

GIRVIN & FERLAZZO, P.C.

Kristine Amodeo Lanchantin, Esq.

20 Corporate Woods Blvd.

Albany, NY 12211

phone (518) 462-0300

fax (518) 462 -5037

e-mail address: kal@girvinlaw.com

BUDGET RE-VOTES AND CONTINGENT BUDGETS

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The following is a primer on budget re-votes and contingent budgets, and what options a school district has when voters defeat the budget.

In brief, if the first budget is defeated, a school board has a number of choices to make. First, it must determine if it wishes to go immediately to a contingent budget, a contingent budget with a few propositions, or if it wishes to resubmit a budget to the voters. This second budget may be either the same budget, or a revised budget. If it goes to a contingent budget, the Board must determine what expenditures are ordinary contingent expenses. It may choose to go straight to contingent budget and put up a few propositions instead of a full budget. Next, it must create a budget containing these ordinary contingent expenses which is within the contingent budget cap. Finally, it would only be required to submit propositions to the voters pursuant to Education Law §2008 which are within the voter's authority.

Re-Votes and Voter Propositions

Education Law §2022(4) provides for a two vote limit on budgets. If a budget is defeated, the school district may either approve a contingent budget, or go back to its voters just one more time with a spending plan. The second budget may be the exact same budget as the first, or a revised budget. If the board goes to a contingent budget without a re-vote on a full budget, it may put up some propositions regarding spending for specific items. Please note that if you wish to purchase buses and plan to borrow the necessary funds, the Local Finance Law requires 45 days published notice, not 14 days. Thus, if you plan to borrow the funds, you would not be able to put up a bus proposition at the same time as the budget re-vote. After a second budget defeat, a school district must go to a contingent budget.

All budget re-votes must be held on the third Tuesday in June, unless the Commissioner certifies by March 1st that such vote would conflict with religious observances. In that case, the re-vote day would be the second Tuesday in June. For 2010, the uniform budget re-vote day will be June 15, 2010, the third Tuesday in June.

All the procedures and notices used in the first budget round must be used if a second budget, or a set of propositions, is put before the voters. The procedural issues for a re-vote are as follows. First, the legal notice must be in the official newspaper(s) at least twice, the first publication appearing at least 14 days prior to the re-vote. The legal notice must include information regarding absentee ballots, the public hearing, where the budget will be available 14 days before the re-vote, and voter registration not more than seven or less than two days prior to the re-vote. A public hearing must be held on the budget being presented at the re-vote, even if it is the same budget as the first one. The public hearing must be held not more than 14 days or less than 7 days prior to the re-vote. The budget notice must be re-sent to all qualified voters the day after the public hearing but no later than six days before the re-vote.

Assuming the first publication of the legal notice on June 1, 2010, a possible time-line would be as follows:

May 25, 2010	Board of Education determines if it will place the original budget or a modified budget before the voters, decides the new amount for a modified budget and approves the necessary dates for the legal notice. If your designated papers require more lead time, then you may have to make these decisions earlier.
May 26, 2010	Applications for absentee ballots are made available.
June 1, 2010	First of two published notices - notices must be published at least once in each week prior to the vote, the first being at least 14 days prior to the vote. Publish in weekly paper at least twice if possible.
June 1, 2010	Budget document is available in all appropriate school building offices.
June 8, 2010	Second publication of legal notice.
June 8, 2010	Budget hearing.
June 9, 2010	Voter registration for those Districts using personal registration.
June 9, 2010	Mail six day budget notice.
June 15, 2010	Budget re-vote.

The State Education Department has formally issued guidance which provides that, due to the restrictions of the Education Law and the Commissioner's Regulations, school districts must include all of the appropriate costs in each component of the budget; it should not break out a statutorily enumerated cost into a separate proposition. In other words, under SED's analysis, since interscholastic sports are classified as an ordinary contingent expense within the program component, the Board should not submit an interscholastic sports proposition to the voters.

They have also opined that using separate propositions for ordinary contingent expenses could very well have a negative impact on the calculation of the contingent budget cap for the district.

Practically speaking, the voters have no authority to force the District to submit propositions which involve (1) any ordinary contingent expense, including program cuts, interscholastic sports, etc.; (2) expenditures over the contingent budget cap, unless such expenditures are excluded from the contingent budget cap calculation; or (3) any item or expenditure which has already been before the voters twice.

Contingent Budget Cap

Education Law §2023 limits a contingency budget increase (assuming a defeat of the budget on at least one if not two occasions by the public) to the **lesser** of 120% of CPI or 4%.

Additionally, other constraints are placed on the configuring of a contingent budget. The administrative component of a contingent budget shall not comprise a greater percentage of the contingent budget exclusive of the capital component than the **lesser** of (1) the percentage the administrative component had comprised in the prior year budget exclusive of the capital component; or (2) the percentage of the administrative component had comprised in the last proposed defeated budget exclusive of the capital component.

Exclusions from the contingent budget cap calculation include:

1. expenditures resulting from a tax certiorari proceeding;
2. expenditures resulting from a court order or judgement against the school district;
3. emergency expenditures that are certified by the Commissioner as necessary as a result of damage to, or destruction of, a school building or school equipment;
4. capital expenditures resulting from the construction, acquisition, reconstruction, rehabilitation or improvement of school facilities, including debt service and lease expenditures, subject to the approval of the qualified voters where required by law; this also includes debt service for school buses;
5. expenditures in the contingency budget attributable to projected increases in public school enrollment, which, for the purpose of this calculation, may include increases attributable to the enrollment of students attending a newly established pre-kindergarten program, new construction, growth or similar factors;
6. Budgeted expenditures of gifts, grants in aid or insurance proceeds;

7. expenditures for payments to charter schools pursuant to Education Law section 2856;
8. Self supporting privately funded programs.

It is important to note that increases in compensation for teachers and other staff members are not an exception. Since salaries may not be limited by the cap, a school district will be forced to off-set these increases with program or staff cuts.

Steps to follow to calculate your contingency budget?

1. Calculate the adjusted base budget.
2. Multiply this adjusted base budget amount for the prior year by the CPI to determine the subsequent year contingency budget amount.
3. Determine the amount of non-contingency and contingency items that would need to be removed from the contingency budget.
4. Finally, check the administrative component to ensure it stays within statutory limits.

The Office of Educational Management Services posts on its website a sample spreadsheet to guide districts through the calculation of their contingency budgets. In addition, Education Law 2022 requires district residents to receive a budget notice which includes the contingency budget amount and a statement of assumptions regarding the calculation of such amount.

If the budget originally proposed to the voters is less than the contingency budget cap, you must recalculate your contingency budget as follows:

SED has opined that in the case of proposed budgets that are actually less than the subsequent contingency budget, a district would have to make cuts to meet the definition of contingency appropriations. In other words, although cuts would not have to be made to reach the contingency budget cap, non-contingent budget items would have to be cut from the proposed budget. The new proposed budget would include all contingency and necessary expenses to operate the school district. When the proposed budget is below the contingency budget cap, the contingency budget is calculated by removing all non-contingency appropriations from the proposed budget. Items which are statutorily considered non-contingency expenses are, for example, student supplies, community use of buildings and grounds, certain equipment purchases and certain salary increases. Therefore, the contingency budget adopted by the Board of Education would always be less than the proposed budget.

If your district encounters an unanticipated, ordinary contingency expense during the year, it may increase its contingency budget up to the cap amount. For example, if a high-cost student with special needs moves into the district after the school year has started and was not

anticipated, the district may increase its budget up to the contingency budget cap. If a district is already at its contingency budget cap, there is no authority to exceed that cap amount. Therefore, budgetary adjustments would have to be made within the budgetary constraints.

Ordinary Contingent Expenses

“Ordinary contingent expenses” to be included in a contingent budget are those expenses specifically authorized by statute, legal obligations of the District and those items necessary to maintain the education program, preserve property and assure the health and safety of the students and staff. These items include:

- (a) teachers’ salaries, including the salaries of all members of the teaching and supervising staff;
- (b) items of expense specifically authorized by statute to be incurred by the board of education, including, but not limited to, expenditures for transportation to and from regular school programs included as ordinary contingent expenses in Education Law Section 2503(12), expenditures for textbooks, required services for non-public school students, school health services, special education services, kindergarten and nursery school programs, and the district’s share of the administrative costs and costs of services provided by a board of cooperative educational services;
- (c) items of expense for legal obligations of the district, including, but not limited to, contractual obligations, debt service, court orders or judgments, orders of administrative bodies or officers, and standards and requirements of the board of regents and the commissioner that have the force and effect of law;
- (d) the purchase of library books and other instructional materials associated with a library;
- (e) items of expense necessary to maintain the educational programs of the district, preserve the property of the district or protect the health and safety of students and staff, including, but not limited to, support services, pupil personnel services, the necessary salaries for the necessary number of non-teaching employees, necessary legal expenses, water and utility charges, instructional supplies for teachers’ use, emergency repairs, temporary rental of essential classroom facilities, and expenditures necessary to advise school district voters concerning school matters; and
- (f) any other item of expense determined by the commissioner to be an ordinary contingent expense in any school district.

In addition to the above list, Education Law §2023 currently provides that ordinary contingent expenses include cafeteria expenses and expenses incurred for interscholastic athletics, field trips and other extracurricular activities. Transportation costs to and from the

regular school program as well as transportation for interscholastic sports, field trips and other extracurricular activities are also ordinary contingent expenses. Transportation outside of previously approved mileage limitations would not be an ordinary contingent expense.

As a general rule, expenses incurred for use of buildings and grounds by non-school groups are not ordinary contingent expenses. Such groups may only use District buildings and grounds if the identifiable “extra” costs incurred by the District for allowing the event to take place are covered by rental fees paid by the group. If there are no identifiable extra costs, then the District may make the facilities available at no cost. Identifiable “extra” costs include salaries and benefits of employees such as custodians and groundskeepers, utility charges, extra maintenance and repair costs, which the District would not otherwise be paying during the time of the use. Note that if the District already has the building in use at the same time, there may be no identifiable costs. Additionally, the Commissioner has ruled that the use of school buildings for the purpose of teacher meetings and PTA meetings with school-connected purposes is an ordinary contingent expense. However, teacher or PTA programs of an entertainment or social nature are not ordinary contingent expenses and cannot take place unless a rental fee is charged.