

TOWN OF NEWTOWN
Board of Finance:
Joint Board of Education, Board of Finance & Legislative Council Work Group

Meeting Minutes
Thursday, October 7, 2021 Virtual Special Meeting

These minutes are subject to approval by the Joint Non-Lapsing Work Group

Present: Chris Eide, Cathy Reiss, Ned Simpson, Debbie Leidlein and John Madzula II
One members of the public, on phone access

Absent: Dan Delia

Chair Ned Simpson called the meeting to order at 7:32 p.m. Attendees saluted the American Flag.

VOTER COMMENTS - None

APPROVAL OF MINUTES

Chris E moved approval of September 27, 2021 Minutes. Cathy Reiss seconded.

Chris E moved motion to amend approval of minutes as shown below. Cathy Reiss seconded.

- Old Business, second solid bullet, second open bullet: Replace “Agreed to unanimously” with “Everyone voiced agreement to remove the sentence.”
- Old Business, second solid bullet, third open bullet: Yes votes were from John M and Ned S
- Old Business, second solid bullet, sixth open bullet: Yes votes were from Chris E, John M and Ned S
- Old Business, second solid bullet, eighth open bullet: Yes votes were from Cathy R and Ned S.

Amendment passed unanimously

Amended Motion passed unanimously

COMMUNICATIONS – Voter submitted email from D Zukowski, October 6, 2021

NEW BUSINESS: - None

OLD BUSINESS:

- Discussion and Action: Work Group Agreement related to a Newtown Non-Lapsing Educational Fund
 - Motion by Chris E both the Policy Agreement, October 1, 2021 and the Joint Work Group transmittal letter to the chairs of Board of Education, Legislative Council and Board of Finance, September 27, 2021. (Attachment A and B) Seconded by Cath R.
 - Chris E moved motion to amend approval of the Policy Agreement as shown below. Seconded by Cath R
 - Section 1, first paragraph, delete the word “for”
 - Section 1, second paragraph delete the phrase “~~not to exceed~~” and remove the strikethrough of “~~the~~” immediately preceding that phrase.
 - Section 1, change the two occurrences of “nonlapsing” to “non-lapsing”

- Section 3, B add a return after “approves the CIP.” to make a paragraph “C” starting with “As part of the”
- Section 3, end of new “C” remove the phrase “(Note: add timing – Dan will check with Tanya)”
- Amendment passed unanimously
Amended Motion passed unanimously
- Chair Ned Simpson thanked work group members for their participation in the process resulting in an agreement. This is the final meeting of the Work Group.

VOTER COMMENTS - None

ANNOUNCEMENTS –

Debbie L. made a motion to adjourn. Cathy R. All members were in favor and the meeting was adjourned at 7:50 pm.

Respectfully submitted,

Ned Simpson, Chair

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Joint Group Agreement Draft October 1, 2021

Non-Lapsing Education Fund

A Policy Agreement between:

Board of Education, Board of Finance & Legislative Council

Section 1. Preamble

In 2010, the General Assembly passed a law, Connecticut General Statutes 10-248a, establishing a mechanism **for** through which unexpended funds from the prior fiscal year from the budgeted appropriation for education could be transferred to a fund for expenditure in future years. The intent was to avoid “spend it or lose it” transactions and reward school administration for budget management. Such a fund is called “**nonlapsing**” The Board of Finance (BoF) of the Town of Newtown established such a non-lapsing education fund (the “Non-Lapsing Fund”) on May 12, 2014.

The statute was amended in 2019. This change increased **the not to exceed maximum** deposit amount to two percent and gave a board of education the authority to spend from their **nonlapsing** account without review/approval from any other town body. (Attachment A)

The Board of Education (BOE) changed their policy and procedures to reflect the revised statute. During preliminary discussions the Board of Finance raised concerns regarding the proposed Board of Education drafts.

Since 2014 the Board of Education has submitted Non-Lapsing deposit and expenditure transactions to the Board of Finance, which the Board of Finance approved. Due to the COVID-19 Pandemic in 2020, the Board of Education maintained an unusually high surplus at the end of the fiscal year 2019-2020. At their September 14, 2020 meeting the Board of Finance did not approve a request for a \$1.3 million deposit of Board of Education appropriations surplus into the Non-Lapsing Fund. There was significant public criticism of this Board of Finance action. The Legislative Council then discussed the Non-Lapsing Fund and the Town’s attorney issued an opinion that it should be Legislative Council that approves Board of Education requests for Non-Lapsing transactions.

The purpose of this policy is to work within the spirit of cooperation and the law to establish a three way agreement between the Board of Education, Board of Finance and Legislative Council to define roles, responsibilities and process for Non-Lapsing Fund deposits and expenditures.

Section 2. Deposits into Non-Lapsing

The Board of Education may, subject to the approval of the Legislative Council considering recommendation from the Board of Finance, deposit into the Non-Lapsing Fund all or a portion of any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the Town, provided that the amount deposited into the Non-Lapsing Fund shall not exceed the amount set forth in Section 10-248a of the Connecticut General Statutes.

- A. The Board of Education shall send notice to the Legislative Council of their desire to present their request to a joint meeting of the Board of Finance and the Legislative Council to be held no later than the first week of September.
- B. The Legislative Council considering recommendation from the Board of Finance may authorize deposits into the Non-Lapsing Fund in each fiscal year.

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- C. The total amount in the Non-Lapsing Fund may accumulate without limitation over time if not expended.

Section 3. Use of Funds

- A. The Board of Education shall, subject to the approval of the Legislative Council considering recommendation from the Board of Finance, authorize expenditures from the Non-Lapsing Fund for any expenses that the Board of Education determines are necessary to support students or that are in the best interests of the Newtown Public Schools.
- B. If the Board of Education requests an expenditure from this account to be used to help pay for an approved Capital Improvement Plan (CIP) project, then such request is approved when the Legislative Council approves the CIP.
- C. As part of the communication in Section 2. A. above, the Board of Education will provide a written summary of the Non-Lapsing Fund's balance and expenditures for the prior fiscal year

Section 4. Educational Purposes

The Non-Lapsing Fund balance comes from an appropriation that was approved by the voters of the Town for educational purposes and the Board of Education shall use the Non-Lapsing Fund for educational purposes.

Approved by Board of Education: _____.

Adopted by Board of Finance:

Approved by Legislative Council: _____

Attachment A

Attachment A - The Statute - 10-248a

2011 Statute

Sec. 10-248a. Unexpended education funds account. For the fiscal year ending June 30, 2011, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district for each town may deposit into a non-lapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided such amount does not exceed one per cent of the total budgeted appropriation for education for such prior fiscal year.

2020 Statute

Sec. 10-248a Unexpended education funds account. For the fiscal year ending June 30, 2020, and each fiscal year thereafter, notwithstanding any provision of the general statutes or any special act, municipal charter, home rule ordinance or other ordinance, the board of finance in each town having a board of finance, the board of selectman in each town having no board of finance or the authority making appropriations for the school district for each town may deposit into a nonlapsing account any unexpended funds from the prior fiscal year from the budgeted appropriation for education for the town, provided

- (1) such deposited amount does not exceed two per cent of the total budgeted appropriation for education for such prior fiscal year,
- (2) each expenditure from such account shall be made only for educational purposes, and
- (3) each such expenditure shall be authorized by the local board of education for such town.

Excerpt of Comments from Board of Education's Attorney

The following is excerpt from the June 23, 2020 Board of Education CIP/Facilities/Finance Committee meeting where Matthew Ritter, Shipman & Goodwin the school district's attorney discussed the revised statute. Mr. Ritter was Speaker of the Connecticut House of Representatives for the session where the statute was passed

"Best advice I can give you regarding 10-248a, is that it is meant to be a mutually cooperative relationship. The statute involves board of education powers and town powers. If one side thinks they can do whatever they want it's going to mess up the whole concept. It really does rely on cooperation between the two sides.

Money gets deposited into the account. Expenditures get approved by the board of education for educational purposes. The language in 10-248a has some notwithstanding language regarding general statutes and local charters. It talks about how money gets deposited, expenditures from the account are approved by the board of education for educational purposes.

Question: Does this mean the local board of education can use the funds for items, including capital expenses, without going through the appropriation process set forth in the town charter as long as it is for educational purposes? The answer is Yes.

The statute overrides a town charter. Best way to look at it is this. When the money is in the account, unless you have a policy to the contrary, which is a negotiation, the fall back is 10-222.

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The local board's discretion on how to spend that money as long as it's for educational purposes. Could be capital, could be non-capital.

So, your reaction might be, well that's great the board of education has complete control. No. Here is the problem. If you spend money on projects the board of finance or the town council hate, they will not agree to put money into the account in the future. That goes back to my initial comment: you've got to get along to make this work. The answer is unless there is a policy that talks about how you spend money from that fund, all the statute requires is that board of education approve the project that it goes for educational purposes."

Approved by Board of Education: _____.

Adopted by Board of Finance: _____.

Approved by Legislative Council: _____

Attachment B

Transmittal Letter Draft September 27, 2021

Non-Lapsing Education Fund

Joint Work Group

Board of Education, Board of Finance & Legislative Council

TO: Keith Alexander Chair Board of Finance
Michelle Embree Ku Chair Board of Education
Paul J. Lundquist Chair Legislative Council

FROM Joint Non-Lapsing Work Group:
Dan Delia Board of Education
Chris Eide Legislative Council
Debbie Leidlein Board of Education
John Madzula II Board of Finance
Cath Reiss Legislative Council
Ned Simpson, Chair Board of Finance

Attached is the work product of the Board of Finance Joint Non-Lapsing Work Group. We ask that your body review and act upon this recommendation.

The Work Group has been meeting since March 2021. Our efforts started with a compilation of pertinent documents. Discussion with Town Attorney D. Grogen and School District Attorney M. Ritter occurred at our May 3rd meeting. This was followed by discussions with town Finance Director, Robert Tait and schools Director of Business & Finance, Tanja Vadas. With that base of knowledge available, the Work Group worked to craft the attached document.

This agreement constitutes the entire agreement between the BOE, BoF, and LC members of the Joint Committee on the Non-Lapsing Fund. Such agreement was made notwithstanding any existing agreements, policies, and understandings, both written and oral, between the parties and policies of the parties with respect to the subject matter hereof regarding the roles, flows, and approvals for funds going into the Non-Lapsing Fund and expenditures from the Non-Lapsing Fund

With this transmittal, we consider our work complete.

Thank you for entrusting the responsibility for seeking three-way agreement.

Attached
Non-Lapsing Work Group Joint Agreement 10-7-2021 Meeting Final.docx