

Technical Advice for the Two-Vote Provisions 16 V.S.A. § 563(11)(B)

Section 563(11)(B) of Title 16 requires school budgets to be divided into two questions for voter approval if two conditions are met. The first condition, is met if the current year school district education spending per equalized pupil exceeds the statewide average. The second condition is met if education spending in the district's proposed budget for the coming school year exceeds the current year spending, adjusted by an inflation index, plus one percent (2007, No. 82, § 5).

If a school district meets both conditions, the vote shall be in the following form:

School Budget Question #1:

Shall the voters of the School District approve a total budget in the amount of [\$], which includes the Maximum Inflation Amount of education spending?

School Budget Question #2:

If Question #1 is approved, shall the voters of the School District also approve additional education spending of [\$]?

Many specific questions surrounding budget votes were not addressed by the statute. The following answers are the Department of Education's technical advice for implementing the two-vote requirements if both conditions exist. The answers assume a divided budget vote is required for a school district unless otherwise specified.

What follows is technical advice for implementation of the two-vote requirements (16 V.S.A. § 563(11)(B)). The answers are not meant to be legal advice, rather advisory. If you require legal advice concerning the two-vote language and its implementation, please contact your attorney.

Terminology

1. The term "total proposed budget" as used in section 563(11)(B)(ii) means the amount to be voted in article one. Article one is the sum of the education spending that includes the Maximum Inflation Amount plus local revenues. Article two is authorization for any education spending exceeding the amount in article one. The two articles together are the entire budget as proposed by the school board.

Separately warned articles

2. If a proposed budget requires two votes, then separately warned articles for additional expenditures are not allowed. Instead, these proposed amounts must be included in the entire proposed budget for the school district, divided between the two votes. A supporting enabling article is allowed, limiting how the school board can use specific funds that were included in the budget.

3. If a proposed budget is not required to be divided into two votes, separately warned articles are allowed so long as total proposed education spending does not exceed the two-vote threshold.

Floor votes and amendments from the floor

4. School districts that do not vote by Australian ballot must still consider the statutory language regarding the two-vote requirement if the proposed budget requires two votes.
 - a. The amount proposed in question one should not be amended.
 - b. Any successful amendments proposed from the floor will increase the amount proposed in question two.
 - c. If an additional amendment is proposed after question two is voted, the amendment is voted as proposed.
5. If the budget as proposed does not require two votes, an increase due to an amendment from the floor may cause the proposed education spending to exceed the two-vote threshold.
 - a. The proposal to amend the budget is voted as proposed from the floor.
 - b. A successful vote for the amendment is considered to be the second vote if the proposed amendment causes the total proposed education spending to exceed the two-vote threshold.
 - c. The amended budget is placed on the floor for voting.

Reserve funds

Reserve funds may fall under one of two categories: those reserving a surplus from a prior year's budget and those reserving money for a new expenditure, requiring the raising of new tax dollars.

6. Pursuant to 16 V.S.A. § 567, if the amount to be placed in a reserve fund is due to a surplus from a prior year expenditure budget, the question to place the money in reserve may be asked as a separate article. The money is available and the question is should the surplus be placed in a reserve fund rather than if an additional amount should be raised for a reserve fund. There are two types of surplus in this category:
 - a. an audited surplus
 - i. If the voters approve reserving an audited surplus, the revenues are available to cover the expenditure. Education spending is not affected.
 - ii. If the voters defeat the reserve article, the audited surplus will be applied to the overall expenditures and education spending will decrease.
 - b. a projected surplus
 - i. If the voters approve reserving a portion of a projected surplus, the revenues are available to cover the expenditure. Education spending is not affected.
 - ii. If the voters choose not to reserve the a portion of a projected surplus, that portion of the projected surplus will be applied to the overall expenditures and education spending will decrease.

7. If the requested amount to be reserved is to be raised from new taxes, any such amount should be included in the two votes with a separate enabling article. An enabling article directs the school board to use funds included in the entire proposed budget for a specified purpose.

Deficits

8. Deficits are a legal obligation and do not require voter approval for repayment. By statute, an amount sufficient to pay the deficit shall be added to the next adopted budget (24 V.S.A. § (b)). Therefore, the amount of a deficit should not be included when considering if a divided vote is required for a proposed budget. If a divided vote is required, the amount of the deficit shall be added to the approved budget.

Capital projects

9. Prior to the passage of Act 82, DOE had interpreted 16 V.S.A. § 3448(a)(5)(B)(ii) as requiring a separate article for voter approval for expenditures of a specific amount for a specific capital project. Under Act 82, such a separate expenditure article is no longer allowed if the proposed budget, including the amount for the capital project, has education spending exceeding the maximum inflation amount.
 - a. Any such amount for a specific capital project affecting education spending should be included in the two votes.
 - b. Approval of a separate enabling article will direct the school board to use funds included in the total budget for that specific capital project.
10. Short-term capital projects for which a district does not bond may be of two types: a single year project or a capital project financed for a term of five years or less. Please also read 22a and 22b under Exclusions.
 - a. A single year project is part of education spending contained in the proposed budget and is considered for the two-vote requirement.
 - b. Voters may approve borrowing to finance a short-term project for a period of up to five years (24 V.S.A. § 1786a(b)).
 - i. A separate vote requesting voter approval to borrow money for up to five years to finance a capital project is allowed.
 - ii. Annual principal and interest payments resulting from repayment of a loan for a short-term capital project are included in education spending amounts considered for the two-vote requirement.
11. Bond votes for long-term projects are not part of education spending as they are multi-year commitments. Bond votes do not enter into the determination of whether two votes are required. A separately warned article requesting approval to secure a bond for long-term capital projects is allowed.
12. Any principal and interest payment resulting from repayment of an approved bond is part of education spending and is subject to the provisions of the two-vote requirement. Please also read 22a and 22b under Exclusions.
13. Interest from a bond anticipation note resulting from an approved bond is part of education spending and is subject to the provisions of the two-vote requirement. Please also read 22a and 22b under Exclusions.

Interstate Districts and Regional Technical Center School Districts

14. School districts that are included in an interstate agreement are not subject to the provisions of the two-vote requirement.
 - a. Interstate school district language prevails (16 V.S.A. § 780(A)).
 - b. Budgets are approved by both Vermont and New Hampshire voters with different ramifications for the members of an interstate district due to statutory differences between the two states.
15. Regional technical center school districts do not have equalized pupils. The provisions of the two-vote language do not apply.

Member School Districts of a Regional Technical Center School District

Voters from school districts that are members of a regional technical center school district vote on the technical center budget at the annual regional technical center school district meeting. Upon approval of the regional technical center's budget, the shares of the member districts become legal obligations of the member school districts without the need for a further vote (16 V.S.A. § 1578a(c)). Although not voted on a second time, the obligated amount is included in the entire education spending of the member school districts as reported to DOE but is not considered for purposes of the two-vote requirement.

If a member school district of a regional technical center school district meets the conditions for two-votes, excluding the obligated amount to the regional technical center, the school district votes on questions one and two. The school district adds the legal financial obligation to the regional technical center school district to the total amounts passed in questions one and two.

Early or late votes that affect the education spending total

It is possible a district may approve expenditures prior to or after the main budget vote on Town Meeting Day in March. If that is the case, the provisions of the two-vote requirement must be considered.

16. Earlier approval of expenditures for the proposed budget year, prior to the main budget vote:
 - a. If the total of the proposed education spending in the main budget vote to be held in March plus the amount approved in the earlier vote exceeds the two-vote threshold, there must be a second vote.
 - i. The school district has previously committed to some education spending in the earlier vote.
 - ii. Question one of the main budget vote must be the maximum education spending plus local revenues, less the amount approved in the earlier vote.
 - iii. Question two of the main budget vote will be for any proposed education spending exceeding the sum of the amount in question one plus the early vote amount.
17. Additional expenditures approved after the main budget is approved in March may fall under two scenarios.

- a. The initial budget vote was not subject to the provisions of the two-vote requirement. The additional education spending contained in the later vote will cause the total education spending to exceed the two-vote threshold.
 - i. The later vote is considered to be the second vote, and
 - ii. the ballot language must identify the later vote as the second vote required by the two-vote language.
- b. The initial vote was subject to the provisions of the two-vote requirement. The additional amount is voted as is but the ballot language must identify expenditures in the new vote as additional education spending over and above the sum of the maximum inflation amount in question one plus the education spending in question two under the two-vote requirement.

Reconsideration votes

18. If question one passes but question two fails, the district may retry the second vote in accordance with 17 V.S.A. § 2661 until the due date for budgets, June 1.
 - a. If the first vote was approved by May 1 but the second vote has not passed as of June 1 when approved budgets are due, the district has an approved budget equal to the question one amount. That budget is to be submitted on June 1 (16 V.S.A. § 4027).
 - b. If the second vote passes prior to June 1, the 30-day reconsideration period applies to the second vote. No budget is submitted until the 30-day reconsideration period has ended and the status of the second vote is finalized.
19. If questions one and two both pass and a petition for reconsideration is received for the second vote, the budget is not approved until the second vote is finalized after reconsideration.
20. Questions one and two both pass and a petition for reconsideration is received for question one only. If the reconsideration is successful and requires the budget amount approved in question one to be brought back before the voters, the second vote becomes moot. The district must bring both questions to the voters, if the new proposal exceeds the two-vote threshold.

Other statutory requirements

21. If the cost of a planning commission for formation of a union district exceeds \$25,000, it must be voted on separately by the participating districts (16 V.S.A. § 706a). This education spending is outside the provisions of the two-vote requirement but is part of education spending. The Legislature revised section 706a subsequent to adopting the two-vote procedure (2007, No. 154 (Adj. Sess.) §22). As the later-enacted law, it is presumed that the Legislature intended that this planning cost not be subject to the two-vote procedure.
 - a. A separately warned article for the proposed cost for the planning commission is allowed.
 - b. Question one of the main budget vote must be the maximum education spending plus local revenues, less the proposed cost for the planning commission.

- c. Question two of the main budget vote will be for any proposed education spending exceeding the sum of the amount in question one plus the proposed cost for the planning commission.

Exclusions to education spending for the divided vote determination

22. When applicable, the following six exclusions shall be used to reduce the education spending in a proposed budget when determining whether a district must use a divided vote (16 V.S.A. § 4001 (6)(A)):
 - a. principal and interest payments for capital projects begun and paid for under the state construction aid suspension, provided no reimbursement or aid from the state shall be received;
 - b. principal and interest payments for capital projects begun before the suspension and that received state construction aid, plus any interest on an anticipation note while awaiting state aid;
 - c. tuition costs for any grades not offered by the district may be either included or excluded from education spending, depending on which is more advantageous to the school district;
 - d. planning costs for the merger of a small school (average grade size of 20 or less) with one or more schools;
 - e. spending attributable to the district's share of 21st Community Century Learning Center after-school programs; and
 - f. costs for providing alternative educational opportunities to at-risk high school students, either at the district or through a contracting entity.