# NHMA Budget & Finance Workshops 2024

## Fundamentals of the Municipal Budget Process

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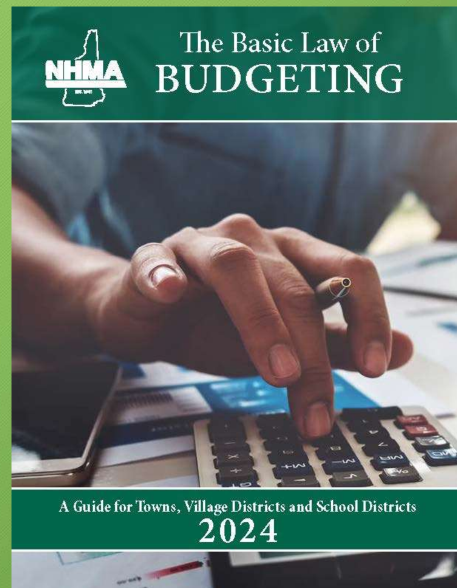
1

THANK YOU TO OUR SPONSORS:

2

## Contents*:

- Appropriations
- Gross Basis Budgeting
- Warrant Notice
- No Spending w/out Appropriations
- Lapse of Appropriations
- Transfers of Appropriations
- Budget Committee
- SB 2 - Official Ballot law
- Town/Village/School Meetings
- Capital Improvement Plans
- Property Tax System
- Eight Appendices




3

## Types of Governmental Entities

- Cities
- Towns
- Village Districts
- School Districts
- Counties
- Intergovernmental Agreements

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4

## Budgeting Laws

- RSA Ch. 32 (Municipal Budget Law)
- RSA Ch. 33 (Bonds)
- RSA Ch. 35 (Capital Reserve Funds)
- RSA Chapter 31 (Powers & Duties)
- RSA Chapter 39 (Town Meeting)
- RSA Chapter 21-J (Department of Revenue Admin.)

5

## No Spending without an Appropriation

No board of selectmen, school board, village district commissioners or any other officer, employee, or agency of the municipality acting as such shall pay or agree to pay any money, or incur any liability involving the expenditure of any money, for any purpose in excess of the amount appropriated by the legislative body for that purpose, or for any purpose for which no appropriation has been made, except as provided in RSA 32:9-11 (judgements, transfers and emergencies).

RSA 32:8

6

## Violations of Budget Law

- Removal, RSA 32:12
- *Blake v. Pittsfield*
- DRA Disallowance

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7

## The Budget Process: Key Players

- Legislative Body
- Governing Body
- Budget Committee: Advisory v. Official

8

# Legislative Body: The Town Meeting

| | | |
|---|---|---|
| Approves all appropriations | Votes to create and fund common municipal funds | Citizen authority to propose appropriations by petition |
| May amend separate articles to reduce or zero out appropriations | May amend budget to reduce (or increase) total bottom line appropriation | Can zero out line item appropriations in DRA budget form |

9

# Governing Body - Definition

- 21:48 Governing Body. – the term "governing body" shall mean the board of selectmen in a town, the board of aldermen or council in a city or town with a town council, the school board in a school district or the village district commissioners in a village district

10

# Roles of the Governing Body

- Prepares warrant, drafts separate warrant articles
- Submit proposed budget to the Budget Committee or Town Meeting.
- Prepares manifest to pay all town expenses
- Ensure all funds totaling $500 or more are remitted by departments, town clerk and tax collection to the treasurer
- Publish in annual report, the general fund balance sheet based upon audited financial statements
- Establish and maintain appropriate internal control procedures
- Maintain records of all town financial transactions
- Annually review and adopt an investment policy
- Pay all sums of money received to the town treasurer

11

# Role of Budget Committee

- Review current year's expenditures
- Review proposals, request information
- Prepare budget
- Schedule and hold budget hearings
- Forward final proposed budget to governing body
- ***Does not control spending***
- 10% Rule in towns with official budget committee

12

## Throughout the Year

- After the budget is adopted, the budget committee may request comparative statements of appropriations and expenditures made throughout the year.
  - Select board must choose to comply with this request (work together!)
- Meet periodically throughout the year to review and prepare
  - An involved budget committee may choose to meet throughout the year to review expenditures and evaluate this information in preparation for upcoming budget. Budget preparation is a year long process!

13

## Budget Committee Membership

- RSA 32:15. Three to 12 members, either elected or appointed (member-at-large)
- No 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.
- One member of select board, one member of school board (wholly within town), one member of village district commission appointed (ex-officio).
- Oddly enough, only ex-officio members are allowed alternates.

14

## Status of Ex-Officio Budget Committee Members

- The membership of an elected municipal budget committee is prescribed by RSA 32:15 and shall include one member ***each*** from the select board, school board and village district located in town.
- These Ex-Officio members serve as full voting members of a municipal budget committee – this is not optional, ***it is mandatory.***
- Budget Committees cannot by procedural rule make these Ex-Officio representatives non-voting members: *Town of Hudson and Hudson School District v. Hudson Budget Committee* – Hillsborough County Superior Court-Case No. 2022-CV-00223, 8/15/22

15

## Budget Committee vs. Select Board

- The obligation to safeguard town assets and ensure expenditures are made in compliance with the adopted budget lies with the select board.
  - Budget committee is not an oversight committee
- May review expenditures by select board. Cannot dispute discretion of SB, but can use SB actions to influence future budget recommendations.
- Budget committee has no authority over personnel and employment related matters, that belongs solely to the SB.
- May place recommendation on articles containing an actual appropriation, not on other articles.

16

# The Budget Cycle is Continuous


17

# Why May a Municipality Appropriate Money?

- No Home Rule
- RSA 32:3, V & RSA 31:4
- Village Districts, RSA 52:1
- School Districts, RSA 198:4

18

## Steps in Budget Development

- Department heads prepare estimated expenditures and revenue projections and submit to governing body. RSA 32:4. (library trustees may directly submit their proposed budget to budget committee – RSA 202-A:11, II)
- Towns with Town Manager – the manager provides the governing body with an estimate of the probable expenditures of the town for the ensuing fiscal year, along with an estimate of revenues. RSA 37:6, V
- Select Board reviews information provided under RSA 32:4 and RSA 37:6, V and submits their budget recommendations to the budget committee (if there is one).
- Budget Committee prepares the budget as provided in RSA 32:5, and if authorized under RSA 40:14-b, a default budget under RSA 40:13. RSA 32:16, I.

19

## 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.

20

## Appropriations Are Acts of Legislative Policy

- ✓An appropriation is a policy decision to set aside a specific amount of public money for a specific stated governmental purpose.
- ✓ It is a legislative act by vote of the legislative body (the voters) at a properly noticed annual or special meeting.
- ✓An appropriation is different from the authorization to tax (raising money). "Raising" indicates the source of the revenue; "appropriating" indicates how the money will be spent.

21

## "Separate" Articles

**"Special"** Articles, RSA 32:3, VI:
- Petitioned
- Bonds
- Capital reserve/town-funded trust funds
- Designated non-lapsing, non-transferable, special

- Nontransferable, RSA 32:10, I(d)
- Can be encumbered for one more year
- Can be designated initially as nonlapsing for up to 5 years

22

## General Warrant Article Suggestions

- Disclose gross appropriation
- Disclose revenue sources
- Consider order of articles
- Consider statutory wording and vote requirements
- Use DRA's Suggested Warrant Article Language found in the Portal

23

## Problems to Avoid

| | | | |
|---|---|---|---|
| Change of Purpose | Improper Use of CRF | Agents of CRF Not Warned | Made "Non-Lapsing" From Floor |
| Not Warned | Did Not Gross Appropriate | No Recommendations on Special Warrant Articles | No "Sum Certain" |

24

## Procedural Requirements for Valid Appropriations (Budget Creation)

- ✓ Public budget hearing
- ✓ Disclosure of purpose and amounts at hearing (including sub-account information)
- ✓ Disclosure of default budget at first budget hearing
- ✓ Budgeting on gross basis
- ✓ Recommendations
- ✓ Warrant Notice
- ✓ Listing of all appropriations and separate warrant articles on posted budget

25

## Public Budget Hearing Required

- Must have at least one budget hearing; deadlines for traditional towns in RSA 32:5 (25 days before town meeting) and for SB 2 in 40:13 (see NHMA Important Date Calendars - https://www.nhmunicipal.org/calendars-printable-pdfs )
- All purposes must be "discussed or disclosed" at public hearing-new purposes and additional amounts may be brought up at a hearing and the budget committee/governing body can accept those suggestions…or not.
- After hearing is closed, no new purposes or amounts may be added to budget or separate articles (unless supplemental hearing is held).
- However, budget items can be reduced or eliminated after the final budget hearing.

26

## Gross Basis Budgeting
## RSA 32:5, III

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- ✓ 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, gift 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.

27

## Multi-Year Agreements

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Municipalities 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.

A municipality can bind itself to a multi-year agreement if the total cost items for the full life of the agreement are fully disclosed and adopted by the legislative body.

28

## 3/5ths Majority to Approve Bonds

- ✓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).
- ✓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).

29

## Recommendations & Numeric Tallies RSA 32:5, V & V-a

- Recommendations:
  - ✓Required on special articles, 32:5, V
  - ✓Required on collective bargaining cost items, 32:19
  - ✓Defects/deficiencies don’t affect validity of appropriations, 32:5, V
- Numeric tallies:
  - ✓32:5, V-a – allowed by vote of town meeting – but if not required by vote of town meeting may be included at discretion of budget committee or governing body
- Recommendations on non-money articles allowed by governing body - Olson v. Grafton

30

## Estimated Tax Impact

- RSA 32:5, V-b
- Must be adopted by legislative body
- Governing body determines
- Only an estimate!

31

## Limitations on Actions by Budget Committee

- ✓ The Budget Committee cannot intentionally neuter the ability of town meeting to increase budget by 10% over the amount recommended. *Baker v. Hudson*
- ✓ Budget Committee can cut budget and is not required to specify how a school budget must absorb a $650,000 budget cut. *Brentwood School Dist. v. Brentwood Budget Committee*

32

## Exceptions to 10% Limitation

| | |
|---|---|
| Fixed charges not counted, RSA 32:18 | Bonds and Notes, interest and principal<br>Charges imposed by other governments |
| Bond requests recommended by governing body, RSA 32:18-a | Prevents non-recommendation by budget committee from keeping issue from the voters |
| Collective bargaining agreements, RSA 32:19 | As with bonds, assures the voters consider the matter |

33

## Warrant Notice & Amendments

- *Warning Subject Matter*
  - ✓ Appropriation valid only if subject matter appears in warrant (RSA 32:6)
  - ✓ New purposes/line items cannot be added from the floor of the meeting, whether traditional or SB 2 deliberative session
  - ✓ Petitioned articles can be amended
  - ✓ In SB 2 towns amendments only invalid if they effectively eliminate the subject matter of the warrant article
- *Stay at Home Rule*
  - ✓ Stay at home test: Suppose a voter had read the original article in the posted warrant and decided she wasn't 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.

34

# Spending Limitations

***Tax & Spending Caps*, *RSA 32:5-b; 32:5-c*.**

- Limitation on annual increase of proposed budget
- Adopted by voters
- Fixed percentage or fixed dollar amount
- Proposed amount to be raised by taxes can’t exceed prior year by more than cap
- Voters can exceed cap through amendments at town meeting

***10% Limitation in Official Budget Committee towns***

- Amount approved by town meeting cannot exceed by more than 10% of the amount recommended by the budget committee
- Certain exclusions from total

35

# Questions?

36

# Time for a 10-minute break!

37

## The Rules Governing The Annual Appropriation

- Appropriations only at Annual or Special Meeting – *a Special Meeting must be authorized by court order to approve an appropriation for an emergency under RSA 31:5 unless the ballots cast equals1/2 of the number of legal voters borne on the checklist of the town entitled to vote at the annual or biennial election next preceding such special meeting.* RSA 32:6
- Appropriations cover anticipated expenditures for one fiscal year. RSA 32:7
- Calendar fiscal year towns with a March annual meeting may spend between January 1st and the date a budget is adopted commensurate with prior year's appropriations and expenditures for the same purposes during the same time period. RSA 32:13

38

## Appropriations at Special Meetings?

- Unless the ballots cast shall be equal in number to at least 1/2 of the number of legal voters on the checklist of the town entitled to vote at the annual or biennial election next preceding such special meeting
- Appropriation due to emergency requiring immediate expenditure - get court approval
- RSA 31:5, III & RSA 197:3, III—special meeting to reconsider cost items of a proposed collective bargaining agreement

39

## Emergency Expenditures RSA 32:11

- Unusual circumstance requiring over expenditure of budget
- Before making expenditure apply to DRA for permission
- Official Budget Committee must vote to approve
- Governing body must designate the source of the proposed spending

40

## Contingency Fund
## RSA 31:98-a

✓Towns may annually establish a contingency fund to meet the cost of unanticipated expenses that may arise during the year.

✓Fund shall not exceed one per cent of the amount appropriated by the town for town purposes during the preceding year excluding capital expenditures and the amortization of debt.

✓Better option than RSA 32:11 (Emergency Expenditures) or RSA 31:5 (Special Meetings).

41

## RSA 76:6 - Overlay

- In assessing taxes the select board may assess a sum not exceeding 5 percent more than the amount of such tax.
- Overlay is established annually to fund anticipated property tax abatements, exemptions and uncollected taxes in that year.
- Both overlay deficits and surpluses may occur. By comparison a contingency fund is a tool that can be used to meet unanticipated expenses which occur during the course of a budget year.
  - ✓Overlay Deficit - A deficit that occurs when the amount of overlay raised in a given year is insufficient to cover abatements.
  - ✓Overlay Surplus - Any balance in the overlay of a given year in excess of the amount remaining to be collected.

42

# Certain Multi-Year Expenditures

**Lease/purchase agreements, RSA 33:7-e**

- With escape clause (simple majority)
- Without escape clause (supermajority vote)

**Capital projects, RSA 32:7-a**

- Identified capital projects
- 2/3 or 3/5 majority vote
- Up to 5 years
- Included in default budget

43

# Transfer Of Appropriations RSA 32:10

- Governing body may transfer money from one line to another
- Transfer authority is the same over the default budget
- Voters cannot restrict transfer authority
- Special warrant articles - can transfer into, but not out of

44

## No Means No RSA 32:10, I (e)

*IF*

Budget line item reduced to zero, or

Separate warrant article with appropriation defeated or reduced to zero.

***THEN***

That "purpose" is deemed to be one where no appropriation is made.

No money may be spent for that defeated purpose during the ensuing fiscal year.

45

## Lapse of Appropriations RSA 32:7

All appropriations shall lapse at the end of the fiscal year and any unexpended portion thereof shall not be expended without further appropriation, ***UNLESS:***

- Encumbered by legally-enforceable obligation;
- Placed in nonlapsing fund: capital reserve or trust;
- Appropriated to a capital reserve fund;
- Amount is raised through bonds or notes (then lapses upon completion of purpose);
- Money received from state, federal, or private grant (then nonlapsing for as long as program rules)
- Special warrant article:
  - Governing body can vote to encumber for one year; OR
  - Article was labeled as nonlapsing by meeting (specifies lapse, up to 5 years).

46

## Encumbering and Special Non-Lapse Rule

- How is an Appropriation Encumbered?
  - ✓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 Assoc.*, 173 N.H. 411 (2020)
- Under RSA 36-A:5, I, Conservation Commission may deposit any unspent part of its annual budget appropriation into the conservation fund. Similar authority also given to Heritage Fund, Agricultural Fund, Housing Fund

47

## Other forms of Spending

- Legal Judgments, RSA 32:9
- Unanticipated Revenue, RSA 31:95-b
- Capital Reserve Fund
- Expendable Trust Fund
- Revolving Fund
- Special Revenue Fund
- Trust Funds – Gifts & Bequests

48

## Pay Legal Judgment – RSA 32:9

- 32:9 Exception. – Money may be spent to pay a judgment against the town or district, without an appropriation

49

## Unanticipated Money – RSA 31:95-b

- Town Meeting authorizes select board or board of commissioners to accept unanticipated money from a state, federal or other governmental unit or a private source
- If amount to be received is $10,000 or more board shall hold public hearing
- Expenditure of any local funds must be lawfully appropriated for same purpose
- Exempt from RSA 32 limitations on expenditures
- Library Trustees can be granted same authority under RSA 202-A:4-c
- Land Use Boards may also accept gifts & grants – RSA 673:16

50

# Capital Reserve Funds: RSA 35

Towns, village districts and school districts are permitted to establish and fund capital reserve funds to:

- ✓ Acquire or improve capital improvement, or capital 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;
- ✓ Municipal and regional transportation improvement projects

51

# Capital Reserve Funds: RSA chapter 35

- Creation: Majority vote – distinctly state purpose
- Creation – appropriate dollar amount
- Discontinuance: Majority vote
- Changing purpose: 2/3 vote
- Agents to expend: Majority, can't be added from floor
- Transferring funds: NO!
- Additional payments into by separate warrant article

52

## New Rules for Capital Reserve Funds and Lease Payments

- **RSA 35:15 amended by 2021 Chapter 105 (SB 87)**
- 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.
- This is a significant change from previously, where payments could be made from the fund only after super-majority approval by town meeting and no escape clause existed.
- **Effective Date: August 30, 2021.**

53

## Expendable Trust Fund RSA 31:19-a

- RSA 31:19-a authorizes towns to create trust funds for the maintenance and operation of the town and any valid public purpose
- Agents can be appointed to expend trust funds
- Expendable trust funds subject to same provisions concerning custody, investment, expenditure, change of purpose, and audit as are capital reserve funds
- Expendable trust funds can be permitted to accept privately donated gifts and legacies provided there is no commingling of private money with public money

54

# Revolving Funds RSA 31:95-h

- Deposit into the fund all fees, charges, income derived from the activities or services supported by the fund
- Money in the fund accumulates, not part of town general surplus
- Held in custody of Treasurer
- Spent on order of select board or other board or body designated by town meeting

55

# Revolving Fund 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;
- 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 53-F; or
- Facilitating transactions relative to municipal group net metering.
- Recreation Revolving Fund – RSA 35-B:2, II
- NO OTHER REVOLVING FUND PURPOSES PERMITTED

56

## Special Revenue Funds- RSA 31:95-c

- Created to shield and preserve the revenue from fee generating facilities like airports and solid waste facilities for repairs and upgrades of those facilities
- Special Revenue Funds limited to those town activities funded primarily through user fees (solid waste disposal, airport operations, etc.)
- No agents allowed for spending, requires vote of town meeting

57

## Trust Funds RSA 31:19

Town meeting may authorize the select board, or town council, to accept gifts and donations without further action by the town.

Depending on the terms of the trust, the select board as agents of the town may expend the trust fund "to carry out the objects designated by such trusts."

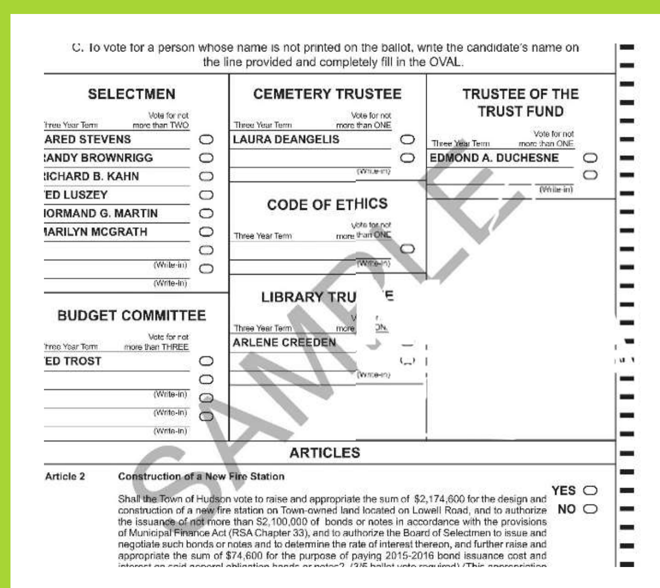
58

## Suggested Warrant Articles

- Acceptance of Personal Property Donation – RSA 31:95-e
- Acceptance of Unanticipated Revenue – RSA 31:95-b
- Authorization of Tax Anticipation Borrowing – RSA 33:7
- Authorization of Select Board to set and establish fees – RSA 41:9-a

59

## Senate Bill 2 Official Ballot Law RSA 40:13




60

## DEFAULT BUDGET
## RSA 40:13, IX, X & XI


- If operating budget rejected by voters, then the default budget is adopted
- Governing body can accept default budget or call a special town meeting to consider adoption of a revised operating budget
- Default budget prepared by governing body or budget committee if town meeting chooses

61

## SB 2 & The Default Budget: RSA 40:13

- Default budget may be higher or lower than last year's budget.
- Default budget is amount of the same appropriations as contained in the operating budget authorized for the previous year . . .
  - reduced and increased, as the case may be, by debt service, contracts, and other obligations previously incurred or mandated by law, and
  - reduced by one-time expenditures contained in the operating budget and by ***salaries and benefits of positions that have been eliminated in the proposed budget***.
  - RSA 40:13, IX(b).

62

## Default Budget Terms Defined

"One-time expenditures": Appropriations not likely to recur in the succeeding budget.

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

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

63

## Default Budget Procedure

- ✓ Disclosed and presented for questions and discussion at first budget hearing
- ✓ Line item changes must be available at budget hearing:
  - ✓ Appropriations in last year's budget
  - ✓ Reductions and increases, including identification of specific items that constitute a change by account code and the reason for change
  - ✓ One-time expenditures
  - ✓ Reductions for eliminated positions
- ✓ Discussion and debate of default budget at deliberative session (not amended)

64

## *Capital Improvement Plan*
## *RSA 674:5 - 8*


65

## *CIP Basics*

**A CIP "shall" do the following:**

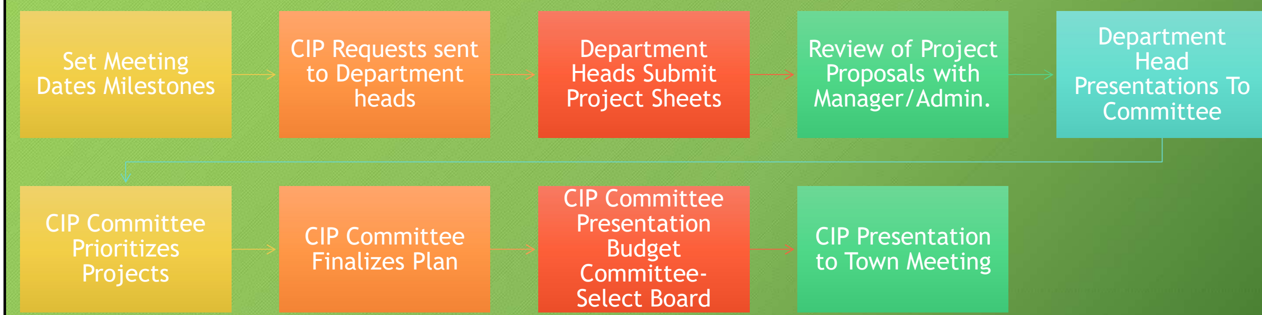
- Address capital improvement projects over a period of at least six years.
- Classify projects according to the urgency and need for implementation.
- Include a timetable for implementation of projects.
- Take into account public facility needs shown in the master plan.

**A CIP "may" include the following:**

- The estimated cost of each project.
- The probable operation and maintenance costs
- The probable revenues (if any) from each project

**CIP preparation by planning board or CIP Committee**

66



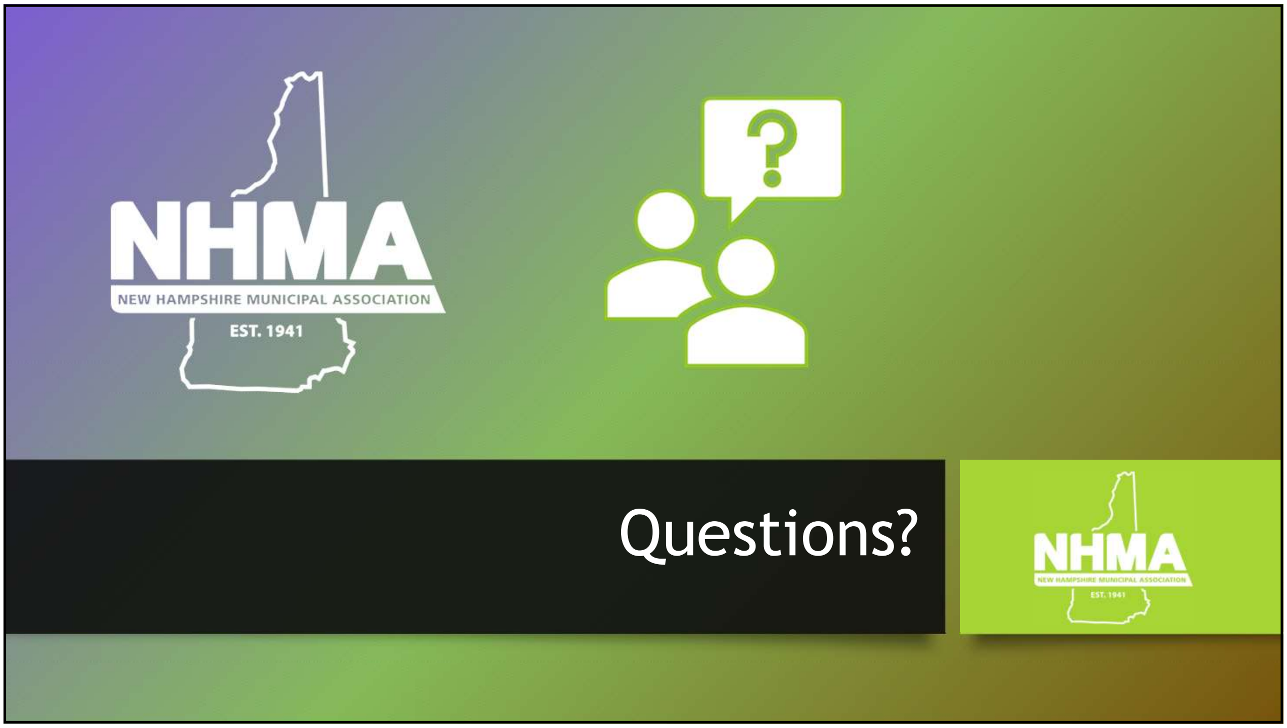

# *CIP Development Process*

67

# Additional Online Resources

- The New Hampshire Public Finance Consortium: https://nhpfc.org/
- New Hampshire Department of Revenue Administration – Municipal Bureau: https://www.revenue.nh.gov/about-dra/municipal-and-property-division/municipal-bureau
- NHMA 2025 Important Date Calendars: https://www.nhmunicipal.org/calendars-printable-pdfs
- Town Reports: https://scholars.unh.edu/nh_town_reports/

68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69


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70