



RESOURCE GUIDE PREPARED FOR THE BUDGET COMMITTEE

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 document 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 The adoption of an official budget committee can be rescinded in the same manner.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. DRA 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. Copies of each proposed budget must be submitted directly from the budget committee to DRA. RSA 32:5, VI. 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*.