be made in a year. No money may be spent from the revolving fund for any item or service for which an appropriation has been specifically rejected by the legislative body during the same year.

All or any part of the income derived from the services listed above may be deposited into the revolving fund, as may other revenue approved by the legislative body for deposit into the fund. The revolving fund is nonlapsing and is not considered part of the municipality’s fund balance. The treasurer has custody of the monies in the revolving fund and shall pay out monies only upon order of the governing body or other board designated by the legislative body at the time the fund is created. Revolving fund money may be spent only for the purposes for which the fund was created.



School districts are authorized under RSA 194:3-c to create revolving funds for school programs which are self-supporting “in whole or in part.” The district may supplement revenue through

– and only through - a line item in the budget, and all such funds are subject to annual audits, with records regarding the program open to the public. A revolving fund is non-lapsing only if so designated by the article authorizing the fund. If the fund is terminated, then funds raised through fees or tuitions are returned to the students, and if raised by goods or services, they go to reduce the tax rate.

Additionally, RSA 198:4-c authorizes districts to create a revolving funds for building trades. Such a fund must be used to pay necessary construction costs carried out as part of the instructional program. When the project is completed, it is sold, and the money received is put in the fund for use in another construction project.

## **5. OTHER LAPSE RULE EXCEPTIONS**

There are other funds that, by statute, do not lapse at the end of the year. Examples are the conservation fund (RSA 36-A:5), forest maintenance fund (RSA 31:113), heritage commission fund (RSA 674:44-d) and airport fund (RSA 423:6 and :7). Not all appropriations to these various commissions are placed automatically into these nonlapsing funds. Make sure in each case that the voters properly created the fund and the money was properly allocated into the respective fund. For example, a budget may include two appropriations to the Conservation Commission: one to the conservation fund (which would be nonlapsing) and one ordinary operations appropriation for that fiscal year, which would lapse. However, under RSA 36-A:5, I, the whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 36-A:4 may be placed in a conservation fund and allowed to accumulate from year to year. The deposit into the Conservation Fund must be made before the end of the fiscal year.

In addition, an appropriation for a “capital project” under RSA 32:7-a does not lapse automatically. If the amount appropriated in any year is not spent in that year, it will not lapse. The money will remain available for use for the project during the term stated in the warrant article. However, a capital project appropriation does not create a capital reserve fund. It is simply accounted for as a nonlapsing appropriation from year to year. At the end of the term stated in the original warrant article, any unspent amounts will lapse into fund balance. Alternatively, at any annual meeting before the end of the term of the project, the legislative body may rescind the appropriation by a simple majority vote on a warrant article. If the project is rescinded, any unexpended appropriations for the project will lapse immediately to fund balance.

# CHAPTER SIX

## TRANSFERS OF APPROPRIATIONS DURING THE YEAR

### Sixth Key Concept

As a general rule, if the governing body needs more money in one account (“purpose of appropriation”), it can transfer money from some other account (“purpose”), so long as the expenditure does not result in overspending the bottom line of the total budget under RSA 32:10. Such a transfer must be approved in some manner by the governing body. As affirmed in *Sullivan v. Hampton Board of Selectmen*, 153 N.H. 690 (2006), the governing body in a town or district that has adopted the official ballot referendum system (SB 2) may exercise this discretionary transfer authority with respect to an adopted default budget in the same way as it may with respect to an adopted operating budget. See Chapter 8 for more on default budgets.

The voters cannot limit the governing body’s ability to make transfers by action on the floor of the meeting. In *McDonnell v. Derry*, 116 N.H. 3 (1976), the voters attempted, by a general warrant article, to prohibit overspending any line item without permission of the budget committee. The New Hampshire Supreme Court held that this was illegal because it is inconsistent with RSA Chapter 32. Voters may impose an advisory limit on transfers from some particular line item, which, though not enforceable in court, might well be enforceable at the ballot box during the following election.

### A. Special Warrant Articles Nontransferable

An amount appropriated by a special warrant article cannot be transferred and spent for other purposes. RSA 32:10, I(d). A special warrant article is one of the following five categories of individual warrant articles: petitioned appropriations articles; bond or note issuance; articles that appropriate money into or out of special funds such as capital reserve or trust funds; any article designated in the warrant by the select board as special, nonlapsing or nontransferable; or a capital projects appropriation. RSA 32:3, VI.

A warrant article or budget line item cannot be designated “special” or nontransferable from the floor of the meeting. The only way voters can create nontransferable appropriations, contrary to the wishes of the governing body, is to submit a petitioned appropriation warrant article before the meeting and then vote to adopt it at the meeting.

Amounts can be transferred out of the operating budget and into a special warrant article appropriation, but amounts cannot be transferred out of special warrant articles to other purposes. RSA 32:10, I(e)

### B. Maintaining Records of Transfers

Public records must be kept for all transfers of appropriations “such that the budget committee . . . or any citizen . . . may ascertain the purposes of appropriations to which, and from which, amounts have been transferred.” RSA 32:10, I(b). But paragraph I(c) of that same statute makes it clear that the select board can over expend one account without specifically designating the account from which the board transferred the additional funds, as long as:

- the total of the line items overspent does not exceed the total underspent (that is, the bottom line is still binding); and
- the expenditures are properly entered and recorded under the proper account codes, so that any citizen can, at any time, find out which lines are being overspent or underspent and what the money was actually spent on. This requirement applies to whatever detailed chart of accounts is being used. See alternative definition of “purpose” in RSA 32:10, II.

When the governing body makes a transfer, it does not have to vote formally on it. So long as the governing body properly authorizes each expenditure through whatever manifest system the municipality uses, it is not necessary to designate formally which expenditures constitute “transfers” of appropriations. If the authorized expenditure results in overspending some account or line item, it is an implied transfer from other accounts that remain underspent.

If only the bottom line is binding, why are records of transfers necessary? Budgeting is an ongoing process. If, at the end of the year, one account is underspent and another overspent, the budget committee and/or voters can take account of that information in formulating the following year’s budget. If the same amount is being requested in the new budget, the voters and/or budget committee have the right to ask why. Before 1993, this information may not have come to light because there was no legal requirement to “properly classify and enter” every expenditure. Some officials would, for example, record welfare expenditures under highways, because that was the appropriation being spent—that is, money was being transferred from the highway account to be used for welfare, but because of improper recording there was no way to discover this.

In practice, the easiest way to avoid accidentally overspending the bottom line is for the select board to formally vote on all transfers of funds from one purpose to another. While it is also acceptable for the board to authorize each expenditure through whatever manifest system it ordinarily uses, monitoring the budget at least on a monthly basis is recommended. Maintaining proper records is necessary to help ensure there is no over expenditure of the approved budget bottom line, which would be a frank violation of the budget law under RSA 32:8.

### **C. Line Item Voting?**

Voters at the town, village or school district meeting may vote on specific line items in the budget, but these votes are advisory only and do not affect the governing body’s power to make transfers, unless a line item is actually deleted or reduced to zero. RSA 32:10, I(e). So long as even one dollar of an appropriation is approved for a line item, the governing body may transfer unexpended funds from other areas of the budget into that line under RSA 32:10. This provision applies only to line items on the posted budget, not to line items in a more detailed chart of accounts (see alternate definition of “purpose” in RSA 32:10, II). Obviously, if the bottom line is affected, that is binding, not merely advisory, because the governing body may not overspend the bottom line.

If making adjustments to individual line items is only advisory, why do it? Again, budgeting is an ongoing process. It is only by comparison with past appropriations, and expenditures made against them, that the budget can be built and a reasonable bottom line ultimately set.

What if there is a petitioned warrant article not to make a particular expenditure (for example, not to buy a new police cruiser this year)? Is it binding? This is a legal “gray” area, but it would likely be binding. If the voters pass such an article they should also be sure to delete or subtract that amount from the operating budget’s bottom line. Otherwise, there will be two inconsistent votes.

## **D. Failed Separate Article: ‘No Means No’**

RSA 32:10, I(e) was amended in 2004 to specify that if a separate appropriations article—an appropriations article separate from the operating budget article—is rejected by the voters, the purpose in the article is deemed “one for which no appropriation is made.” The effect of this law is that no amount of money may be transferred to, or spent for, the purpose of a separate warrant article (including special warrant articles) that has been defeated or reduced to zero. This is often referred to as the “no means no” provision.

Unfortunately, while the language of this statute may seem rather clear, in practice it has not been that simple. There are many gray areas in which the limits of the governing body’s authority have not yet been made clear. It is not clear, for example, whether or not the purpose of an article proposing a “lease/purchase” of a piece of equipment is considered the same purpose as the purchase of the same piece of equipment. It is also unclear whether the defeat of a separate article to purchase a piece of equipment prevents the already-designated agents of a capital reserve fund from spending money from that fund to purchase the equipment instead. In these difficult situations, it is best to seek advice from the DRA, your municipal attorney and/or the NHMA Legal Services attorneys.

# CHAPTER SEVEN

## THE BUDGET COMMITTEE

### Seventh Key Concept

## I. Composition and Creation of the Official Budget Committee

### A. Official v. Advisory Budget Committee

An official budget committee must be adopted by a vote of the legislative body under RSA 32:14. The law does not require a town or district to have any budget committee. Some towns and districts may choose to have no budget committee; others may choose to have an unofficial, advisory budget or finance committee. RSA 32:24. However, unless an official body committee has been adopted, as described in Section B below, an unofficial committee is purely advisory and has none of the statutory duties or authority of an official budget committee. In towns and districts without an official budget committee, the governing body takes on official responsibilities related to the budget.

This chapter discusses the creation, authority, and responsibility of an official budget committee.

### B. Adoption of an Official Budget Committee

Any town with a town meeting form of government, including those with a budgetary town meeting or official ballot town meeting, and towns with an official ballot town council form of government under which all or part of the annual operating budget is voted upon by official ballot, may establish an official budget committee. RSA 32:14, I(a). An official budget committee is established by a majority vote of the meeting and remains in existence unless and until a future meeting votes to abolish it. RSA 32:14. Voting on the question to establish an official budget committee is done by ballot, but not the official ballot used to elect officers. Polls must remain open and ballots must be accepted by the moderator for a period of not less than one hour following the completion of discussion on the question. The adoption of an official budget committee can be rescinded in the same manner. Once adopted, the official budget committee has all the statutory responsibilities and authority as described in RSA chapter 32.

Cooperative school districts and village districts located in more than one municipality may also establish an official budget committee. RSA 32:14, I(b) and (c); RSA 195:12-a (Cooperative School Districts).

There are some special considerations to keep in mind regarding budget committees and school districts. If a town adopts RSA 32:14 – :24, budget preparation for any school district or village district wholly within that town is governed by the same budget committee that governs the town budget. RSA 32:16, I. Therefore, there is no opportunity for a single-town school district to have its own budget committee unless the town itself does not adopt its budget by means of an annual meeting. Questions may also arise when a cooperative school district has a budget committee, but it was not adopted under RSA 195:12-a. These budget committees can be created by school board policy, in the “articles of agreement” created at



the inception of a cooperative school district, or even informally through “past practice,” (i.e., nothing in writing, but it’s always been done this way). In these situations, confusion may arise regarding the extent of authority and the roles of the budget committee. Ultimately, if the cooperative school district budget committee was not adopted under RSA 195:12-a, then it is not an official budget committee with the powers and duties set forth in Chapter 32, and its role is purely advisory.

## **C. Membership**

### **1. MEMBERS-AT-LARGE**

The composition of the budget committee is determined by town meeting within the limits set by RSA 32:15. A budget committee must include three to twelve members-at-large who are residents of the municipality and who may be elected or appointed by the moderator, as the town meeting decides. The members at large must be domiciled in the town, and any member that ceases to have domicile will immediately lose his or her seat. Members-at-large serve staggered three-year terms. The town meeting may vote at a subsequent meeting to change the number or manner of selection of its members-at-large. One of the members-at-large must be elected by the other committee members as chair, and the committee can elect other officers as it sees fit.

### **2. EX OFFICIO MEMBERS**

The committee must also include one member of the governing body of the municipality, one member of the school board of each school district wholly within the municipality (if any), and one commissioner of each village district wholly within the town (if any). These ex-officio members are appointed by their respective boards to sit on the budget committee and serve terms of one year, along with an alternate ex-officio member to serve in their absence. The ex-officio members are voting members of the committee but may not serve as chair.

Under RSA 195:12-a, a cooperative school district budget committee has the “same number of members as the cooperative school board plus one additional member from the school board as provided in this paragraph.” Furthermore, other than this additional “ex officio” school board member, a cooperative school board member cannot serve as an appointed or elected budget committee member.

### **3. INCOMPATIBILITY WITH OTHER OFFICES**

RSA 32:15, V states that “[n]o selectman, town manager, member of the school board, village district commissioner, full-time employee, or part-time department head of the town, school district or village district or other associated agency shall serve as a member-at-large.”

Therefore, department heads cannot serve as members-at-large on the budget committee, even if they are part-time employees. RSA 32:15, V. “Department head” is not defined in the law and is, therefore, this is a gray area of the law. To avoid problems related to incompatibility, any employee responsible for submitting some portion of a budget should be treated as a department head.

A related issue is that of the ex-officio members voting upon the budget presented by their respective boards. In other words, should the selectperson on the budget committee vote on the budget that the select board has recommended to the budget committee? Yes. The statute clearly contemplates this by requiring an ex-officio member and prohibiting any other member of that board from serving as a member-at-large. The system is set up so that there is a representative from each governing body of all affected political subdivisions, and those ex-officio members are expected to vote.

### **4. FAILURE TO ATTEND MEETINGS**

A member-at-large ceases to hold office immediately upon missing four consecutive scheduled or

announced meetings of which that member received reasonable notice, without being excused by the chair. RSA 32:15, VI.

## 5. VACANCIES

If members of the budget committee members are elected, rather than appointed, the budget committee itself fills vacancies in the membership-at-large seats. If budget committee members are appointed, the chair must immediately notify the moderator, who is responsible for filling the vacancy. If the moderator fails to appoint within five days after being notified of a vacancy, then the remaining budget committee members can fill the vacancy. RSA 32:15, VII. When someone is appointed to fill a vacancy by any of these methods, that person serves until the next annual meeting, at which time a successor shall be elected or appointed to either fill the unexpired term or start a new term, as the case may be.

Vacancies on cooperative school district budget committees are filled by the chairperson of the cooperative school board. RSA 195:12-a, I; RSA 671:33; *Sanborn Regional School District v. Budget Committee of the Sanborn Regional School District*, 150 N.H. 241 (2003).

# II. Role and Authority of the Budget Committee

## A. Basic Purpose

According to RSA 32:1, the purpose of the budget committee is “to assist voters in the prudent appropriation of public funds.” The New Hampshire Supreme Court, in *Hecker v. McKernan*, 105 N.H. 195 (1963), described the purpose of the municipal budget committee:

[T]o provide a committee with special knowledge to oversee and analyze the expenditures of the various town departments and districts. In this manner the electorate, which would ordinarily be without the detailed knowledge necessary to vote intelligently on certain budgetary problems, might be given sufficient information to determine the annual amounts necessary to properly manage town affairs.

Since all departments naturally tend to want more money in order to better perform the functions they are charged with, the budget committee becomes “an arbiter . . . given power by the legislature to reconcile these appropriation requests to maintain the tax load within manageable proportions.” *Baker v. Hudson School Dist.*, 110 N.H. 390 (1970).

## B. Duties and Authority of the Budget Committee

RSA 32:16 enumerates the duties and authority of the municipal budget committee as follows:

- I. To prepare the budget as provided in RSA 32:5, and if authorized under RSA 40:14-b, a default budget under RSA 40:13, IX(b) for submission to each annual or special meeting of the voters of the municipality, and, if the municipality is a town, the budgets of any school district or village district wholly within the town, unless the warrant for such meeting does not propose any appropriation.
- II. To confer with the governing body or bodies and with other officers, department heads and other officials, relative to estimated costs, revenues anticipated, and services performed to the extent deemed necessary by the budget committee. It shall be the duty of all such officers and other

persons to furnish such pertinent information to the budget committee.

III. To conduct the public hearings required under RSA 32:5, I.

IV. To forward copies of the final budgets to the clerk or clerks, as required by RSA 32:5, VI, and, in addition, to deliver 2 copies of such budgets and recommendations upon special warrant articles to the respective governing body or bodies at least 20 days before the date set for the annual or special meeting, to be posted with the warrant.

## C. “The Budget”

Ultimately, the voters adopt the budget. But in towns and districts with an official budget committee, it is the budget committee’s budget that is presented to the voters.

RSA 32:3, III defines “budget” as “a statement of recommended appropriations and anticipated revenues submitted to the legislative body *by the budget committee, or the governing body if there is no budget committee*, as an attachment to, and as part of the warrant for, an annual or special meeting.” The italicized words were added to the law in 2003 to clarify that in budget committee towns and districts it is the budget committee’s recommended budget, not the governing body’s, that is posted with the warrant. RSA 32:5, VII was amended in 2004 to again clarify that it is the budget committee’s budget that is posted with the warrant: “The governing body shall post certified copies of the budget, with the warrant for the meeting. The operating budget warrant article shall contain the amount as recommended by the budget committee if there is one.” However, if the municipality has voted to include the estimated tax impact on the budget and other warrant articles, it is still the responsibility of the governing body (select board, school board, or village district commissioners) to determine whether an article has a tax impact at all, and to approve the calculation of that estimate. RSA 32:5, V-b.

## D. Acquiring Information for Budget Preparation

Preparing a proposed budget can be a lengthy process. Ultimately, the deadlines can all be traced back from the date of the annual meeting, and the milestones that must be reached along the way under the law. It can be helpful for everyone involved in municipal government to understand the schedule so they can appreciate how the information they will provide fits into the overall picture. It is advisable for the budget committee to develop a schedule for budget proposals, discussion, and decision making that leaves sufficient time for the various formal budget hearings that will be required. In addition, it is the best practice to share this schedule with the governing body, town manager/administrator, and department heads very early in the process, and to work together so that the expectations about when information will be provided to the budget committee are realistic for everyone involved.

RSA 32:16, II states that the budget committee must “confer with the governing body or bodies and with other officers, department heads and other officials, relative to estimated costs, revenues anticipated, and services performed to the extent deemed necessary by the budget committee.”

Therefore, in budget committee towns and districts, all officers and departments are required to submit statements of estimated expenses and receipts to the governing body first. The governing body then submits its own recommendations to the budget committee, together with all information necessary for the preparation of the annual budget, including each purpose for which an appropriation is sought and each item of anticipated revenue. RSA 32:17. The scheduling of the committee’s functions is under the budget committee’s control.

The budget committee also has the authority to request statements directly from department heads and other officers. RSA 32:17. Consistent with that, RSA 32:16, II states that it is “the duty of all such officers

and other persons to furnish such pertinent information to the budget committee.” However, while it may be helpful to the budget committee to discuss proposed budgets with the governing body, town administrators/managers and department heads, the budget committee does not have the authority to require any of those officials or employees to attend budget committee meetings. Effective September 21, 2021, RSA 32:17 has been amended to provide that when providing a comparative statement of all proposed appropriations and expenditures, that information must include all sub-accounts used by the governing body. Furthermore, those amendments require that the information provided to the budget committee is to be in a form acceptable to the budget committee, provided, however, this requirement may be satisfied by the municipality by providing a knowledgeable staff person who will attend the budget committee meetings with access to and ability to provide the required information.

Where there is a town manager (in towns adopting RSA chapter 37), all officer and department budgets are submitted to the manager. The manager prepares a recommendation to the select board by January 31 of each year. RSA 37:6, V.

Obviously, when putting together the budget, the budget committee will need to obtain certain information from the municipality. While requested information should be provided, the committee must remember that it has no authority to direct municipal staff work duties. Requests should provide a reasonable time frame and a reasonable format for producing the documentation. A careful balance must be attempted between acquiring information necessary for budget preparation and not interfering with the duties of other employees or officials. ***Finally, keep in mind that one budget committee member has no authority to act alone, and so one committee member cannot demand information if the committee has not decided by committee vote to request that information.***

After conferring with all officers and department heads, the budget committee prepares the budget and is responsible for holding the required public hearings, subject to the statutory notice and deadline requirements. See RSA 32:5; RSA 195:12. See Chapter 1 for the budget hearing requirements.

Twenty days prior to the meeting, the budget committee must forward the final budget to the governing body (select board, school board, or village district commissioners). RSA 32:16.

## E. The Default Budget

In SB 2 municipalities, the governing body determines the default budget, unless the voters have delegated that responsibility to the budget committee. RSA 40:14-b. This delegation 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 can occur at any time under an article in the warrant. For more on the default budget, See Chapter 8.

## F. Reviewing (Not Controlling) Expenditures

An official budget committee has the authority to review expenditures for the purpose of budgeting. RSA 32:22 provides as follows:

Upon request by the budget committee, the governing body of the town or district, or the town manager or other administrative official, shall forthwith submit to the budget committee a comparative statement of all appropriations and all expenditures, including all subaccounts used by the governing body, by them made in such additional detail as the budget committee may require. The budget committee shall meet periodically to review such statements.

This statute requires governing bodies and managers to provide any information the budget committee wants “in such additional detail as the budget committee may require.” The budget committee’s purpose

for reviewing expenditures is to determine whether the budget is meeting the needs of the town or school district, and to assist the budget committee in putting together a budget. In other words, reviewing current and past expenditures assists the budget committee in preparing future budgets. Use of the word “periodically” in RSA 32:22 also indicates that the budget committee can (and should) review expenditures throughout the year, not just during the so-called “budget season.”

However, RSA 32:22 is also very clear that the authority to review expenditures in no way creates the authority to control expenditures:

The provisions of this section shall not be construed to mean that the budget committee, or any member of the committee, shall have any authority to dispute or challenge the discretion of other officials over current town or district expenditures, except as provided in RSA 32:23.

Instead, under RSA 32:23, the only way a budget committee can dispute an expenditure is through a formal petition to the superior court:

Upon receipt of the reports provided for by RSA 32:22, the budget committee shall examine the same promptly, and if it shall be found that the governing body or town manager have failed to comply with the provisions of this chapter concerning expenditures, a majority of the committee, at the expense of the municipality, may petition the superior court for removal as provided in RSA 32:12.

This would include overspending the bottom line or failure to properly enter and classify expenditures. It would not include, as stated in RSA 32:22, an ability to dispute the governing body’s proper exercise of discretion in making expenditures or transfers within the budget.

## **G. Special Article Recommendations**

The budget committee’s recommendations should not only be shown on the budget form, but also on the warrant itself in the case of special articles, along with those of the governing body. If town meeting has voted previously under RSA 32:5, V-a or RSA 40:13, V-a to require recommendations by numeric tally on all warrant articles containing appropriations (and, in the case of RSA 40:13, V-a, ballot questions), the budget committee’s and governing body’s recommendations should appear on the warrant/ballot for all such articles. RSA 32:5, however, provides that the failure to do this will not invalidate an appropriation otherwise lawfully made. RSA 32:5, V-a and RSA 40:13, V-a also permit the governing body in a town to vote to include the numerical tally on these articles when the town meeting has not voted to do so. RSA 32:5, V-a and RSA 40:13, V-a also permit the governing body in a town to vote to include the numerical tally on these articles when the town meeting has not voted to do so, or an official budget committee may, on its own initiative, require that the tallies of its votes be printed next to the affected article. Copies of each proposed budget must be submitted directly from the budget committee to DRA. RSA 32:5, VI.

## **H. Failure of Budget Committee to Propose a Budget**

In the rare instance in which a budget committee fails to prepare a budget to recommend to the town or district meeting, RSA 32:5, VI provides that the governing body shall post its proposed budget, along with a statement that it is being posted in lieu of the budget committee’s proposed budget. The governing body’s proposed budget then becomes the basis for town meeting debate and action.

# I. Limit on Appropriations

## 1. 10 PERCENT LIMITATION

In budget committee towns and districts (meaning those with an official budget committee adopted according to RSA 32:14), the total amount appropriated by the meeting, including amounts appropriated in separate and special warrant articles, cannot exceed the total recommended by the budget committee by more than 10 percent. RSA 32:18. The 10 percent calculation is computed on the total amount recommended by the budget committee (including separate warrant articles), less that part of any appropriation item which constitutes “fixed charges.” Fixed charges include appropriations for principal and interest payments on bonds and notes, as well as mandatory assessments imposed on towns by the county, state or federal governments.

In official ballot referendum (SB 2) towns and districts, the 10 percent limitation is calculated based on the initial recommendations of the budget committee prior to the first session. In the event a special warrant article is amended by the first session, and the budget committee changes its recommendation on that article after the first session, the 10 percent limitation is still calculated based on the budget committee’s original recommendation before the first session. RSA 32:5, V(b). This concept is discussed further in Chapter 8.

In a town with a tax or spending cap, the 10 percent rule still applies regardless of how the cap affects the proposed budget. In other words, the legislative body may only appropriate up to 10 percent more than the total amount recommended by the budget committee. The concept of tax and spending caps is discussed further in Chapter 1.

Can the budget committee, using the 10 percent rule, reduce its true recommended budget by 10 percent below the amount it really feels should be appropriated to prevent the voters from having any leeway? No. That is what the budget committee in Hudson tried to do. The New Hampshire Supreme Court, in *Baker v. Hudson School District*, 110 N.H. 389 (1970), held the practice illegal, saying that “the voters [must] be left with some options which the budget committee may not undermine through a subterfuge.”

However, in a 2015 superior court case, the judge determined that a budget committee’s cut of approximately \$650,000 from the school district’s recommended budget did not violate the principle set forth in the *Baker* case above. *Brentwood School District v. Budget Committee of the Town of Brentwood*, No. 218-2015-CV-150 (Rockingham Superior Court March 5, 2015). The budget committee was somewhat vague about where in the budget the particular cuts were coming from, and the ultimate result was that the voters could not amend the budget to reflect the school district’s originally proposed budget. The judge looked at the budget committee’s intent and determined there was no evidence that the committee dishonestly proposed a budget that it knew to be unworkable or that it intentionally “neutered” the voters’ amendment capability in light of the 10 percent rule.

The 10 percent limitation affects the budget’s bottom line only, not individual line items. Because of this rule, the budget committee can prevent larger projects simply by not recommending them. The rule gives the budget committee a significant role in the budget process. In a sense, the town meeting, by opting to have a budget committee, has given up some of its legislative authority. If the voters want that power back, they can repeal RSA 32:14 – :24.

## 2. OVERRIDE OF 10 PERCENT LIMITATION

RSA 32:18-a establishes a procedure for a budget committee town or district to vote to override the 10 percent rule on specific bond issue questions. If a warrant article for a bond

is not recommended in its entirety by the budget committee, the governing body may vote to place the article on the warrant with the phrase “passage of this article shall override the 10 percent limitation imposed on this appropriation due to the non-recommendation of the budget committee.” The bond article still must pass by the statutorily required three-fifths (3/5) majority vote.

### **3. EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS**

Under RSA 32:19, amounts that are included in a budget for the purpose of funding the cost items of collective bargaining agreements are exempt from the 10 percent rule. Budget committees are free to not recommend these items, but that non-recommendation does not cause the warrant article automatically to fail. If such appropriations are not recommended by the budget committee, then such appropriations shall be exempt from the 10 percent limitation set forth in RSA 32:18, thus, the budget committee has no veto over these items. The statute provides that the budget committee’s failure to recommend the negotiated cost items is not considered an unfair labor practice.

### **4. EXCEEDING THE 10 PERCENT LIMIT**

If the total appropriations at a given meeting do, in fact, exceed the recommended budget plus 10 percent, which items are invalid? The statute is silent on this question, but it is the practice of DRA to treat the meeting chronologically, in the order the votes are declared passed by the moderator. The first appropriations that take the total over the 10 percent limit are invalid, as well as any subsequent votes increasing total appropriations. This is a bit more complex in SB 2 towns and districts, but DRA’s practice has been to follow the chronological order of the second session ballot voting and invalidate those votes that exceed the 10 percent limitation.

Clearly, exceeding the limit should be avoided, because when it happens, the voters believe they have made a valid appropriation that is later disallowed by DRA. The best practice is for the moderator to have a clear awareness of the problem. Before the meeting, someone should calculate the 10 percent limit using DRA’s form (available on the DRA website). The moderator should make sure someone keeps a running total during the meeting, so that the voters can be informed before a vote is taken that it will violate the limit. Since any vote can be reconsidered under a proper motion, the voters may then want to reconsider previous appropriations.

In SB 2 towns and districts, it is particularly important for the moderator to encourage the first session to consider the 10 percent limitation. Suppose, for example, neither Articles 10 nor 11 were recommended by the budget committee. Neither one alone violates the limit but passing both of them would violate the limit. The moderator should strongly encourage amendment of at least one of those articles at the first session by adding the words, “This vote to take effect only if Article [x] is defeated.”

### **5. THE 10 PERCENT RULE AND SPECIAL MEETINGS**

The rule applies independently to each meeting, not to the yearly total appropriations. No appropriation shall be made at any special meeting for any purpose not approved by the budget committee unless it is within the 10 percent limitation, or, unless the special meeting involves a proposed bond issue and the governing body votes to include the language in the warrant article that allows the voters to override the 10 percent rule in accordance with RSA 32:18-a, or where the special meeting involves a warrant article proposing the approval of the cost items of a collective bargaining agreement.

### **6. PETITIONED ARTICLES**

If the budget committee does not recommend a petitioned appropriation article, can the voters pass it anyway? Yes, if the amount appropriated is within the 10 percent rule. *Pittsfield Board of Selectmen v. School Board*, 113 N.H. 598 (1973).

## J. The Right-to-Know Law

Budget committees—whether official or advisory—are public bodies under The Right-to-Know Law. Therefore, all budget committee discussions, actions, and records are subject to the Right-to-Know Law, RSA Chapter 91-A. *See, Herron v. Northwood*, 111 N.H. 324 (1971). Any subcommittees or advisory committees they may create are also “public bodies” within the meaning of RSA 91-A:1-a, VI. This means meetings of the budget committee, whether official committees under RSA chapter 32 or unofficial advisory/finance committees, must have noticed meetings open to the public, and all minutes and other materials must be open to the public as governmental records.

This is an extremely brief explanation of a public body’s obligations under The Right-to-Know Law. For more information, see NHMA’s publication, *New Hampshire’s Right-to-Know Law*.



# CHAPTER EIGHT

## APPROPRIATIONS UNDER THE OFFICIAL BALLOT REFERENDUM (SB2) SYSTEM

### A. ‘Standardized’ Referendum System Versus ‘Customized’ Charter

In 1995, the legislature enacted two bills to allow towns and districts that appropriate their budgets through an annual meeting of voters to act on any or all warrant articles by means of the official ballot system. Without adopting one of these options, the use of the official ballot for warrant article voting is restricted as set forth in RSA 39:3-d. The “standardized” official ballot referendum option (referred to as SB 2) is discussed below.

However, the other official ballot referendum bill (HB 141 of 1995) added two options to the types of town government that can be adopted via the charter process as set forth in RSA Chapter 49-B, namely the budgetary official ballot town meeting form of government (RSA 49- D:3, II-a) and the budgetary official ballot town council form (RSA 49-D:3, I-a). Under these charter options, the details of such a charter—that is, how the official ballot would be used—is left to the discretion of each town or district as exercised through the charter adoption process in RSA 49-B. As discussed in Chapter 1, Section I, a town with a town council form of government also may amend its charter to include a limit on annual increases in the amount raised by taxes in the town budget. The limit must include a provision allowing for override of the cap by a supermajority vote as established in the charter. RSA 49-D:3, I(e). Amendments effective August 20, 2021 provide that city and town charter exclusions, ordinances and accounting practices that have the effect of an override of a tax cap require a supermajority vote of the legislative body. The charter cannot, however, alter the basic official ballot procedures, such as voting booth specifications, absentee voting, etc.

### B. Description of the SB 2 System

Under the “standardized” official ballot referendum form of government (RSA 40:13), any town or district can adopt a system in which all matters coming before the legislative body are given their final vote by means of the official ballot. The method of enactment is contained in RSA 40:14. A vote to adopt requires a three-fifths majority.

If SB 2 is adopted, the annual meeting consists of two sessions. The first session is held “between the first and second Saturdays following the last Monday in January, inclusive of those Saturdays,” unless the meeting adopts the April or May meeting option. The first session, commonly referred to as the deliberative session, is conducted just as the business portion of a traditional town meeting described in Chapter 6, complete with the authority to discuss and amend any warrant article (except those required to go on the official ballot). However, the major difference is that the voters do not take final action on the warrant articles at this session. Instead, at the second session, voters vote on everything on the official ballot: all articles in the final form (as amended at the first session, if applicable), plus the election of officers, and all other questions. The second session takes place the second Tuesday in March (or second Tuesday in April or May, for those towns choosing those options) and is run just like any other election

by official ballot, with no further opportunity for discussion or amendment. There are other special timing provisions for the submission of petitioned warrant articles, budget hearings, etc. RSA 40:13, II-a, II-b and II-c. The ballot question for rescinding the official ballot referendum system and returning to the traditional town meeting shall be: “Shall we rescind the provisions of RSA 40:13 (known as SB 2), as adopted by [the local political subdivision] on [date of adoption] so that the official ballot will no longer be used for voting on all questions, but only for the election of officers and certain other questions for which the official ballot is required by state law?” Rescission requires a three-fifths vote.

In addition to the two separate sessions, there are several major differences between SB 2 and traditional towns and districts, as described further in this chapter.

## **C. Different Deadlines**

In official ballot referendum jurisdictions, the following dates and other features differ from those that apply under the traditional town meeting system. RSA 40:13.

The time for the first budget hearing, rather than being “not later than 25 days before the meeting,” is “on or before the third Tuesday in January” for a March SB 2 meeting. Towns or districts may adopt the second Tuesday in April or in May as the second session voting date. The current March date remains in effect if no action is taken to alter it. If one of the alternative dates is chosen, then all of the “January” dates in the schedule below are changed to either February (if the April balloting is chosen) or March (if the May balloting is chosen). See RSA 40:13, II-b and II-c for exact details. The law also allows towns that have not adopted SB 2 to coordinate their elections with a school district that has adopted an April or May official ballot voting date.

Notice of the budget hearing must be posted by the second Tuesday in January for a March meeting (February for an April meeting and March for a May meeting).

The first session meeting date is between the first and second Saturdays following the last Monday in January, February or March inclusive of those Saturdays, depending on which town meeting option has been chosen—March, April or May. RSA 40:13, III.

The final date for petitioned warrant articles is the second Tuesday in January (February or March, depending on which meeting option has been chosen) provided however, that if a petitioned article proposes a bond governed by RSA 33:8-a, the deadline is the previous Friday. At least one budget hearing must be held after that date. The “drop dead date” for collective bargaining agreements—the date by which agreement must be reached on cost items—is also the second Tuesday in January (February or March). The last day for the budget committee, if one exists, to deliver copies of the final budget and recommendations to the governing body is the Thursday before the last Monday in January (February for an April meeting and March for a May meeting).

The budget and warrant, including the default budget form, must be posted on or before the last Monday in January (February or March). For special meetings, the warrant should be posted 14 days before the first session, and the second session must be held between 28 and 60 days after the first session. The public hearing on bond issues must be held on or before the third Tuesday in January (February or March).

## **D. Default Budget**

Probably the biggest budgeting difference between SB 2 and traditional towns and districts is the default budget. The default budget is necessary in the event that the voters reject the proposed operating budget at the second (ballot) session.

## 1. OPERATING BUDGET

To understand what the default budget is, you must first know the definition of “operating budget.” The operating budget is the total appropriations, excluding separate and special warrant articles. RSA 40:13, IX(a). As described below, this means that separate and special warrant article appropriations will not be included in the default budget unless they constitute “debt service, contracts or other obligations previously incurred or mandated by law.” The governing body and budget committee in an SB 2 municipality may want to consider this when deciding whether or not to draft separate warrant articles for proposed appropriations, because the following year’s default budget will be affected by the choice.

## 2. DEFAULT BUDGET

If the operating budget is rejected by ballot, a “default budget” based on the prior year’s operating budget takes effect, unless the select board or school board, at their discretion, calls one special meeting, without the need for court permission, to have one more try at adopting a revised operating budget different from the prior year’s. RSA 40:13, X.

### a. Determination of the Default Budget

Determination of the default budget, including one-time expenditures, capital projects appropriations, and water/sewer default amounts, rests with the governing body and cannot be altered by the meeting. However, 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?”

### b. Definition of “Default Budget”

The “default budget” is defined as “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 by reduced 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). It goes on to define “one-time expenditures” as “appropriations not likely to recur in the succeeding budget, as determined by the governing body.”

### c. Calculation of the Default Budget

Essentially, the default budget freezes the budget at the previous year’s level except for amounts which the town is legally obligated to pay or which were one-time expenses.

Several amendments to RSA 40:13 were adopted in 2018 that expound upon the definition of and requirements for calculating the “default budget.” 2018 NH Laws Chapter 313 and 2018 NH Laws Chapter 241.

Chapter 313 adds language to the existing definition in RSA 40:13, IX(b). Now, not only must last year’s budget be reduced by one-time expenditures, it must also be reduced “by salaries and benefits of positions that have been eliminated in the proposed budget.” The amendment further clarifies that “eliminated positions shall not include vacant positions under recruitment or positions redefined in the proposed operating budget.”

As a final change to that subparagraph, Chapter 313 settles the question whether the default budget may be higher than the proposed operating budget:

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.

Chapter 241 also added new subparagraph (c) to RSA 40:13, IX to define the term “contracts” found in the definition. The term “contracts” means “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.”

In fact, while these amendments were pending in the legislature, a judge in the 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)]. Chapter 241 confirms that ruling by requiring that the amount of money in a contract must be previously approved by the voters through the annual meeting budget process to be included in the default budget.

This means that employee raises should not be included unless they are required by a legally binding and previously ratified contract obligating the municipality to fill particular positions or employ particular people at certain wages. In addition, 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. 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. For 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).

If an SB 2 town maintains separate funds for revenues and expenditures related to the operation, maintenance and improvement of a water and/or sewer system (a water fund under RSA 38:29 and/or sewer fund under RSA 149-I:10), and if any appropriation to go into that fund is proposed to be raised through user fees or charges which are included as a separate warrant article from the operating budget, the warrant article may include its own default amount. The default amount is determined by the governing body. The article must state what the default amount is, and that if the article fails, the default amount will be deemed to have been appropriated. RSA 40:13, XI-a.

In addition, 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. In other words, once town 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 or not the proposed operating budget is passed.

**d. Transfer Authority & Default Budget**

This, however, does not mean the governing body cannot *pay* the increased expenses. As clarified by the New Hampshire Supreme Court, the governing body may exercise the same discretionary transfer authority under RSA 32:10, I with respect to a default budget as it may exercise with respect to an ordinary operating budget. *Sullivan v. Hampton Board of Selectmen*, 153 N.H. 690 (2006). The Court noted that RSA 40:13, IX(b) defines the default budget simply as an amount and prescribes how to calculate that amount. The Court also noted that the default budget appears in a warrant article only as a dollar amount and, as such, creates a bottom-line figure within which the governing body board must stay. The failure to pass the operating budget is a sufficient change in circumstances within the requirements of RSA 32:10, I to justify the governing body's use of the transfer authority. The Court reasoned that “[h]olding otherwise would force the selectmen to sit idly by awaiting the onset of a foreseeable budget crisis instead of acting to prevent it.” *Id.* at 694. Transferring amounts among budget categories will not trigger the procedural requirements that apply to the consideration of a revised operating budget, even if there are many transfers, so long as the governing body does not overspend the bottom line of the default budget. *Id.* at 695.

**e. Public Disclosure and Notice**

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. A separate default amount following the definition described above is set by the governing body and included in the warrant article for water and/or sewer funds.

The 2018 amendments also amplified the notice requirements for the default budget. Adding onto the long-standing requirement that the default budget be disclosed at the first budget hearing, RSA 40:13, XI(a), as amended, further explains the default budget must be “presented for questions and discussion” at that hearing, although many towns and districts already do this. The form used for presenting the default budget must now include the “specific items that constitute a change by account code, and the reasons for each change,” as well as “reductions for eliminated positions and benefits.” Towns and districts will be required to make the “line item details” for these changes available for inspection by the voters.

Finally, Chapter 241 has clarified the default budget's role at the deliberative session. RSA 40:13, IV expressly permits voters to discuss and debate the default budget, along with other articles on the warrant. That being said, RSA 40:13, XI(b) still prohibits the voters from *amending* the default budget at the deliberative session.

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).

Please also refer to NHMA's Default Budget FAQ, Appendix H.

## E. Recommendations/Altering Recommendations

The recommendations of the governing body and the budget committee on special warrant articles containing appropriations must appear both on the warrant and on the official ballot. RSA 40:13, VI. If town meeting has adopted the provisions of RSA 40:13, V-a, the recommendations of the governing body and budget committee must be recorded and must be included on the warrant with the numeric tally of the vote. Alternatively, if town meeting has not yet taken such a vote, the governing body or the budget committee may take a vote to include the numeric tally of the vote.

In addition, the governing body and the budget committee (if any) in official ballot referendum towns and districts can change these recommendations if the first session has amended an amount contained in a special warrant article. RSA 32:5, V provides that the governing body and budget committee “may revise its recommendation on the amended version of the special warrant article and the revised recommendations shall appear on the ballot for the second session of the meeting provided, however, that the 10 percent limitation on expenditures [in budget committee towns and districts] shall be calculated upon the initial recommendations of the budget committee.” RSA 32:5, V(b).

## F. Voting Issues

### 1. VOTERS ABILITY TO AMEND WARRANT ARTICLES AT FIRST SESSION

The first session has the same ability to amend warrant articles as that of a traditional meeting. Nothing in the law prevents an article from being moved or amended on the floor of the first session, such as amending the amount of a bond issue down to \$1. The role of the first session, in addition to information and debate, is to decide the final form of ballot questions. The only types of articles that cannot be amended are those whose wording is prescribed by law, such as zoning amendments. RSA 40:13, IV. Of course, no amendments can be made at the second session (official ballot voting).

The primary restriction on warrant article amendments is that the subject matter cannot be effectively eliminated, which started with the case of *Grant v. Barrington*, 156 N.H. 807 (2008). In that case, the New Hampshire Supreme Court said that amending an article to delete all words after “To see” was legal. As a result of that case, the legislature amended RSA 40:13 to prohibit this practice, often referred to as “to-seeing.” RSA 40:13, IV(c) reads, “No warrant article shall be amended to eliminate the subject matter of the article. An amendment that changes the dollar amount of an appropriation in a warrant article shall not be deemed to violate this subparagraph.” In other words, an article may still be amended to change the dollar amount, including reducing it all the way to zero, but it may not be amended by deleting everything after the words “To see.”

A recent 2017 case clarified that SB 2 voters have great latitude in amending articles. The case involved two petitioned warrant articles that proposed making the positions of welfare director and police chief elected offices with stipulated annual salaries. By amendment at the deliberative session, both articles were revised to state that the town meeting would express the advisory view that both the police chief and welfare director should remain appointed positions with nothing stated about annual salaries.

The Court held that the statute was intended to prohibit warrant articles from being amended in a manner that eliminates their subject matter entirely, thereby making it impossible for voters at the second session to determine what the article is about. Although these amendments substantially changed the original articles, the subject matter—the welfare director and police chief positions—remained the same. The Court also rejected the petitioner’s argument that voters

are prohibited from changing the intent of an article, noting that this would require the Court to read the word “intent” into the statute.

If the deliberative session amends anything, the amended version of the warrant must be included in the annual report. RSA 40:13, II; see *Spaulding v. Newport School District*, No. 220-2013-CV-33 (Sullivan County Superior Court April 8, 2013). Additionally, if the operating budget warrant article is amended by the deliberative session, the governing body and the budget committee, if one exists, may each vote on whether to recommend the amended article, in which case the revised recommendation(s) will appear on the official ballot.

However, there is some new flexibility in what must go on the ballot. If an article proposes the adoption or amendment of an ordinance, a neutrally-worded topical description of the substance of the ordinance or amendment may be placed on the ballot instead of the full text. RSA 40:13, VI. (Zoning articles must still follow the requirements of RSA 675:3.) If the topical description is used, an official copy of the proposed ordinance or amendment, including any amendment to the proposal adopted by the first (deliberative) session, shall be placed on file and made available to the public at the clerk’s office at least one week before the second (voting) session of the meeting. In addition, an official copy must be displayed for the voters to read at the polling place the day of the second session. RSA 40:13, VII-a. Language to be used on the ballot if this option is chosen is set forth in RSA 40:13, VIII-a.

## **2. RESTRICTING RECONSIDERATION**

Votes to reconsider a previous vote of the meeting or to restrict reconsideration may only occur at the first (deliberative) session when articles are discussed, debated, and possibly amended. RSA 40:13, IV provides that a vote to restrict reconsideration prohibits any further action upon that article until the second session, when voters either approve or reject the article in whatever form it was at the time of the vote to restrict reconsideration. In an SB2 deliberative session, an affirmative vote to restrict reconsideration prohibits any further action on the restricted article until the second session, when the article is voted on by ballot in its final form. Therefore, SB 2 municipalities do not follow the procedure for taking up the reconsideration at a meeting seven days later as provided in RSA 40:10, II, like in traditional towns and districts. In other words, a vote to restrict reconsideration in an SB 2 municipality means discussion, deliberation, and amendments to that article has ended.

## **3. SECRET BALLOT**

Voters who are present at the first session can ask for a secret “yes/no” ballot on a proposed amendment or motion differing from the printed article being voted on at the first session. RSA 40:4-a and RSA 40:4-b. However, the secret “yes/no” ballot under RSA 40:4-a and :4-b does not include any opportunities for absentee voting.

## **4. CONDITIONAL MOTIONS**

Since ballot voting on all questions happens simultaneously, there is no way to know the result of an earlier question before voting on a later one when the outcome of one article hinges on the outcome of another article. However, there is no legal reason why a motion could not be made conditional. Suppose that Article 3 is a bond issue for a school addition and Article 7 calls for a lease of extra classroom space, a question everyone knows is moot if Article 3 is approved. It makes sense to word the ballot question under Article 7 as follows: “In the event that Article 3 is defeated, shall the district raise and appropriate the sum of \$\_\_ for the lease of extra classroom space?” This can also help to prevent the meeting from exceeding the 10 percent limitation in budget committee towns.

## 5. RECOUNT

A recount can be requested on any question on the official ballot. RSA 40:4-c allows a recount to be requested within seven days on any official ballot question, if a \$10 fee is paid. That statute is specifically referenced in RSA 40:13, XIV.

## 6. MAJORITY NEEDED FOR BONDS

There is no longer a distinction between towns operating under the SB 2 form of town meeting versus the traditional form of town meeting when determining the majority necessary to approve a bond or note. RSA 33:8 now provides that the issue of bonds or notes by *any* municipal corporation, except a city or a town which has adopted a charter pursuant to RSA 49-B, without a budgetary town meeting, shall be authorized by a vote by ballot of 3/5. The issue of notes or bonds by a municipality that has adopted an optional form of legislative body under RSA 49-D:3, I-a or RSA 49-D:3, II-a shall be authorized by either a 2/3 or 3/5 vote as provided for in the charter. If such charter does not specify which majority vote is required, then the required majority vote shall be 3/5.

RSA 32:8 clarifies that only the votes in the affirmative or negative are to be counted when calculating whether a three-fifths majority has been achieved. In other words, only votes actually cast are counted, not ballots where that question is left blank.

## G. Special Meetings

Special town and district meetings also require two sessions under the official ballot referendum system, one for discussion and amendment, and a second one for official balloting. RSA 40:13, XVI. The only exception applies to special meetings at which the only questions to be acted upon are the adoption, amendment or repeal of a zoning ordinance, historic district ordinance or building code. In those cases (where no appropriations would be involved), there is no deliberative session. RSA 40:13, XVII.



# CHAPTER NINE

## BASIC TOWN, VILLAGE DISTRICT, & SCHOOL DISTRICT MEETING PROCEDURES

The following points are excerpts from NHMA's *Town Meeting and School Meeting Handbook*, to which you are referred for more information. All of these points also apply to the first session of an official ballot referendum meeting, except, of course, for the final vote on each article.

### A. Rules of Procedure

New Hampshire law vests the moderator with authority to set rules of procedure for the town or district meeting, so long as those rules do not violate state law, and also enables the meeting to overrule the moderator's rulings. RSA 40:4. The New Hampshire Supreme Court has ruled that a town meeting is not a continuing body, and one meeting may not adopt standing rules or bylaws to govern the proceedings of subsequent meetings. Each meeting is independent and entitled to the privilege of adopting its own rules. *Exeter v. Kenick*, 104 N.H. 168 (1962).

From a practical viewpoint, a set of rules adopted by the voters is only advisory, even at that same meeting, because rulings made by the moderator—even if clearly contrary to the adopted rules—will stand, unless successfully challenged by the voters at that meeting. When viewed in this perspective, there is no strong legal impetus for adopting a set of rules at the beginning of a meeting. Instead, the justification for doing so is to preserve the feeling and appearance of fairness by giving fair warning of how the moderator intends to govern the meeting in the absence of any challenges.

#### 1. OVERRULING THE MODERATOR

Occasionally, a moderator will make a ruling that is clearly erroneous or otherwise meets with general disfavor by the town meeting. If this happens, any qualified voter may appeal to the meeting to overrule the moderator's ruling. The voter is not required to give any reason for the request to overrule but should be given an opportunity to do so. The moderator is then legally obliged to poll the house to see whether or not the moderator is sustained. RSA 40:4. As with most other votes, a simple majority controls.

#### 2. MODERATOR MUST FOLLOW RULINGS OF THE MEETING

Any moderator who willfully neglects or refuses to follow any rule or proceeding established by the vote of the town, including any vote to overrule the moderator, is guilty of a misdemeanor. RSA 40:6. We are not aware of any moderator actually becoming subject to this penalty, but in light of *Exeter v. Kenick*, discussed above, such a penalty would be applicable only if the voters had actually made a particular procedural vote or demanded a secret ballot or recount, and the moderator had blatantly ignored it. A court probably would not listen to a complaint from a voter who had not bothered to challenge the procedure at the meeting, or from one whose motion to overrule the moderator did not pass.

## B. Wording of Articles, Motions and Amendments

Select boards and voters often ask about the “correct” way to word a warrant article, motion or amendment. Usually there are no magic legal words, with some notable exceptions, such as a motion to discontinue a highway “subject to gates and bars.” Votes on appropriations must comply with the Municipal Budget Law. As a general rule, the “right” way to word a proposed warrant article, motion, or amendment is any way that clearly expresses the intent of the voters, is understood by those present, and will be understood by those not present. Simplicity is usually best. Courts usually interpret town meeting votes so that technical errors do not defeat the obvious wishes of the voters.

Even where the wording of a question is prescribed by statute, this wording is not mandatory. RSA 31:130 says that the prescribed wording of enabling statutes is “advisory only” and that the vote will not be declared invalid if slightly different wording is used, “so long as the action taken is within the scope of, and consistent with the intent of, the enabling statute or statutes.”

Moderators have no inherent power to reword motions or amendments, but most moderators, in the interest of fairness, make some effort before a vote is taken to ascertain whether the intent and effect of a proposed vote is well understood. If there are doubts, a moderator may even make friendly suggestions for wording if this can be done in an impartial way. The moderator may also consult with the town’s attorney, if present, to resolve doubts about the legal effect of the proposed action.

In *Lamb v. Danville School Board*, 102 N.H. 569 (1960), a warrant article had called for the appropriation of \$98,000 for a new school, to be raised through bonds or notes. A motion was made to raise and appropriate \$60,000 for the school. It lost. A second motion was to raise and appropriate \$98,000 for the school. That lost also. A third motion sought to raise and appropriate \$95,000 for the school and to raise it through bonds or notes. That vote passed. The plaintiff argued in court that this vote was invalid because it was inconsistent with the earlier votes, and there was never a motion to reconsider. The Court disagreed, quoting from U.S. Supreme Court Justice Oliver Wendell Holmes: “The machinery of government would not work if it were not allowed a little play in the joints ... The failure to observe the niceties of parliamentary procedure involving no violation of statutes does not void the district action.”

### 1. MANDATORY VERSUS ADVISORY

A persistent source of confusion is whether a vote is intended by the voters to be mandatory or merely advisory. It is best to clarify that intention in the wording of the vote itself. Otherwise, a court may later have to delve into the voters’ intent. In *McMahon v. Salem*, 104 N.H. 219 (1962), a vote to “authorize” the town manager to appoint a recreation commission was construed as a mandate. The Court held that the manager must appoint, observing: “To hold otherwise would attribute to the voters greater indecision than is commonly encountered at town meetings.” On the other hand, in *Stamper v. Selectmen of Hanover*, 118 N.H. 241 (1978), a vote stating the “sense of the meeting” that hawkers and peddlers are a benefit to the town was held not to deprive the select board of the authority to prohibit hawkers and peddlers on some of the town’s streets in accordance with RSA 41:11.

### 2. WHAT TYPES OF MOTIONS OR AMENDMENTS ARE LEGALLY VALID?

The legality of motions and amendments is controlled by the requirement in RSA 39:2 that “the subject matter of all business to be acted upon at the town meeting shall be distinctly stated in the warrant.” This means that any motion or amendment that raises subject matter not contained in the warrant does not have any legal validity. Of course, a motion to name someone Volunteer of the Year or to thank the Scouts for providing cookies is not intended to have any legal validity. It is not illegal to make these kinds of motions at the meeting and to vote on them but votes that the voters intend to have a legal and binding effect must comply with the subject matter requirement in RSA 39:2.

### 3. NO NEED FOR MOTION TO TRACK ARTICLE

There is no legal requirement for the main motion made under a warrant article to reflect the exact wording of the article as printed in the warrant. The only legal requirement is that the subject matter of the motion has been stated in the warrant, such as where new information has made the original wording outdated. However, if the article is moved with significant changes to the article as printed in the warrant, the better practice is to first move the article as printed in the warrant; thereafter, a proposed amendment can be made. The Department of Revenue Administration has indicated that where an article as printed in the warrant differs significantly from the article as adopted by the meeting, with no indication in the town meeting minutes the article was amended by way of a motion to amend approved by the meeting, DRA might disallow that article. Although this would apply to only those articles containing appropriations, it is better to have a consistent practice for all warrant articles.

### 4. ADDING OR ALTERING DETAILS BY AMENDMENT

It has long been held that so long as a motion or amendment deals with the same subject matter as appears in the warrant, the action to be taken with respect to that subject matter may vary considerably from what is in the warrant. *Pittsburg v. Danforth*, 56 N.H. 272 (1875). For example, in *Sawyer v. Railroad*, 62 N.H. 135 (1882), the warrant article had called for the town to make a payment if a particular railroad were built by January 1878. The vote taken omitted the condition of the completion date. The Court said the vote was nevertheless valid and that alternative and additional conditions could have been added as well. In other words, an amendment may legally change the intent and impact of a warrant article but may not change the subject matter. There are, however, two exceptions to this general rule. When the language of an article is prescribed by statute, amendments that alter the original intent may not be legal if they stray too far from the original intent. In addition, as explained more fully in Chapter 8, the law limits the ways in which the first session of an official ballot referendum (SB 2) meeting may amend warrant articles. Under RSA 40:13, IV(c), the first session may not amend an article to eliminate the subject matter of the article, although it may continue to amend dollar amounts freely.

## C. Dividing a Question

If no new subject matter is added, there is no reason a meeting cannot take multiple independent votes on different aspects of that subject matter. If both aspects are covered by a pending motion, a motion to divide the question may be in order. Alternatively, a separate and independent motion could be made after the vote is taken on the first motion. This is true in SB 2 towns and districts as well—the ballot can legally contain multiple questions under the same warrant article.

## D. Reconsideration and Limits on Reconsideration

Generally, any vote taken by a town meeting may be reconsidered and/or rescinded later at that same meeting or at any subsequent meeting unless some third-party contractual obligation or other vested right has already been created in reliance on that vote. *Jewett v. Alton*, 7 N.H. 253 (1834). Also, a vote taken by official ballot, such as a zoning question, cannot be reconsidered on the floor at a later deliberative session. *McDonnell v. Derry*, 116 N.H. 3 (1976). (Bear in mind that when we refer to “official ballot votes” in this context, we are not referring to the official ballot referendum form of government. In SB 2 towns and districts, ballot votes at the second session cannot be reconsidered. RSA 40:13, XV.)

For example, in *Preston v. Gillam*, 104 N.H. 279 (1962), the original town meeting vote instructed the select board to sell certain town property by auction. The select board had already scheduled an auction at the time the board received a valid petition for a special town meeting to reconsider that vote, a meeting

that could only have occurred after the already-scheduled auction. The select board held the auction, sold the property and then refused to schedule a meeting to reconsider because it was too late. The Court held that these actions were proper.

In *Byron v. Timberlane School District*, 113 N.H. 449 (1973), a particular bond issue failed to pass by the required two-thirds vote at the March 31 annual meeting, but there was a motion to reconsider at an adjourned session on April 6. At that April 6 session, a new vote was taken, and the bond issue was again defeated. However, later during that same session, around 2 a.m., when most voters had left, a motion to reconsider again was made. This time the bond issue passed. The Court upheld this vote. The lesson seems to be that voters who leave before the final adjournment do so at their peril.

Perhaps because of voter dissatisfaction with such tactics, there are now two statutes that limit the ability to reconsider, even if the meeting later changes its mind. These laws supersede any local rules. They also supersede any late-night attempts to change local rules.

### **1. BONDS EXCEEDING \$100,000**

RSA 33:8-a provides that a vote on the issuance of bonds or notes over \$100,000 cannot be reconsidered at that same session. If there is a motion to reconsider, and it passes, actual reconsideration must take place at an adjourned or recessed session of the meeting held at least seven days later. Notice must be given in a newspaper in circulation in the town at least two days before the reconsideration vote.

### **2. RESTRICTING RECONSIDERATION**

The more general statute restricting reconsideration is RSA 40:10, which can be made to apply to any vote. This statute allows a meeting, on a vote-by-vote basis, to limit reconsideration of a vote or warrant article in the same manner as bond issue votes are protected under RSA 33:8-a above. After any vote passes at the meeting, the meeting may then vote to restrict reconsideration of that prior vote or article. If the vote to restrict reconsideration passes, the vote or warrant article that is subject to the restriction is, until final adjournment of that meeting, protected as provided by RSA 40:10. If later in that meeting, there is a motion to reconsider the restricted vote or warrant article and the motion passes, actual reconsideration cannot take place until an adjourned session held at least seven days later. The time, date and place at which the reconsideration will occur must be announced before the close of the prior session and must be published in a newspaper at least two days prior to the reconsideration. The motion to restrict reconsideration can be made by any voter at the meeting. It does not have to be made by someone who voted in favor of the motion.

The actual vote to restrict reconsideration cannot itself be reconsidered. That would have been an obvious loophole in the scheme. The motion to restrict reconsideration does not have to be made immediately after the original vote. The law says that “any vote previously taken at that meeting” can be restricted. For example, it is possible to vote “to restrict reconsideration of all votes taken up to now.” However, the voters cannot adopt a rule at the beginning of the meeting to restrict reconsideration of all votes at that meeting. A vote to restrict reconsideration under RSA 40:10 can be taken only after the vote on the article being restricted.

For example, at 8 p.m. a motion is made under a proper warrant article to appropriate \$50,000 for a particular purpose, and it passes. Then a motion is made to restrict reconsideration of this article, and that motion passes. Hours later, a motion is made and passed to reconsider the 8 p.m. vote. The result is that at least seven days later, an adjourned session must be held with proper notice to vote again on the \$50,000 appropriation.

### 3. IMPLIED RECONSIDERATION

RSA 40:10 says that a restriction on reconsideration, once voted for, applies to any subsequent action by the meeting that changes the effect of the original vote, regardless of whether the word “reconsideration” is actually used.

## E. Preventing Disorder

The moderator may command any constable, police officer or legal voter to remove from the meeting and detain any person whose conduct is disorderly. RSA 40:8. Police and constables are guilty of a violation for not obeying the commands and orders of the moderator for the preservation of order. RSA 40:9. No person may speak during the meeting without permission of the moderator, nor may anyone speak when any person already speaking is in order. Everyone must be silent at the desire of the moderator or he or she will be guilty of a violation. RSA 40:7.

In *State v. Dominic*, 117 N.H. 573 (1977), the New Hampshire Supreme Court upheld the disorderly conduct conviction of a select board member who, at a meeting of the select board, refused to follow the orders of the chair. The Court said the First Amendment right to free speech was not violated by an order to leave the room for failing to follow the procedural orders of the chair. The same legal principle applies to support the authority of the moderator to have disorderly persons removed from the meeting.

## F. Separating Voters from Nonvoters

RSA 669:5 requires an updated checklist to be used for all town meetings, including the deliberative session. The moderator must, therefore, make sure that only registered voters vote, so that the town meeting process is orderly. The details are up to the moderator, so long as whatever arrangement is made assures that only registered voters are voting.

## G. How Votes Are Counted and Declared

With the exception of certain votes required by statute to have a two-thirds or three-fifths vote in order to pass, a vote at town meeting will be considered approved if it passes by a majority of those present and voting. There is no quorum requirement and those present but silent (abstaining) are not counted either as positive or negative. *Sugar Hill v. Lisbon*, 104 N.H. 40 (1962); *Laconia Water Co. v. Laconia*, 99 N.H. 409 (1955). A moderator cannot alter the majority vote rule, and if an attempt to do this is made, a court can later overturn it, even if no objection or request for recount was made at the time.

## H. Requests for Secret Yes/No Ballot

The moderator must conduct a secret ballot whenever five voters (three voters in a town of 500 or fewer) make a written request prior to a voice vote or division vote on the article. RSA 40:4-a. Voters must be present at the meeting to request the secret ballot vote. The written requests must come during the meeting “prior to a voice vote or division vote...” Most moderators have not permitted petitions signed by five voters to be submitted before the meeting asking for secret yes/no ballots on some or all questions. Secret ballot voting under RSA 40:4-a applies to votes taken at an SB 2 first session (a motion to amend).

The procedure for a secret ballot is not prescribed in detail by the statute. Some towns use blank white paper and voters are requested to print “yes” or “no.” Other towns print the words “yes” and “no” with boxes beside them in which the voters place an “x.” Many towns use different colored paper for each question to avoid confusion. To save time, some towns have found it useful to pass a “ballot box” up and

down the aisles for the collection of secret ballots. Fraud is prevented by the manner in which differently marked ballots are distributed as voters enter the hall.

## I. Questioning a Vote

If the moderator is in doubt as to the result of any voice vote, he or she may call for the taking of the vote by other means. In addition, RSA 40:4-b requires the moderator to take a secret “yes/no” ballot when seven or more voters question any non-ballot vote immediately after the moderator declares the vote and before any other business is begun. The voters must be present. The request may be oral or in writing.

Recounts are also permitted after secret “yes/no” ballots as described in paragraph H above. Any five voters who are present may, orally or in writing, request a recount of a secret ballot. Such a request must be made immediately after the result is announced. The recount shall take place immediately following public announcement of the vote taken providing that the vote margin is not more than 10 percent of the total vote cast. RSA 40:4-a, I(b).

It should go without saying that if the moderator or other election official actually discovers a mistake in the counting of ballots, the moderator may correct himself/herself, even after an incorrect result has been announced, and even if there was no request for a recount. *Felkner v. Chesley*, 66 N.H. 381 (1891).

# CHAPTER TEN

## CAPITAL IMPROVEMENTS PLANS: AN IMPORTANT FINANCIAL PLANNING TOOL

A capital improvement plan (CIP) is a living document used as a community planning and fiscal management tool for the purpose of coordinating the location, timing, and funding for capital improvements over a multi-year period. Although it is a tool many larger communities have been using for years, a CIP can be useful and valuable for even very small communities. Essentially, it is a prioritized list of anticipated large expenses, including, but not limited to capital expenses related physical plant and facilities, equipment, feasibility, architectural and engineering studies and infrastructure needs. The threshold of what a “large expense” is and the details of what is needed may vary from municipality to municipality, but the process, the governing law and its usefulness are the same across the state. The goal is to develop a CIP plan that provides a working blueprint for sustaining and improving a municipality’s infrastructure needed to maintain desired levels of government services.

### A. Why do we need a capital improvements program?

CIPs are not required by law, but there are a host of reasons a municipality should prepare one and keep it up to date. Here are a few:

- A plan helps bridge the gap between the long-term planning process and the development of the annual operating budget.
- A plan systematically anticipates needs rather than just reacting to unanticipated problems (thus preventing surprises among government officials and the voting public).
- Planning ahead allows time to get the necessary resources in place bit-by-bit rather than all at once, avoiding spikes in the tax rate.
- This advance planning leaves time to identify alternate sources of funding (federal and state grants, long and short term debt, or pay-as-you-go).
- A well developed CIP can help evaluate competing demands for resources and identify the most economical means of financing a project.
- The plan informs and educates both decision makers and the public about the anticipated investments in the municipality. A plan prepared cooperatively among officials, employees and the public increases the “buy-in” so voters understand why items in the plan are important.
- “Shovel-ready” or prepared plans can help a community be ready to participate in federal or state grant programs when they arise.
- Good plans create a blueprint linking fiscal capacity with the need to promote economic development through investments in infrastructure.

- Regular attention to capital assets increases the likelihood of proper maintenance to extend the life of existing assets.
- A CIP is a legal prerequisite for some other land use tools, such as growth management under RSA 674:22 or impact fees under RSA 674:21, V.

## B. Where does the CIP fit into local government?

A CIP is a planning tool. Under the law, “[t]he sole purpose and effect of the capital improvements program shall be to aid the mayor or selectmen and the budget committee in their consideration of the annual budget.” RSA 674:5. The final CIP must be submitted to the governing body and the budget committee “for consideration as part of the annual budget.” RSA 674:8. The projects identified in the CIP are not mandatory; the CIP is simply a set of recommendations and an outline for achieving them. However, the list of reasons above shows that a CIP goes a long way toward helping that budget meet the real needs of the community at a time, in a way, and for a price that makes sense.

It is also important to note that a CIP has no effect on applications before the planning board or zoning board of adjustment other than as a guide for off-site exactions, and to the extent it is used to guide the development of growth management ordinances or impact fee ordinances. *Zukis v. Fitzwilliam*, 135 N.H. 384 (1992).

The overall purpose is to help communities make good planning choices for the future based on goals and resources. In doing so, the CIP integrates many other facets of local government. The CIP is tied to the goals of the master plan. It puts the operating budget and the capital budget in perspective. A good CIP is based on the existing fixed asset inventory and presents a replacement and renewal schedule that makes sense. It also requires cooperation among department heads, the governing body, town/city manager, and planning officials. A capital improvements program acts as a bridge between the planning process and the budget process. With all the information gathered during the CIP process, municipal officials can help voters make informed decisions about appropriations and policies.

It is also important to note that, without a CIP in place, a municipality is not permitted to enact a growth management ordinance under RSA 674:22, I. This makes sense because a growth management ordinance is only valid to the extent it accurately balances the municipality’s need for restrictions on growth and a projection of what is deemed to be “normal growth.” *Rancourt v. Barnstead*, 129 N.H. 45 (1986). In other words, how can a town know what a growth management ordinance needs to accomplish if it hasn’t considered what reasonable projected growth is and what infrastructure is required to support it? The CIP also provides information about the municipality’s need for additional services to accommodate growth and a reasonable timetable for developing those services.

The other major ordinance that may be adopted only after a CIP is adopted is an impact fee ordinance under RSA 674:21, V. Impact fees may be assessed for a lot of things, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; municipal road systems and rights-of-way; municipal office facilities; public school facilities; the municipality’s proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing, and disposal facilities; public library facilities; and public recreational facilities not including public open space. A town may still levy exactions for off-site improvements under RSA 674:21, V(j) without an impact fee ordinance, but they are limited to the cost of improvements located outside the subject property and include only any necessary highway, drainage, and sewer and water upgrades pertinent to that development.



Although school districts are, for the most part, separate political entities which adopt their own budgets, a town or city CIP can also look at school-related projects. This information is useful in a variety of ways. It provides perspective on the overall financing burden of capital improvements that taxpayers will be bearing because, of course, the same taxpayers are paying both municipal and school taxes. It may make sense to stagger some school and municipal projects to avoid spikes in the tax rate. It may also make sense to schedule school and municipal projects in a certain order to create efficiency. For example, if a town needs to repair a road and the school district needs to rebuild a school, add sewer connections, and change the location of its curb cuts on the same road, it may make sense for the road improvement to wait until the school project is completed. In addition, school capital projects are part of the underlying rationale for both growth management and impact fee ordinances.

## **C. Where do we begin?**

Before a capital improvements program can be prepared, (a) the municipality must have established a planning board under RSA 673:1, and (b) the planning board must have created and adopted a master plan under RSA 674:1. When considering how this fits with a CIP, it is helpful to remember that a master plan is intended to delineate the best and most appropriate future development of the area to guide the planning board in its work, so the community can achieve smart growth, sound planning, and wise resource protection. RSA 674:2, I. After those two prerequisites are met, the legislative body (town meeting, town council or city council/aldermen) may authorize the creation, adoption and amendment of a capital improvements program. RSA 674:5. In a town meeting town, this is done by approval of an article on the warrant.

Municipalities may authorize either the planning board or a special CIP committee to work on the CIP. If the warrant article is silent on this issue, it is assumed that the planning board will do it. Alternatively, the article may provide for a CIP committee appointed by the governing body (select board, town/city council). The committee must include at least one member of the planning board and may (but isn't required to) include other members of the planning board and other local officials. It is important to note that the planning board cannot grant itself the authority to prepare a CIP; the authorization must come from the legislative body.

Once authority has been given to prepare a CIP, the planning board or committee—and any subcommittees—must realize that they are “public bodies” subject to all of the requirements of RSA chapter 91-A, New Hampshire’s Right to Know law. This means that all meetings require at least 24 hours’ notice posted in at least two public places, the public must be permitted to attend the meetings, and minutes must be kept of all meetings. RSA 91-A:2. In addition, virtually all documents given to or created by the planning board or committee in the process of preparing the CIP will be “governmental records” which must be disclosed to the public upon reasonable request. RSA 91-A:4.

## **D. What is a “capital improvement”?**

In the most general sense, a capital improvement is something that has a high cost and a useful life of several years, in contrast with regular operations and maintenance, which generally have a lower cost and occur on a more frequent basis. Typically, capital improvements will include infrastructure projects, land acquisition, buildings, or engineering studies for any of those projects, and may include vehicles or highway maintenance equipment in some municipalities. One useful starting point is the list of improvements for which impact fees may be assessed; the list in RSA 674:21, V is a good place to look for ideas.

Each community must define for itself what qualifies as “high cost” and a “useful life of several years.” The specific definition in each community will be slightly different based on the population, capital needs, and available budget. There is no single “right” way to define this. Smaller towns may have a different definition than larger towns or cities. For example, the City of Franklin sets its capital improvement threshold at \$25,000 with a useful life of seven or more years. Expenditures that do not meet both the cost and useful life threshold are not included in the capital improvements plan; instead, they are included as a part of the city’s operating budget. In a smaller community like Plymouth, (population 6,500), the threshold is \$10,000 with a useful life of five years. An even smaller community may define it as any project having a useful life of at least 3 years and requiring a gross expenditure of more than \$5,000.

An expenditure that seems very large to one community and that occurs only rarely (and thus should be part of a capital improvements program) may be considered part of the ordinary operating budget in a much larger community. If a city has a large fleet of vehicles and expects to replace three or four of them every year, vehicle replacement may simply be a line in the operating budget. For a small town, however, the replacement of a vehicle may occur only once every few years, and the expenditure may be significant. This is something that may belong in a capital improvements program so it can be planned and saved for appropriately.

## **E. What goes into a capital improvements program?**

According to RSA 674:5 and :6, there are required elements and optional elements. A CIP “shall” do the following:

- Address capital improvement projects over a period of at least six years. It can be a longer period, of course, and 6 – 10 years is typical in many municipalities.
- Classify projects according to the urgency and need for implementation.
- Include a timetable for implementation of projects.
- Take into account public facility needs that are indicated by the development shown in the master plan or which are permitted under the municipality’s zoning ordinances and regulations.

A CIP “may” include the following:

- The estimated cost of each project or capital purchase.
- The estimated operation and maintenance costs.
- The anticipated project timeline.
- The estimated revenues (if any) from each project.
- Suggested funding sources.
- Project or capital purchase prioritization.

Some larger communities prefer to have the CIP concentrate solely on what is needed and when, and to have the budget committee, administrator/manager, and governing body concentrate on the cost and funding mechanisms. Again, there is no single “right” answer here.

Each community should make choices for their future needs based on their specific goals and available resources..

## 1. HOW DOES THE PROCESS WORK?

First of all, it is critical to recognize that the planning board or CIP committee does not operate in a vacuum. The law grants quite a bit of authority to the planning board or CIP committee. It is true that under RSA 674:6, the CIP is based on information submitted by the departments and agencies of the municipality. All town or city departments, agencies, officials, and any affected school board are required to provide to the planning board or CIP committee, upon its request, a statement of all capital projects proposed to be undertaken during the CIP period. RSA 674:7, II.

However, although the law gives the planning board or CIP committee authority to gather information, this authority means little if the planning board or CIP committee does not act in a way that fosters cooperation and coordination with everyone else in municipal government. To be effective, the process should involve the governing body and the chief administrative officer (town/city manager). The process is actually somewhat similar to the way an official budget committee prepares a budget: information is gathered from all corners of municipal government and put together in a proposal for the town or city to consider. And just as with budgeting, the development of a CIP works well only when all of the parties cooperate with one another.

The planning board may have the responsibility to prepare the plan, but it cannot do so without the assistance of almost every other municipal official. “Who is in charge?” is not the most important issue here.

## 2. ORGANIZATION

The first issue is organization. The planning board or committee should have an initial meeting to consult with the town administrator, town or city manager, the governing body and the budget committee to discuss the process and the timetable. RSA 674:7. The goal here is to have fewer surprises and more cooperation among all officials and employees. Working together, this group should establish a timeline for preparation of the CIP. The timeline should be two things: reasonable and well-publicized. It is important for the planning board or committee to recognize that the officials and employees from whom they are trying to get information each have a lot of other things on their plate. The further in advance they know the information is needed, the easier it should be for them to prepare the information in a timely way.

The other general preparation task is to establish policies. This should be done as part of the initial meeting(s) suggested above, and should address:

- A definition of what a “capital improvement” is for your community (threshold expense and useful life).
- How will items be prioritized?
- Points of contact—how will the planning board or committee communicate with other officials and employees about this project?
- What general categories of information will be requested from the town administrator or manager, city manager, department heads, and governing body? Is there any specific format to be followed or any particular information that will be requested? The board or committee should be able to communicate what it is they are looking for.

## 3. TIMELINES

After the initial meetings, the planning board or committee should establish a timeline for its activities based on the feedback from the initial meetings.

This internal timeline should include:

- A period to assess the current fiscal and capital asset situation and to review the master plan. If there are many departments or too much information, the planning board or committee might consider creating subcommittees to each review a certain portion of the information (perhaps a specific department) and report back to the larger group.
- A discussion period during which the planning board or committee can discuss issues with the town/city manager or administrator, ask and answer questions, and gather additional information.
- A plan for exactly who will draft the CIP and when.
- A timetable for drafting, revising, and adopting the CIP.

#### **4. ASSESSING THE CURRENT SITUATION**

It is difficult to plan where you are going if you don't know where you are. Thus, the planning board or committee should look at three important areas relating to the current situation. The first is a capital asset inventory. It may already exist in larger communities, but smaller towns may need to put one together for the first time. The list should include everything the municipality has that falls within the established threshold of what is a "capital asset." (One place you might consider checking is the list of insured properties and equipment.) Once a list is established, it is important to note the deficits. Department heads are particularly helpful in pointing out the "holes" in the existing inventory.

The second issue is a fiscal analysis to assess fiscal capacity. The planning board or committee should obtain or create a comprehensive list of all the trust funds, capital reserve funds, special revenue funds, and other funds (and the balances in each fund). Other important information includes the most recent tax rate, fixed costs going forward (such as bond payments or other debt service), and the past, present and future expected revenues, expenditures and debt (i.e., what can the municipality afford?).

The third area of importance is the current status of previously approved projects. What are the cost estimates and funding sources for projects which are currently underway and when are they expected to be completed? What impact do those projects have on the fiscal analysis and asset inventory once they are finished?

The CIP may include the following information:

- A list of the capital projects, equipment, and major studies.
- A ranking of projects based on a prioritization matrix reflecting the entity's long-term goals and objectives.
- A financing plan for each expenditure.
- A timetable for the construction or completion of the project
- A project justification and explanation for the project expenditures

#### **5. REVIEWING THE MASTER PLAN**

A review of the recommendations of the master plan in relation to the capital improvements program being considered is a required step in the preparation of a CIP. RSA 674:7. This review may reveal indicators of long-term capital needs to improve existing services so that they match community standards and to accommodate reasonable growth. Local zoning ordinances and land use regulations should also be reviewed as part of this step to see how proposed capital projects may fit.

## 6. EVALUATING PROJECT REQUESTS

Under RSA 674:7, the planning board or CIP committee is required to confer with the governing body, the chief fiscal officer or budget committee, the school board, and other municipal officials and agencies. These officials are required to provide a statement of all capital projects they propose during the term of the CIP. Information provided should, ideally, include justifications, estimates of project costs, estimates of future operation and maintenance costs for each project, the relationship of this project to other (existing and proposed) projects, implementation schedules and the degree of urgency for each one. It is also important to obtain information regarding the replacement, repair or renovation of existing capital assets. The planning board or committee should also consider the estimated tax impact of proposed projects.

How well will the total annualized tax impacts of capital spending fit within the municipality's overall fiscal goals and the urgency of the needs?

As information is gathered, the planning board or committee should review it and respond to the official, board or employee who provided it as appropriate with recommendations, questions or comments. RSA 674:7. While some municipalities prefer to have the town administrator or manager help with the financial and tax impact end of things, in others, the planning board or committee handles all of it. If the administrator or manager is part of the committee, this can all be made much more seamless. In any case, the planning board or committee should engage in a thorough discussion with all of the officials and employees it needs to in order for the CIP to address the municipality's needs.

## 7. FUNDING

The most straightforward way to pay for municipal projects is through a one-year appropriation, but that is certainly not the only way. Regular appropriations into capital reserve funds targeted for specific projects are, essentially, savings accounts for future projects. They prevent spikes and dips in the property tax rate and can be much easier for taxpayers to handle than a sudden, very large expense in one year. Municipalities may also borrow to pay for capital projects, either by borrowing directly from a bank or, more commonly, by issuing bonds. Borrowing spreads the expense out after the project rather than before. Another funding source is impact fees. They may be assessed and collected from those receiving approval from the planning board for development projects and used to fund capital projects, although they must be refunded if they are not spent or encumbered for the purpose for which they were collected within six years after collection. RSA 674:21, V. This means that they should be targeted toward projects that are projected to occur within that timeframe.

It is often possible for a municipality to pay for much of a project with grant money from the state or federal government, and occasionally from private sources. Most grants require some matching portion of the funds to be provided by the municipality, but they can still significantly reduce the tax impact. Taxes may also be targeted toward capital improvements through a tax increment financing district under RSA Chapter 162-K.

Most importantly, all of these methods may be used in combination with one another. A mix of funding sources is often the best way to move projects forward without undue pressure on taxpayers.

## F. Drafting, Revising, and Adopting the CIP

There is no statutory procedure for the planning board or committee to follow to adopt the final product. The New Hampshire Office of Planning & Development (OPD) recommends using the same process that a planning board would use to adopt a master plan under RSA 675:6. Under that procedure, the board/

committee holds at least one public hearing with ten days posted and published public notice (exclusive of posting and hearing days). If substantive changes are made after the first hearing, a second hearing may be held with the same notice. In any case, the planning board or committee should take a formal vote at a public meeting to adopt the final version. A copy should be sent to NH OPD for filing. RSA 675:9.

The planning board or committee must present the CIP to the mayor or select board and the budget committee, if one exists, for consideration as part of the annual budget. RSA 674:8. Although only the plan for the current year must be presented each year, it does not make sense to present proposals in a vacuum. Providing the entire CIP will allow those preparing the budget to put the recommendations in context and make them more useful.

## **G. Next Steps: Begin Again!**

To be effective, a CIP cannot simply be prepared, put on the shelf, and forgotten. It must be an ongoing project. The best CIPs are reviewed and amended on a regular basis (every 1 – 3 years) and kept up to date. Priorities, needs, and opportunities will change over time, and the CIP needs to change as well. The original authority by the legislative body is sufficient for the planning board or committee to continue work past the first year, although additional appropriations may be required in subsequent years to fund the review and amendment process. Each time the CIP is amended, it should be filed with NH OPD and shared once again with the mayor or select board and budget committee.

A great CIP is worth the time and effort that goes into it. It is a versatile management tool that can help municipalities make better choices and plan for future needs in a way the community can afford. By coordinating strategic planning, financial capacity, and physical development the plan can serve as a compass pointing toward future goals realized.

# CHAPTER ELEVEN

## UNDERSTANDING THE PROPERTY TAX SYSTEM

### A. Property Taxes Based on Appropriations

Every property owner is responsible for paying a portion of the taxes necessary to operate various units of government: the municipality, school district, county, and village district, if any. Each of these units of government must draft a budget, hold public hearings on the budget proposal, and submit the budget to its legislative body for adoption. It is these appropriations, reflecting the spending priorities voted by the legislative bodies, that determine the amount of revenue needed to be raised by property taxes in order to fund municipal government operations, and each municipality's share of the school, state education, and county budgets. For many taxpayers, the lag time between adopting the budget in the spring and the arrival of the property tax bill at the end of the year results in a disconnect between those approved budget appropriations and the need to eventually pay for them. Additionally, many citizens are unfamiliar with the process used to determine their share of the property taxes raised to support the adopted budgets. The following sections describe the steps involved in the property tax process and the formula used to calculate each municipality's annual property tax rate.

### B. Valuing Property: The Appraisal Process

In accordance with RSA 76:2, property taxes are assessed based upon the appraised value of property as of April 1 of each year. This means that the property tax bill, generally due in December, reflects the value of property on the previous April 1. By law under RSA 76:5, it is the responsibility of the select board to annually determine the assessed value of each property within the municipality as of April 1. Most, if not all, municipalities rely on professionally-trained assessors to fulfill this statutory responsibility.

Valuing property for property tax purposes is an ongoing process. In accordance with Pt. 2, Art. 6 of the New Hampshire Constitution, each municipality conducts a full revaluation of all property within the municipality at least once every five years. During a full revaluation, property is physically reviewed and then valued based upon the sale prices of other comparable properties or other approved appraisal methods. The goal of a revaluation is to appraise property at its "full and true" value, often referred to as "market" value.

A complete revaluation establishes base-year property values but is costly and time-consuming and consequently is not conducted every year. In the years following a revaluation, assessors perform updates in order to maintain proportionality between the properties in the municipality. They make adjustments to the tax rolls for what are known as pick-ups: for example, new construction, demolitions, errors or omissions, and other changes to properties. Depending on the amount of change reflected in recent sales prices and other market conditions, assessors may perform statistical updates, where values are adjusted either up or down based on market data, using a detailed process beyond the scope of this chapter.

Through revaluations and updates, assessors strive to ensure that property within the municipality is appraised proportionally as required by Pt. 2, Art. 5 of the N.H. Constitution, so that each property owner bears a proportionate share of the property tax based upon the value and use of their property.

### C. Increased Assessed Value Does Not Necessarily Mean Increased Tax Amount

One of the most common misconceptions occur when a revaluation occurs and assessed values increase due to current real estate market increases. Many property owners believe their increased property assessment will automatically result in increased property taxes. This is not true. Some properties may actually realize a reduced tax amount if the value for their class of property (residential, multi-family, condominium, commercial, etc.) has dropped ‘proportionally’ compared to other property types.

It helps to understand the equation used to calculate the tax dollars needed to fund the municipal budget.

$$\frac{(1)\text{Assessed Value}}{1,000} \times (2)\text{Tax Rate} = (3)\text{Property Tax Amount Needed to Fund Municipal Budget}$$

If the (3)municipal budget remains the same, and the total (1)assessed value increases through a revaluation, then the (2)tax rate will decrease. Conversely, if the (3)municipal budget remains the same, and the total (1)assessed value decreases, then the (2)tax rate will increase. In either case, the key factor is ‘(3)’ the amount of taxes needed to fund the municipal budget. If this remains the same, then generally speaking the dollar amount of taxes needing to be raised by individual property owners will not change significantly. To determine why some taxpayers may pay an increased amount while others may pay a decreased tax amount after a revaluation, it is important to understand ‘proportionality’.

### D. Proportionality:

A frequent area of misunderstanding is the importance of assessing property values proportionally. It is not as important whether property is assessed at, above, or below market value, as it is whether taxes are proportionally assessed amongst properties based on values and use.

The following examples along with the graphic illustration in Appendix D will help explain the concept of proportionality. For these examples, there are only two taxable properties in the town, the properties are very similar in all respects, and the legislative body has approved a \$10,000 budget to fund town services, all of which will come from property taxation.

**Scenario 1:** Both properties have a market value of \$250,000 as well as an assessed value of \$250,000, for a total town-wide assessed value of \$500,000. With taxes to be raised of \$10,000, the tax rate would be \$20 per \$1,000 of valuation ( $10,000 \div 500,000 \times 1,000$ ). Since there are only two properties with the same assessed value, the tax burden would be shared equally: each property would owe \$5,000 in property taxes.

**Scenario 2:** The town budget remains the same at \$10,000, but the market has declined since last year so that the market value of each property is now \$225,000. However, the assessed value on each property remains unchanged at \$250,000. What is the impact of over-assessing these properties compared to market value? None—there is no tax impact because the proportionality between the properties did not change; both properties declined in market value by the same amount. The town still needs to raise \$10,000, and with a town-wide assessed value of \$500,000, the tax rate would remain \$20 per \$1,000 of valuation and each property would again owe \$5,000 in property taxes.



**Scenario 3:** The outcome is the same when the market value of the properties increases above the assessed value, in this case to \$275,000. While the market value of all properties in town increased to a total of \$550,000, the assessed values remained at \$500,000, and the town still needs to raise \$10,000, so the tax rate would still be \$20 per \$1,000 of valuation with each property paying \$5,000.

These three scenarios demonstrate that in order to create equity in the tax amount each property owner pays to fund the budget, it is more important that assessed values remain proportional, than it is whether the assessed value of each property is at, above or below market value. In this simple example, because the assessed value of the properties remained proportional, each property's share of the tax burden was 50%, or \$5,000, regardless of how the assessed values compared to market value.

What happens when one of these properties changes in value, but the other does not? Assume the market value of one of the properties dropped while the other property maintained its value (such as a drop in the market for condominiums). The condominium, which once had a market value of \$250,000, now has a market value of \$200,000. If the assessed value of the condominium remains at \$250,000, both of these properties would still owe \$5,000 in property taxes, even though the market value of the condominium is \$50,000 lower than the other property in town. This would leave the condominium owner paying more than a fair share of the tax burden because the market value of the condominium is less than the market value of the other property. Assessors can correct this lack of proportionality by using a statistical update. The assessor reduces the assessed value of the condominium to reflect its drop in market value and to make it proportional to the other property. Now both will be assessed at market value and both will pay only their proportionate share of the tax burden.

See Appendix D for a graphic illustration and explanation of the change that occurs when additional property value is added to the tax rolls.

## E. The Assessing Process

The assessing process requires applying statutory exemptions and credits to the appraised values of properties. This includes identifying properties which are exempt from taxation, such as those owned and used for governmental, religious, charitable, educational, and other special purposes. Other exemptions result in a reduction of the assessed value of a particular property and include exemptions for the elderly, disabled, deaf, blind; certain solar, wind powered and wood burning systems. A credit does not affect the property's assessed value but is a reduction from the bottom line of the tax bill on a particular property. The most common property tax credit is for veterans and their surviving spouses. All property tax exemptions and credits are authorized in RSA 72, some of which include local option in determining the amount of exemption or credit.

A common misconception about property tax exemptions and credits is the effect they have on the amount of taxes to be raised. Granting exemptions and credits for any purpose does not change the amount of property taxes that need to be raised; it merely shifts the responsibility for payment to other property owners. While the exemption may benefit a particular property or one segment of the population, it will lower the municipality's total tax base (total assessed value), resulting in a higher tax rate and increased taxes for those properties not eligible for the exemption. The same is true with property tax credits: if one property qualifies for a credit and therefore pays less in property taxes, then the amount of tax credit must be made up by the property taxes assessed on all other properties by increasing the tax rate.

Similarly, if a property tax exemption or credit is eliminated, it does not result in additional revenue to the municipality. Rather, as illustrated in Appendix D, it increases the municipality's total tax base, which then lowers the tax rate and reduces the tax burden on other properties.

## F. The Equalization Process

Some municipalities may be assessing property close to market value, while others may be assessing above or below market value, all of which is permissible as explained in the proportionality section above. However, to ensure that public taxes shared by municipalities, such as the state education tax, cooperative school district taxes, and county taxes, are reasonably apportioned among municipalities, the assessing playing field must be leveled. This is accomplished by the annual equalization process conducted by the Department of Revenue Administration (DRA) through which each municipality's assessed values are adjusted to reflect proportionality to other municipalities. This process involves a detailed study of property sales throughout the state, a comparison of those sales with the local property assessments, and an adjustment of the local assessed value up or down to achieve proportionality. The result is called the "equalized" assessed value.

Once the equalized value of property in each municipality has been determined, then the total tax amounts to be raised for the state education tax, cooperative school district tax, and county tax can be proportionally allocated to each municipality. For example, if the equalized value of the property in a particular municipality represents 15% of the total equalized property value in the entire county, then that municipality would be apportioned 15% of the total county taxes to be raised. Once the dollar amount of a municipality's share of the county tax is known, then that local municipality's total tax base (total assessed value) is used to determine its county tax rate and how much each individual property owner in that municipality must pay towards support of county operations.

A by-product of the equalization process is the determination of an equalization ratio. Generally, the ratio shows the average level at which each municipality assessed property the previous year in comparison to full value. A ratio of 90 percent would indicate that the municipality generally assessed property at approximately 90 percent of full value, that is, below market value. A ratio of 110 percent would indicate that the municipality generally assessed property at 110 percent of full value, or above market value. Neither a high nor a low ratio, in itself, is cause for alarm. Whether a municipality is assessing at 110 percent or 90 percent of full value is really not significant. As previously explained, what is important is that 'assessments' are proportional, so that each property owner bears their share of the property tax based upon the proportional assessed value of their property.

## G. Setting the Tax Rate

Every fall, the DRA compiles all the information necessary to certify property tax rates for each municipality, reviewing all appropriations voted by the legislative bodies in the spring and all revenues expected, other than property taxes. That information is then used in the formula below to calculate the local property tax rate:

$$\frac{\text{VOTED APPROPRIATIONS minus ALL OTHER REVENUE}}{\text{LOCAL ASSESSED PROPERTY VALUE}} = \text{Property Tax Rate}$$

Multiplying that rate by 1,000 provides the property tax rate per \$1,000 of property value, which is how the rate is typically stated. The amount of money which must be raised through taxes—voted appropriations minus all other revenue expected to be received—is the primary factor that drives the property tax rate. The local assessed value of property is the basis on which the tax money to be raised is apportioned to each property owner within a municipality. This same formula is used to determine the local school portion of the tax rate.

As previously explained, taxes shared among municipalities, such as cooperative school districts and counties, first use the equalized assessed valuation in the equation to determine each municipality's share. (Note that some cooperative school districts also use pupil counts in addition to equalized values when allocating costs to multiple municipalities.) Similarly, each municipality's equalized assessed valuation (calculated without including utility property values) is used to calculate the municipality's share of the annual statewide education property tax of \$363 million in accordance with the provisions of RSA 76:3. Once the municipality's share of those taxes has been determined, that amount is then divided by the municipality's total assessed value to arrive at the tax rate per \$1,000 of property value that is needed to support those units of government.

## H. Property Tax Bill

RSA 76:11-a requires that the property tax bill show the assessed value of all lands and buildings being taxed, along with the tax rates for each component of the tax: the municipal, local education, state education, county, and village district or precinct rates (if any). The bill must also inform the taxpayer of the right to apply for an abatement, and contain a statement regarding the types of tax relief for which the taxpayer has the right to apply, including elderly exemptions and deferrals, disabled and blind exemptions, and veterans' credits. Most municipalities receive the certified tax rates from DRA by mid-November, issuing bills that are then due by December 1 or thirty days after the bills are mailed, whichever is later. RSA 76:13 requires that interest of eight percent per annum be charged on delinquent payments.

## I. How Much Will That Add to the Tax Rate?

Before property tax bills are even mailed, the process begins again in many municipalities, as governing bodies and budget committees deliberate on the budget recommendations that will be presented at the next annual meeting. A question often asked at this time is "How much will a particular item add to the tax rate?" To provide a ballpark estimate of how much a certain item will cost on the tax rate, DRA came up with the "three-finger rule." Taking the municipality's prior year total assessed property value, and covering the right three digits with three fingers, provides an estimate of the amount of money that represents \$1.00 on the tax rate. Covering the next digit would represent 10 cents on the tax rate and covering one more digit would be a penny on the tax rate. This works for estimating both a change in appropriations as well as a change in revenues.

For example, in a municipality with \$1,400,000,000 of total assessed property value:

- \$1,400,000 would be approximately \$1.00 on the tax rate
- \$140,000 would be approximately \$.10 on the tax rate
- \$14,000 would be approximately \$.01, on the tax rate

Using the 'three finger rule', you can easily determine the impact on the tax rate if this municipality should choose to appropriate an additional \$28,000 for a new police cruiser. It would add approximately \$.02 to their tax rate.

Determining the impact of losing a portion of the municipality's tax base (i.e., a reduction in the total assessed value) due to decisions such as increasing exemption amounts, requires a few more steps. First, you would need to determine the total additional amount that would be considered 'exempt'. For example, if this town has 112 residents over the age of 65 receiving an elderly exemption, and the decision was made to increase the exemption amounts by \$10,000 for each age category, it will result in \$1,120,000 total increased exemptions (112 x \$10,000), which is also an equivalent reduction in the 'total assessed property

value'. You would then need to use the most recent tax rate (\$24.26 in this town) and calculate the tax revenue generated from this assessed value amount, as follows:  $\$1,120,000/1,000$  assessed value x \$24.26 tax rate = \$27,171 total tax revenue. Finally, you are then able to use the “three-finger rule” and determine the specific impact on the tax rate. In this case, \$27,171 lost in tax revenue would mean approximately \$.02 (2 cents) would need to be added to their tax rate to make up for this loss.

Note that the amount would be different for each municipality depending on the net local assessed valuation. Also recognize that this is a rough estimate since it is based upon the prior year's assessed valuation, a value that will change as of April 1. But the three-finger rule certainly provides a reasonable estimate of whether a particular appropriation, an action to change the tax base, or an anticipated change in revenue, will result in pennies, nickels, dimes or dollars on the tax rate!

See Appendix E for a worksheet to help determine the tax rate impact for your particular municipality.

# Appendix A

## Custody and Expenditure of Common Town Funds

TYPES OF FUNDS	WHO AUTHORIZES EXPENDITURES	HELD IN THE CUSTODY OF
RSA 31:19 Trust Funds	Governing body or body designated by donor	Trustees of Trust Funds
RSA 31:19-a Town-created trust funds	Agents named to expend or legislative body vote	Trustees of Trust Funds
RSA 31:95-c Special Revenue Funds	Legislative body vote	Treasurer
RSA 31:95-h Revolving Funds	Governing body or other board as designated by legislative body	Treasurer
RSA 31:113 Forest Fund	Legislative body vote	Treasurer
RSA 35:1 Capital Reserve Funds	Agents named to expend or legislative body vote	Trustees of Trust Funds
RSA 35-B :2, II Recreation Revolving Fund	Recreation Committee or other body or board designated by Town Meeting at the time fund was created	Treasurer
RSA 36-A:5 Conservation Fund	Conservation Commission	Treasurer
RSA 38:29 Water Fund	Board of Water Commissioners if established, otherwise governing body	Treasurer
RSA 149-I:10 Sewer Fund	Board of Sewer Commissioners if established, otherwise governing body	Treasurer
RSA 202-A:11; RSA 202-A:22; RSA 202-A:23 Library appropriations, fees and income from trusts	Library Trustees	Library Trustees or Trustees of Trust Funds
RSA 318-B:17-b Drug Forfeiture Account	Police Chief with approval of governing body	Treasurer
RSA 423:6 and :7 Airport Fund	Governing body	Treasurer
RSA 673:16, II Fees collected	Land use board or designated agent	Treasurer
RSA 674:21, V Impact fees	Governing body	Treasurer
RSA 674:44-d Heritage Fund	Heritage Commission	Treasurer
RSA 674:44-g Agricultural Fund	Agricultural Commission	Treasurer
RSA 674:44-j Housing Fund	Housing Commission	Treasurer

# Appendix B

## FEES, LICENSES, PERMITS & PENALTIES

### Selected References

PURPOSE	STATUTORY REFERENCE
<b>Permits/Licenses/Fees</b>	
Select Board Authority to Establish Fees	41:9-a (must be adopted by town meeting)
Affordable Housing	31:95-h
Ambulance	31:95-h
Bicycles	265:149
Building	155-A:9; 674:51, III (d)
Cable	31:95-h; 53-C:4
Cemetery Lot Sales	289:2-a
Dogs	466:4
Driveway	236:13
Documents (RTK Requests)	91-A:4, IV (d)
Energy Conservation & Efficiency	31:95-h
Excavation/Street Opening	236:9
Fire	31:39, I(e); 154:18; 227-L:17
Fireworks	160-B:5; 160-B:6; 160-B:7; 160-B:10
Food serving establishments	147:1, II; 31:39, I(k)
Hawkers & Peddlers	31:102-a
Junk & Scrap Metal	322:1; 322:11; 322:13
Junk/Motor Vehicle Recycling Yards	236:122
Marriage License	457:29
Kennels ("Group Licenses" for dogs)	466:6
Parades/"Theatricals"	286:2; 286:4; 286:4-a
Billiard Tables	286:6; 286:8
Pistols & Revolvers: License to Carry	159:6
Pistols & Revolvers: License to Sell	159:8
Place of Assembly	155:18
Police Details	105:9
Public Safety Services	31:95-h
Raffles	287-A:7
Recreation	35-B:3
Recycling	31:95-h; 149-M:17
Registration Permits, Additional Fees	261:154
Occupy Street: Construction Materials	31:99
Occupy Street: Events	31:100
Solid Waste	149-M:17
Soliciting Funds	31:91

Tattoo Parlors	31:39, I(m)
Taxicabs	31:40
Town Property	41:11-a
Utility Poles & Wires	231:165
Pinball Machines	31:41-d
Open Air Motion Pictures	31:41
Motor Vehicle Racetracks	31:41-a
Geographic Information Systems- GIS	31:95-f (town); 47:11-c (city)
Background Checks for Vendors	31:102-b
Woodstoves	31:117 (town); 47:28 (city)

### **Fines & Penalties**

Local Ordinances	31:39, III, 31:39-c & -d (town); 47:17 & 47:17-b (city)
Parking Meters	231:130; 231:131
Building	155-A:8; 674:51, III (d)
Hazardous Materials Accidents	154:8-a
Health Regulations	147:1
Planning & Zoning	676:17

### **Land Use**

Impact Fees	674:21, V
Plan Reviews, Experts & Administrative Costs	673:16; 676:4, I(g); 676:5, IV

### **Town Clerk**

Vital Record Copies	5-C:10
Recording Fee	41:25

### **Motor Vehicles**

Municipal Permit Fees	261:153, I-IV
Municipal Clerk Fee	261:152
Title Application Fee	261:4
Municipal Agent Fee	261:74-d
Reclamation Trust Fund Fee	261:153, V
Transportation Improvement Fee	261:153, VI
Public Parking Facilities Fee	261:154

### **Boats**

Boat Fees	72-A:3,4
Agent Fee	270-E:5,II(c)

<b>Taxation</b>	
Abatement Application	76:16
Duplicate Copy of Tax Bill	76:11, l
Interest on overdue taxes	76:13; 76:13-b
Tax Lien Costs and Penalties	80:90
Uncollectible Checks	80:56

<b>Utilities</b>	
Broadband	38:39
Electricity	38:22
Gas	38:22
Sewer	149-l:8
Water	38:28



# Appendix C

## FINANCING OPTIONS

### Selected References

<b>RESTRICTED TRUST FUNDS</b>		
Cemetery Trust Funds	RSA 31:20 - 21	Trusts funds received by gift, legacy, devise or donation for care of cemeteries and burial plots.
Trust Funds by Town	RSA 31:19	Town Meeting votes to authorize the governing body to take and hold gifts, legacies.

<b>SPECIAL PURPOSE TRUST FUNDS</b>		
Deferred Compensation Plans	RSA 31:19-b	Deferred compensation trust created under Internal Revenue Code provisions for municipal employees.
OPEB Trusts	RSA 31:19-c	Other Post Employment Benefit (OPEB) Trusts to pay for medical, disability or other health benefits of municipal employees.

<b>FUNDS THAT ARE EXPENDED WITHOUT LEGISLATIVE BODY APPROPRIATION</b>		
Unanticipated Funds	RSA 31:95-b	Town Meeting may authorize receipt and expenditure of state, federal or private grants not requiring expenditure of other municipal funds except those lawfully appropriated for same purpose.
Acceptance of Personal Property	RSA 31:95-e	Town Meeting authorizes acceptance of donation of personal property.
School Unanticipated Funds	RSA 198:20-b	School district meeting may authorize receipt and expenditure of state, federal or private grants not requiring expenditure of other school district funds except those lawfully appropriated for same purpose.
Library Unanticipated Funds	RSA 202-A:4-c	Library Trustees authorized to receive and expend state, federal or private source grants not requiring expenditure of other library funds except those lawfully appropriated for same purpose.
Library Acceptance of Personal Property	RSA 202-A:4-d	Library Trustees authorized to accept donations of personal property.

<b>SAVINGS ACCOUNTS</b>		
Expendable Trust Funds	31:19-a	Town Meeting votes to appropriate funds for permissible public purpose. Agents to expend may be appointed. Non-lapsing account. Annual report of activities published in Town Report.

Capital Reserve Accounts	RSA chapter 35	Town, school, and village district may vote to establish non-lapsing savings accounts for capital improvements and may name agents to expend.
--------------------------	----------------	---

### SPENDING ACCOUNTS

Special Revenue Funds	RSA 31:95-c	Town meetings votes to restrict revenues from a specific source (e.g., highway block grant) for expenditures for specific purposes. The revenues and expenditures are accounted for in a special revenue fund separate from the general fund.
Revolving Fund	RSA 31:95-h	Revenues from fees, charges, or other income derived from such activities as recycling, ambulance or highway details placed into non-lapsing account to be support those services. Expended by select board or other designated agent or department.
Contingency Fund	RSA 31:98-a	Contingency fund authorized by town meeting for unanticipated costs incurred during year. All expenditures reported in annual report.
School Contingency Fund	RSA 198:4-b	Contingency fund authorized by school district meeting for unanticipated costs incurred during year. All expenditures reported in annual report
Recreation Revolving Fund	RSA 35-B:2 (II)	Town Meeting may authorize that all recreation fees and charges be deposited into a non-lapsing revolving fund to support recreation activities. Recreation and Park Commission/Committee is agent to expend
Conservation Fund	RSA 36-A:5	Money appropriated by town meeting for conservation purposes, or land use change tax income allocated under RSA 79-A:25 (II); a non-lapsing fund expended by the Conservation Commission, purchases of interests in land requiring select board approval.
Forest Maintenance Account	RSA 31:113	Non-lapsing account for establishing and maintaining town or city forest.

### ENTERPRISE FUNDS

Water Fund	RSA 38:29	Funds received by municipal water utility from collection of water rates, expended only for acquisition, construction, payment of the interest, management, maintenance, operation, and repair of water systems, or construction, enlargement, or improvement of such systems.
Energy Commission Fund	RSA 38-D:5	Non-lapsing account established to fund the study, planning, and utilization of energy resources for municipal buildings by local Energy Commission.
Sewer Fund	RSA 149-I:10	Sewer rents and rates received that are expended only for the acquisition, construction, payment of debt, management, maintenance, operation, and repair of sewer systems, including sewage or waste treatment and disposal works.

Stormwater Utility Fund	RSA 149-I:10-a	Stormwater utility fees kept as a separate fund to manage surface runoff and drainage that is generated from precipitation and snowmelt, including any debris, chemicals, sediment, or other substances carried along with the water.
Energy Financing Reserve Accounts	RSA 53-F:7 (II)	A loss reserve account for property-assessed clean energy finance programs. Funds in a loss reserve account shall not be provided from general municipal revenues.
Airport Fund	RSA 423:6 - 7	Airport tolls, charges, rents or other fees collected by towns or cities for aeronautical purposes that are kept in a separate, non-lapsing account and not intermingled with other funds of the municipality.

### **SPECIAL ASSESSMENTS**

Cable Franchise Fees	RSA 53-C:4	Fees charged by municipality for cable franchise granted to cable television system.
Impact Fees	RSA 674:21 (V)	Fee imposed upon land use development in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality. Non-lapsing fund expended by governing body within six years from date of collection.

### **BORROWING**

Bond for Preliminary Expenses	RSA 33:3-c	Bonds or notes for the cost of preliminary or final plans or other preliminary expenses connected a proposed public work or improvement of a permanent nature.
Refunding Bond	RSA 33:3-d	Bonds issued in order to pay all or part of any prior issue of bonds called or to be called for redemption, including any redemption premium.
Superfund Cleanup Bonds	RSA 33:3-e	20-year bond issued in order to pay all response costs associated with a CERCLA superfund site in which a municipality is a named potentially responsible party.
Broadband Infrastructure Bonds	RSA 33:3-g	Bonds for the purpose of financing the development of broadband infrastructure in areas not served by an existing broadband carrier.
Water Works Bond	RSA 33:5-a	Debt incurred for supplying water or for the construction, enlargement, or improvement of water works.
Tax Anticipation Notes	RSA 33:7	Debt incurred in anticipation of the taxes to be received in the financial year in which the debt is incurred, in order to pay current maintenance and operation expenses.
Temporary Notes	RSA 33:7-a	A temporary loan in anticipation of the money to be derived from the sale of bonds or notes which are payable not later than 5 years from the date of issue.







Bond in Anticipation of Aid	RSA 33:7-b	Debt that is issued in anticipation of receiving federal aid with respect to a sewer project, with notes payable within 5 years from date of issue.
Tax Lien Redemption Note	RSA 33:7-d	Where a municipality uses the tax lien provisions of RSA 80:56-86, debt may be incurred in anticipation of redemption of real estate tax liens in order to pay current maintenance and operation expenses or to fund cash deficits.
Bonds & Notes	RSA 33:8	The issue of general obligation bonds or notes authorized by a ballot of 3/5 at town meeting.
Municipal Revenue Bonds	RSA chapter 33-B	A municipality or regional water district may issue bonds or notes for construction of revenue-producing facilities (e.g., water works, sewer plant, parking facility, energy producing facility).
School Reimbursement Anticipation Notes	RSA 198:20-d	Borrowing by a school district in anticipation of receiving an Adequate Education Grant a Special Education Grant.

#### **FINANCING OTHER THAN BY BONDS OR NOTES**

Lease Agreements	RSA 33:7-e	Equipment lease purchase agreements that contain a fiscal funding clause that may be approved by a simple majority at town meeting.
Appropriations for Capital Projects	RSA 32:7-a	A multi-year appropriation not exceeding 5 years approved by 2/3 by vote to town meeting, 3/5 in SB2 town, for a capital project.



# Appendix D

## ASSESSED VALUE ILLUSTRATIONS

SCENARIO 1			TOTAL	
	MARKET VALUE	\$250,000	\$250,000	\$500,000
	ASSESSED VALUE	\$250,000	\$250,000	\$500,000
	TAX RATE	\$20/\$1,000 of value	\$20/\$1,000 of value	
	TAX BILL	\$5,000	\$5,000	\$10,000
SCENARIO 2			TOTAL	
	MARKET VALUE	\$225,000	\$225,000	\$450,000
	ASSESSED VALUE	\$250,000	\$250,000	\$500,000
	TAX RATE	\$20/\$1,000 of value	\$20/\$1,000 of value	
	TAX BILL	\$5,000	\$5,000	\$10,000
SCENARIO 3			TOTAL	
	MARKET VALUE	\$275,000	\$275,000	\$550,000
	ASSESSED VALUE	\$250,000	\$250,000	\$500,000
	TAX RATE	\$20/\$1,000 of value	\$20/\$1,000 of value	
	TAX BILL	\$5,000	\$5,000	\$10,000

### Does adding value to the property tax base bring in more tax revenue?

**Example 1:** What is the effect of adding property value in the municipality? Starting with the two properties each valued at \$250,000, assume now that improvements are made to one of the properties, for example, the addition of a two-car garage with a family room above, which adds \$50,000 to the value of the property. The assessors would add this “pick-up” to the tax base, resulting in a new total town-wide assessed value of \$550,000. With the town budget the same at \$10,000, the tax rate would decrease to \$18.18 per \$1,000 of value ( $10,000 \div 550,000 \times 1,000$ ). The unchanged property would see a decrease in its tax bill to \$4,545, while the property with the addition would now owe \$5,455, for a total of \$10,000 in property taxes.

			TOTAL
MARKET VALUE	\$250,000	\$300,000	\$550,000
ASSESSED VALUE	\$250,000	\$300,000	\$550,000
TAX RATE	\$18.18/\$1,000 of value	\$18.18/\$1,000 of value	
TAX BILL	\$4,545	\$5,455	\$10,000

**Example 2:** Assume that the two properties remain the same, and that a third, similar property is constructed. All three properties are assessed at \$250,000, which increases the total town-wide assessed value to \$750,000. The town budget remains at \$10,000 and the tax rate drops to \$13.33 per \$1,000 of valuation ( $10,000 \div 750,000 \times 1,000$ ). Each property owes one-third as its proportionate share, or \$3,333 in property taxes—but the total tax revenue received is still only \$10,000.

				TOTAL
MARKET VALUE	\$250,000	\$250,000	\$250,000	\$750,000
ASSESSED VALUE	\$250,000	\$250,000	\$250,000	\$750,000
TAX RATE	\$13.33/\$1,000 of value	\$13.33/\$1,000 of value	\$13.33/\$1,000 of value	
TAX BILL	\$3,333	\$3,333	\$3,333	\$10,000

As demonstrated by these two examples, new construction (a strip mall, commercial building, residential improvements, etc.) does not result in **additional** property tax revenue to the municipality. The amount of property tax revenue to be raised is always based upon the appropriations approved during the budget process—in these cases, \$10,000. Expanding the tax base by adding the value of new construction does not generate additional tax revenue. If appropriations remain level, increasing values will only cause a decrease in the tax rate.

# Appendix E

## TAX RATE IMPACT WORKSHEET

*EXAMPLE FOR ANYTOWN, NH*

1	<b>2022 NET LOCAL ASSESSED VALUE:</b>	<b>\$1,411,324,700.00</b>
2	<b>\$1.00 ON THE TAX RATE =</b>	<b>\$1,411,324.00</b>
3	<b>\$0.10 ON THE TAX RATE =</b>	<b>\$141,132.00</b>
4	<b>\$0.01 ON THE TAX RATE =</b>	<b>\$14,113.00</b>
5	<b>ESTIMATES IMPACT OF \$400,000 FIRE TRUCK: (\$400,000 / LINE 2)</b>	<b>\$0.28</b>
6	<b>IMPACT OF \$25,000 COST ITEM: (\$25,000 / LINE 2)</b>	<b>\$0.02</b>

**MUNICIPALITY:** \_\_\_\_\_

- 1.) **2022 NET ASSESSED VALUATION:** \$ \_\_\_\_\_
- 2.) **\$1.00 ON THE TAX RATE =** \$ \_\_\_\_\_
- 3.) **\$0.10 ON THE TAX RATE =** \$ \_\_\_\_\_
- 4.) **\$0.01 ON THE TAX RATE =** \$ \_\_\_\_\_
- 5.) **ESTIMATED IMPACT OF \$ \_\_\_\_\_ ON THE TAX RATE:** \_\_\_\_\_  
 (\$ / LINE 2)

# Appendix F

## TIMETABLE FOR SPECIAL TOWN MEETING

---

**NOTE:** Official ballot referendum towns and districts must consult RSA 40:13 for appropriate schedule. The second session must be held not fewer than 28 days nor more than 60 days following the first session.

### **10 DAYS BEFORE COURT PETITION**

If the special meeting is to appropriate money and requires superior court permission, the governing body must vote to petition the superior court and it must post notice of the vote within 24 hours.

### **COURT PETITION**

Governing body petitions superior court for meeting not sooner than 10 days after voting to petition the court. RSA 31:5 or 197:3. DRA must be notified on or before the date the petition is filed with the court, and certification of that notification must be included with the petition filed with the court.

Governing body must post notice of the court date for the evidentiary hearing on the petition within 24 hours after receiving notice of the court date from the superior court. Notices must be posted at the governing body's office and at two or more conspicuous places in the municipality, as well as in the next available edition of a local newspaper with a wide circulation of the municipality.

### **32 DAYS BEFORE MEETING**

Last day for governing body or budget committee to post notice of public hearing. Public hearing may be held prior to this date. Public hearing notice must be posted seven days prior to the hearing. It is also recommended that it be published in a local newspaper. RSA 32:5.

### **31 DAYS BEFORE MEETING**

In budget committee towns and districts, last day for governing body to submit proposed warrant and budget information to budget committee if the hearing will be on the final day. Otherwise the information must be submitted five days prior to whenever the budget committee will hold that hearing. RSA 32:17.

### **FOURTH TUESDAY BEFORE MEETING**

Last day for the supervisors of the checklist to post the checklist. RSA 39:1-c; RSA 669:5; RSA 654:26; RSA 654:27.



## **25 DAYS BEFORE MEETING**

Last day for budget committee or governing body to hold public hearing. RSA 32:5. Other hearings may be held after this if changes need to be made.

## **7 DAYS BEFORE THE SATURDAY CHECKLIST SESSION**

Last day to post and publish notice for checklist correction session. RSA 654:27.

## **16 DAYS BEFORE MEETING**

The last day for the select board to post warrant and budget. RSA 39:5. (Although listed as 14 days in RSA 39:5, the day calculation does not include the date of posting or the date of the meeting). Warrant must also be published within one week of posting.

## **SATURDAY BETWEEN 6 AND 13 DAYS BEFORE MEETING**

Supervisors of the checklist hold session for correction of checklist. Must be posted and published at least seven days prior. RSA 669:5; RSA 654:27.

## **9 DAYS BEFORE MEETING**

Last day for publishing warrant, except that this must be done within one week after posting. RSA 39:4.

## **MEETING**

Hold meeting.



The following list includes the forms and documents required by towns and cities to be filed with the department. Many of the forms are now created and processed through the Municipal Tax Rate Setting Portal (MTRSP). The forms and instructions on our web site can be accessed at: <https://www.revenue.nh.gov/forms/town-city.htm>. Please contact the Municipal Bureau at (603) 230-5090 with questions.

FORM NAME	FORM NUMBER	REQUIRED SIGNATURES	DUE TO DRA
Warrant	N/A	Majority of Governing Body	20 days after meeting
Budget of the Town	MS-636	Majority of Governing Body	20 days after meeting
Proposed Budget of the City	MS-6c	Majority of Governing Body	20 days after meeting
Budget of a Town with a Municipal Budget Committee	MS-737	Majority of Budget Committee	20 days after meeting
Default Budget (SB2 Only)	MS-DT	Majority of Governing Body or Majority of Budget Committee (following adoption of RSA 40:14-b)	20 days after meeting
Deliberative Minutes (SB2 Only)	N/A	Town/City Clerk, Certified	20 days after meeting
Sample Ballot (SB2 Only)	N/A	Town/City Clerk, Certified	20 days after meeting
Annual Meeting Minutes	N/A	Town/City Clerk, Certified	20 days after meeting
Voting Results (SB2 Only)	N/A	Town/City Clerk, Certified	20 days after meeting
Report of Appropriations Actually Voted	MS-232	Majority of Governing Body or their Designee	20 days after meeting
Annual Town Report	N/A	N/A	To public 7-days prior to annual meeting* 20 Days after meeting
Financial Report of the Budget	<u>MS-535</u>	Majority of Governing Body and Preparer	April 1 (Sept. 1 FY)
Revised Estimated Revenues	MS-434	Majority of Governing Body or their Designee	September 1
MS-1 Extension Request Form	MS-1 EXT	Majority of Governing Body or Assessors	Prior to September 1
Summary Inventory of Valuation	MS-1	Majority of Governing Body	September 1
Tax Collector Report	MS-61	Tax Collector	March 1 (Sept. 1 FY)
Audit Waiver Request	MS-60W	Majority of Governing Body	45 Days prior to end of FY
Auditor Option and Schedule	MS-60A	Municipal Official	10 Days after close of FY



FORM NAME	FORM NUMBER	REQUIRED SIGNATURES	DUE TO DRA
Report of Locally Elected Auditor(s)	MS-60	Town Auditor	Within one year after close of the municipality's fiscal year
CPA Audit	N/A	Audit Firm Preparer	Within one year after close of the municipality's fiscal year
Report of Trust and Capital Reserve Funds	MS-9	Majority of Trustees	March 1 (Sept. 1 FY)
Report of Common Trust Fund Investments	MS-10	Majority of Trustees	March 1 (Sept. 1 FY)
Report of Town, City and Village Officials	MS-123	Town/City Clerk	After annual election
Treasurer's Report of Borrowing	MS-50	Town/City Treasurer	10 Days after issue of bonds or notes
Treasurer's Annual Report	N/A	Town/City Treasurer	Close of fiscal year



The following list includes the forms and documents required by school districts to be filed with the department. Many of the forms are now created and processed through the Municipal Tax Rate Setting Portal (MTRSP). The forms and instructions on our web site can be accessed at: <https://www.revenue.nh.gov/forms/school.htm> Please contact the Municipal Bureau at (603) 230-5090 with questions.

FORM NAME	FORM NUMBER	REQUIRED SIGNATURES	DUE TO DRA
Warrant	N/A	Majority of School Board	20 days after meeting
Proposed Budget	MS-26	Majority of School Board	20 days after meeting
Proposed Budget (Dependent School District)	MS-26c	Majority of School Board	20 days after meeting
Proposed Budget (Budget Committee)	MS-27	Majority of School Board	20 days after meeting
Default Budget of the School District (SB2 Only)	MS-DSB	Majority of School Board or Majority of Budget Committee (following adoption of RSA 40:14-b)	20 days after meeting
Deliberative Session Minutes	N/A	School District Clerk, Certified	20 days after meeting
Sample Ballot (SB2 Only)	N/A	School District Clerk, Certified	20 days after meeting
Annual Meeting Minutes	N/A	School District Clerk, Certified	20 days after meeting
Voting Results (SB2 Only)	N/A	School District Clerk, Certified	20 days after meeting
Report of Appropriations Actually Voted	MS-22	Superintendent, School District Clerk, Majority of School Board	20 days after meeting
Annual Report	N/A	N/A	To Department of Education 20 days after meeting
Revised Estimated Revenues	MS-24	Preparer	September 1
School Financial Report	MS-25	School Board Chairperson, Superintendent, Maj. of School Board	September 1
Report of Locally Elected Auditor(s)	MS-60	School District Auditor	Within one year after close of school district's fiscal year
CPA Audit	N/A	Audit Firm Preparer	Within one year after close of school district's fiscal year
Auditor Option and Schedule	MS-60A	School District Official	10 Days after close of FY



The following list includes the forms and documents required by village districts to be filed with the department. Many of the forms are now created and processed through the Municipal Tax Rate Setting Portal (MTRSP). The forms and instructions on our web site can be accessed at: <https://www.revenue.nh.gov/forms/village.htm> Please contact the Municipal Bureau at (603) 230-5090 with questions.

FORM NAME	FORM NUMBER	REQUIRED SIGNATURES	DUE TO DRA
Warrant	N/A	Majority of Commissioners	20 days after meeting
Budget of the Town/Village District	MS-636	Majority of Commissioners	20 days after meeting
Budget of the Town/Village District with a Budget Committee	MS-737	Majority of Budget Committee	20 days after meeting
Annual Meeting Minutes	N/A	District Clerk, Certified	20 days after meeting
Report of Town, City and Village Officials	MS-123	District Clerk, Certified	20 Days after election or appointment
Report of Appropriations Actually Voted	MS-232	Majority of Commissioners	20 days after meeting
Annual Report	N/A	N/A	To public 7-days prior to annual meeting* 20 Days after meeting
Financial Report of the Budget	MS-535	Majority of Commissioners and Preparer	April 1 (Sept. 1 FY)
Revised Estimated Revenues	MS-434	Preparer	September 1
Audit Waiver Request	MS-60W	Majority of Commissioners	45 Days prior to end of FY
Auditor Option and Schedule	MS-60A	District Official	10 Days after close of FY
Report of Locally Elected Auditor(s)	MS-60	District Auditor	Within one year after close of municipality's fiscal year
CPA Audit	N/A	Audit Firm Preparer	Within one year after close of the municipality's fiscal year

# Appendix H

## Default Budget FAQ



## Default Budget FAQ

Up until recently, the law provided that in Official Ballot Referendum (“SB 2”) towns, the default budget is “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.” RSA 40:13, IX (b). The statute went on to define “one-time expenditures” as “appropriations not likely to recur in the succeeding budget, as determined by the governing body.”

This sounds simple enough: the default budget is supposed to be the same budget as last year, with certain amounts added or increased as required by the statute. However, terms such as “contracts previously incurred by law” or what really constitutes an expense “not likely to recur” created ambiguity when calculating the default budget. Indeed, in some towns and districts, tensions rose when the default budget frequently exceeded the proposed operating budget for a given year.

As a result, several amendments were made to RSA 40:13 in 2018. This Q&A looks at the law in its new form and provides suggestions for handling your default budget going forward.

### **WHAT CHANGED IN 2018?**

In a nutshell, between House Bill 1307 and Senate Bill 342, the Legislature revised the definition of “default budget,” created more specific requirements for what may and may not be included in the default budget, and mandated new notice and transparency requirements.

### **HOW WILL OUR CALCULATION OF THE DEFAULT BUDGET CHANGE WITH THESE NEW AMENDMENTS?**

Calculation of the default budget still starts with last year’s budget; the question is which amounts must be taken out, and which amounts that were not included in last year’s budget can be added. As stated above, last year’s budget must be reduced or increased “by debt service, contracts, and other obligations previously incurred or mandated by law, and reduced by one-time expenditures contained in the operating budget.” RSA 40:13, IX (b). Some of this is easy. For example, an obligation “mandated by law” would be something like the county tax, which municipalities are obligated to pay.

## **WHAT AMOUNTS MUST BE TAKEN OUT OF LAST YEAR'S BUDGET?**

Even prior to the 2018 amendments, RSA 40:13, IX(b) required last year's budget to be *reduced* by one-time expenditures. The amendments now also require the budget to be reduced by "by salaries and benefits of positions that have been eliminated in the proposed budget."

## **WHAT IS A ONE-TIME EXPENDITURE?**

"One-time expenditures" are "appropriations not likely to recur in the succeeding budget, as determined by the governing body." For example, let us say the town included money in the maintenance line of last year's operating budget to install new windows in the town hall. Since the window installation was a discrete project that occurred last year, and not something to recur annually (i.e., the town hall doesn't get new windows every year!), that amount constitutes a one-time expenditure that must be taken out to calculate the default budget.

## **WHAT EMPLOYMENT POSITIONS ARE "ELIMINATED" AND MUST COME OUT OF THE DEFAULT BUDGET?**

As stated above, the statute now requires last year's budget to be reduced "by salaries and benefits of positions that have been eliminated in the proposed budget." It goes on to say that "eliminated positions shall not include vacant positions under recruitment or positions redefined in the proposed operating budget." So, let us say your town had an Assistant Public Works Director who 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.

However, 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.

## **WHAT ABOUT MULTI-YEAR CONTRACTS? MORE SPECIFICALLY, IF THE GOVERNING BODY SIGNS A MULTI-YEAR CONTRACT, DOES THE AMOUNT FOR EACH YEAR AUTOMATICALLY GET INCLUDED IN THE DEFAULT BUDGET?**

HB 1307 also added new subparagraph (c) to RSA 40:13, IX to define the term "contracts" in the default budget definition. This amendment addressed one of the most hotly-debated questions related to the default budget—when the governing body enters into a multi-year contract, can the costs associated with the contract automatically be included in next year's proposed operating budget *and* next year's default budget?

This new amendment specifically states that the term "contracts" means "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."

The easiest way to conceptualize this is to put the definition into context.

Take, for example, a waste-hauling contract renewal for a term of three years that the select board signed. Assume the annual amount increases by 10% in year two and 15% in year three. A warrant article could be presented to the voters asking for approval of the entire three-year term, which would include: (1) the purpose of the contract; (2) the term of the contract; (3) the amount to be spent for each year of the contract; and (4) the total amount to be spent over the term of the contract. If that warrant article for the hauling contract is approved, then the three-year hauling contract is a contract "previously approved, in the amount so approved by the legislative body . . . in a separate warrant article." In the subsequent years' default budgets, the full amounts (with the increases) may be included in the default budget.

On the other hand, the definition also says that a contract may be approved in the operating budget for the previous year. Look at the hauling agreement again and assume the select board did not present the agreement to the voters in a separate warrant article, but as an appropriation for the purpose of paying the hauling contract included in a line item in the operating budget. In that case, when calculating next year's default budget, the same amount that was included last year for the hauling contract will be included in the default budget—not the increased amount in the contract.

### **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. In this context, the voters' rejection of this article may bring up difficult questions: Have the voters rejected spending any money at all on a hauling contract? Or have they simply rejected the increased amounts in future years? A well-crafted warrant article may help reduce these risks, should the voters reject the article, so that the purpose of spending (e.g., spending any money on waste hauling) is not prohibited by a “no” vote on the article.

### **WHAT ARE THE RISKS ASSOCIATED WITH PUTTING THE AMOUNT IN THE OPERATING BUDGET?**

There is nothing wrong with this approach—and since there are many types of multi-year agreements signed by the select board, this is often the most effective 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. Let us go back to the hauling contract: Assume the 2017 budget contained \$100,000 for waste hauling. At the end of 2017, the select board signed a renewal for a contract period of three years: \$105,000 for 2018; \$108,000 for 2019, and \$110,000 for 2020.

What amount goes into the 2018 default budget? The answer, based on the new definition of “contracts,” is \$100,000. The reason? The 2018 default budget is based on the 2017 operating budget, and the 2017 budget contained \$100,000. Therefore, the voters approved the amount of

\$100,000 for waste hauling. The default budget should contain \$100,000 and not \$105,000, but your proposed operating budget should contain \$105,000. Don't panic—keep reading!

### **BUT WAIT! ARE YOU SAYING WE'RE PROHIBITED FROM PAYING THE ANNUAL INCREASES IN MULTI-YEAR AGREEMENTS SIGNED BY THE SELECT BOARD? WHAT ABOUT SALARY INCREASES INCLUDED IN AN EMPLOYMENT CONTRACT?**

Absolutely not! Remember that the select board has the authority to spend money and the authority to transfer funds from one purpose to another. This authority applies to a default budget as well as an approved proposed operating budget—both are bottom line budgets.

Let us go back to the hauling contract in the question above, where the select board did not submit the contract to the voters in a separate warrant article, and where the 2017 budget contained \$100,000 for waste hauling. We said that the 2018 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. But the select board can still pay \$105,000 for waste hauling in 2018, 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.



The same rules apply to employment contracts that contain annual salary increases, which is another commonly debated issue with default budgets. Take, for example, an employee whose salary plus benefits in the 2017 budget was \$100,000 (with a \$50,000 salary). But let's say the select board had also entered into an agreement to pay this employee a 10% increase in the subsequent year. For the 2018 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 2017 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. Of course, just like any other multi-year agreement, the select 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.

In fact, while these amendments to RSA 40:13 were pending in the legislature, a judge in the 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. *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)). The select board had put into the default budget about \$60,000 worth of salary increases. These increases were the result of various agreements between the board and certain employees. Neither the contracts nor the amounts in the contracts (i.e., the annual increases above and beyond the salary amounts in last year's budget) had been approved by vote of the legislative body. 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.” HB 1307 confirms that ruling by requiring that the amount of money in a contract must be previously approved by the voters through the annual meeting budget process to be included in the default budget.

Although this order came out before the current amendments went into effect, we believe the case represents the intent behind the amendment—that it was targeted at preventing the “unapproved increases” from being put into the default budget by clarifying that contracts must be approved by the legislative body for those amounts may automatically be included in the default budget.

Of course, approved collective bargaining agreements, and the cost increases included therein, are always included in the default budget because those contracts are approved by the voters separately.

### **IS OUR DEFAULT BUDGET PER SE INCORRECT IF IT IS MORE THAN THE PROPOSED OPERATING BUDGET?**

No. SB 342 finally settles the question whether the default budget may be higher than the proposed operating budget by amending RSA 40:13, IX(b):

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.

Therefore, if the default budget is calculated correctly, it is not “wrong” because it is higher than the proposed operating budget for the year.

### **WHAT ADDITIONAL DISCLOSURE TO THE PUBLIC IS REQUIRED?**

HB 342 amplifies the notice requirements for the default budget. Adding onto the long-standing requirement that the default budget be disclosed at the first budget hearing, RSA 40:13, XI(a), as amended, further explains the default budget must be “presented for questions and discussion at that hearing,” although many towns and districts already do this. The form used for presenting the default budget must now include the “specific items that constitute a change by account code, and the reasons for each change,” as well as

“reductions for eliminated positions and benefits.” Towns and districts will be required to make the “line item details” for these changes available for inspection by the voters.

**SINCE THE DEFAULT BUDGET CANNOT BE AMENDED BY THE VOTERS, IS IT “OFF LIMITS” FOR DISCUSSION AT THE DELIBERATIVE SESSION?**

HB 1307 has clarified the default budget’s role at the deliberative session. RSA 40:13, IV will now expressly permit voters to discuss and debate the default budget, along with other articles on the warrant. However, RSA 40:13, XI(b) still prohibits the voters from *amending the default budget at the deliberative session*.

# Index of Statutes

## New Hampshire Statutes: Full chapter Citations

RSA chapter 32 .....	7, 10, 22, 45, 48, 56	RSA chapter 53-F.....	32, 43
RSA chapter 33 .....	32, 38, 92	RSA chapter 53-G.....	39
RSA chapter 33-B .....	92	RSA chapter 79-E .....	15
RSA chapter 35 .....	31, 41, 42, 43, 90	RSA chapter 91-A.....	56, 73
RSA chapter 37 .....	52	RSA chapter 162-K.....	77
RSA chapter 49-B .....	57	RSA chapter 273-A.....	32, 33
RSA chapter 53-A.....	19		

## New Hampshire Statutes: Section Citations

RSA 31:3 .....	34	RSA 32:3 .....	10, 12, 13, 23, 27, 37, 45, 51
RSA 31:4 .....	2, 13, 14, 36	RSA 32:3, VI.....	10, 23, 37, 45
RSA 31:4-a.....	36	RSA 32:5 .....	7, 17, 18, 19, 21, 22, 23, 24, 25, 50, 51, 52, 53, 54, 61, 62, 96, 97
RSA 31:5 .....	9, 19, 27, 28, 30, 96	RSA 32:5-a.....	19
RSA 31:5, III.....	19, 28	RSA 32:5-b.....	7, 17
RSA 31:19 .....	85, 89	RSA 32:5-c.....	7, 17
RSA 31:19-a.....	11, 31, 41, 42, 85	RSA 32:5, I.....	18, 51
RSA 31:19-a; (d) .....	11	RSA 32:5, II .....	18
RSA 31:19-b.....	89	RSA 32:5, III.....	21, 22
RSA 31:19-c.....	89	RSA 32:5, IV.....	18
RSA 31:20 - 21.....	89	RSA 32:5, V .....	23, 24, 25, 51, 53, 54, 62
RSA 31:39 .....	14	RSA 32:6 .....	12, 26
RSA 31:94 .....	10, 35	RSA 32:7 .....	3, 11, 23, 24, 35, 37, 38, 40, 44, 60, 92
RSA 31:94-a - :94-e.....	10, 35	RSA 32:7-a.....	11, 23, 24, 44, 60, 92
RSA 31:95-b.....	31, 89	RSA 32:8 .....	10, 21, 29, 46, 64
RSA 31:95-c.....	11, 42, 85, 90	RSA 32:9 .....	29
RSA 31:95-d .....	42, 43	RSA 32:10 .....	10, 26, 29, 30, 45, 46, 47, 61
RSA 31:95-e.....	89	RSA 32:10, I(e).....	10, 45, 46, 47
RSA 31:95-h .....	10, 32, 43, 85, 90	RSA 32:11 .....	16, 30, 36
RSA 31:98-a.....	16, 90	RSA 32:11, V .....	16
RSA 31:103-a.....	19	RSA 32:12 .....	7, 29, 53
RSA 31:113 .....	44, 85, 90	RSA 32:13 .....	30
RSA 31:130 .....	66	RSA 32:14 .....	7, 10, 48, 54, 59
RSA 32:1 .....	7, 50	RSA 32:14 - :24.....	7, 48, 54
RSA 32:1 - :13.....	7	RSA 32:15 .....	49, 50
RSA 32:2 .....	7		

RSA 32:16 .....	48, 50, 51, 52	RSA 40:9 .....	69
RSA 32:16, I.....	48	RSA 40:10 .....	63, 68, 69
RSA 32:17 .....	51, 52, 96	RSA 40:10, II.....	63
RSA 32:18 .....	54, 55	RSA 40:13 .....	7, 9, 18, 24, 26, 38, 50, 53, 57, 58, 59, 60, 61, 62, 63, 64, 67, 96, 102, 103, 105, 106
RSA 32:19 .....	19, 23, 28, 55	RSA 40:13, II-b.....	18, 58
RSA 32:19-a.....	19, 28	RSA 40:14 .....	50, 52, 57, 59
RSA 32:22 .....	52, 53	RSA 40:14-b.....	50, 52, 59
RSA 32:23 .....	7, 53	RSA 41:9 .....	36
RSA 32:24 .....	7, 48	RSA 41:9, IV.....	36
RSA 32:25 .....	7	RSA 41:11 .....	66
RSA 33.....	11, 19, 24, 33, 35, 38, 39, 40, 41, 58, 64, 68, 91, 92	RSA 41:14-a.....	41
RSA 33:3-c.....	91	RSA 41:29 .....	31
RSA 33:3-d.....	91	RSA 44:1-b.....	19
RSA 33:3-e.....	91	RSA 49-B .....	17, 57, 64
RSA 33:3-g.....	91	RSA 49-B:13, II-a.....	17
RSA 33:5-a.....	91	RSA 49-C:12, III .....	17
RSA 33:7 .....	91, 92	RSA 49-C:33, I(d).....	17
RSA 33:7-a.....	91	RSA 49-D:3, I-a.....	38, 57, 64
RSA 33:7-b.....	92	RSA 49-D:3, I(e) .....	17, 57
RSA 33:7-d.....	92	RSA 49- D:3, II-a .....	57
RSA 33:7-e.....	92	RSA 49-D:3, II-a .....	38, 64
RSA 33:8 .....	92	RSA 52:1 .....	13
RSA 33; (c).....	11	RSA 52:3-a, I-a.....	36
RSA 35.....	11, 31, 32, 33, 40, 41, 43, 85, 90	RSA 52:3, II .....	13, 36
RSA 35:1 .....	85	RSA 53-A.....	19
RSA 35-B :2, II.....	85	RSA 53-A:2,.....	19
RSA 35-B:2 (II) .....	90	RSA 53-C:4.....	91
RSA 36-A:4.....	14, 44	RSA 53-F:7 (II).....	91
RSA 36-A:4-a .....	14	RSA 72.....	81
RSA 36-A:5.....	14, 31, 44, 85, 90	RSA 76:2 .....	79
RSA 36-A:5, II.....	14	RSA 76:3 .....	83
RSA 37:6, V .....	52	RSA 76:5 .....	79
RSA 38:29 .....	32, 60, 85, 90	RSA 76:11-a.....	83
RSA 38:29, III.....	32	RSA 76:13 .....	83
RSA 38:38, I(c).....	39	RSA 79-E .....	15
RSA 38:38, I(e).....	39	RSA 79- E:1, II-a.....	15
RSA 38-D:5.....	90	RSA 79-E:2, II .....	15
RSA 39:1 .....	27, 96	RSA 79-E:13, I (b) .....	15
RSA 39:2 .....	26, 66	RSA 91-A:1-a, VI.....	56
RSA 39:3 .....	17, 18, 27, 57	RSA 91-A:2.....	73
RSA 39:4 .....	26, 97	RSA 91-A:4.....	73
RSA 39:5 .....	97	RSA 149-I:10 .....	31, 32, 60, 85, 90, 91
RSA 40:4 .....	63, 64, 65, 69, 70	RSA 149-I:10, II.....	32
RSA 40:4-a.....	63, 69, 70	RSA 149-I:10, III.....	31, 32
RSA 40:4-b.....	63, 70	RSA 149-M:4.....	43
RSA 40:4-c.....	64	RSA 149-M:17, IV .....	33
RSA 40:6 .....	65	RSA 149-M:17, V.....	33
RSA 40:7 .....	69	RSA 162-K.....	19
RSA 40:8 .....	69	RSA 189:28-a.....	36, 37

RSA 189:28-a, I .....	36	RSA 318-B:17-b .....	85
RSA 194:3-c .....	43	RSA 423:6 .....	31, 44, 85, 91
RSA 194:15 .....	10, 35	RSA 654:26 .....	96
RSA 195:12 .....	48, 49, 50, 52	RSA 654:27 .....	96, 97
RSA 195:12-a .....	48, 49, 50	RSA 669:5 .....	69, 96, 97
RSA 197:3 .....	19, 27, 28	RSA 671:33 .....	50
RSA 197:3, III .....	19	RSA 673:1 .....	73
RSA 197:6 .....	18, 61	RSA 673:16, II .....	85
RSA 197:7 .....	26	RSA 674:1 .....	73
RSA 198:4 .....	13, 17, 36, 44, 90	RSA 674:2, I .....	73
RSA 198:4-b .....	90	RSA 674:5 .....	42, 72, 73, 74
RSA 198:20-b .....	31, 89	RSA 674:6 .....	75
RSA 198:20-c .....	41	RSA 674:7 .....	75, 76, 77
RSA 198:20-d .....	92	RSA 674:7, II .....	75
RSA 198:48 .....	31	RSA 674:8 .....	72, 78
RSA 202-A:4-a .....	31	RSA 674:21 (V) .....	91
RSA 202-A:4-c .....	31, 89	RSA 674:21, V .....	72, 73, 77, 85
RSA 202-A:4-d .....	89	RSA 674:22 .....	72
RSA 202-A:11 .....	85	RSA 674:44-d .....	31, 44, 85
RSA 202-A:22 .....	85	RSA 674:44-g .....	85
RSA 202-A:23 .....	85	RSA 674:44-j .....	85
RSA 204-C:57, IV .....	15	RSA 675:3 .....	63
RSA 273-A:1, IV .....	19, 28	RSA 675:6 .....	77
RSA 289:2 .....	19	RSA 675:9 .....	78

## NEW HAMPSHIRE MUNICIPAL ASSOCIATION

The New Hampshire Municipal Association (NHMA) provides legislative advocacy, a legal advice hotline, and training programs for member municipalities. Originally formed by local officials in 1941 to represent municipal policy concerns before the state legislature, NHMA has more than 75 years of continuous service to the state's municipalities. As the service and action arm of local governments throughout New Hampshire, NHMA staff respond to thousands of legal inquiries from members every year, and track hundreds of bills every legislative session, actively working to advance member-adopted policies.

NHMA also provides significant training and educational opportunities for local officials and employees from member municipalities. We know local government! Learn more at [www.nhmunicipal.org](http://www.nhmunicipal.org).

### OUR MISSION

Through the collective power of cities and towns, NHMA promotes effective municipal government by providing education, training, advocacy and legal services.



25 Triangle Park Drive, Concord, NH 03301 • Phone: 603.224.7447

[www.nhmunicipal.org](http://www.nhmunicipal.org)