

When Can the Legislative Body Borrow Money Without Voter Approval?

There are nine situations in which a legislative body (selectboard, city council, or village trustees) may borrow funds without voter approval. Outside of these situations, there must be specific voter approval at an annual or special town meeting. 24 V.S.A. § 1786a(b).

Voter approval to borrow is not required in the following instances:

1. Borrowing to pay current expenses so long as the term is one year or less. 24 V.S.A. § 1786(a).

There is no statutory definition or explanation of a "current expense." Our rule of thumb is that a current expense is one that will be paid for in a year or less. A current expense could arise from the provision of a service or from the acquisition of a public improvement or asset. In our opinion, simply because something is an asset or a public improvement does not mean that it cannot be considered a current expense under 24 V.S.A. § 1786. We view the term of the note (one year or less/more than one year) as the defining characteristic.

2. Borrowing in anticipation of taxes so long as the term is one year or less and the amount borrowed does not exceed 90 percent of the municipal taxes assessed for that year. 24 V.S.A. § 1786(b).

3. Borrowing in anticipation of the sale of bonds so long as the term is one year or less. 24 § V.S.A. § 1773(a).

4. Borrowing in anticipation of grants so long as the term is one year or less. 24 V.S.A. § 1773(c).

5. Borrowing for the purchase of tools, equipment, and materials necessary for the construction, maintenance, or repair of highways and bridges so long as the term is five years or less. 19 V.S.A. § 304(a)(3); 24 V.S.A. § 1786a(b).

6. Borrowing from the State Municipal Equipment Loan Fund for the purchase of construction, fire, emergency, or heavy equipment or vehicles so long as the term is five years or less. 19 V.S.A. § 304(a)(3); 24 V.S.A. § 1786a(b); 29 V.S.A. § 1601.

7. Alternative financing of personal property, fixtures, technology, and intellectual property. 24 V.S.A. § 1789. The selectboard may enter into leases, lease-purchase agreements, installment sales agreements, and similar agreements to acquire assets for the municipality either singly or as a participant in an interlocal contract. Such agreements, however, must contain a "non-appropriation clause" that states that the annual payments by the municipality must be approved by the voters.

8. Borrowing to retire a deficit with "refunding bonds." The selectboard may opt to convert a deficit into debt by issuing municipal refunding bonds for an amount equaling the deficit. 24 V.S.A. § 1771. This bond acts by creating a replacement debt which will be paid off over a period of years.

9. Borrowing for the preparation of engineering studies or plans for public water/wastewater supply systems/ facilities, provided such debt is included in any subsequent public authorization of municipal indebtedness to construct the project for which the planning loans were used. 24 V.S.A. § 4756(e).

If the municipal borrowing does not fit into any of the above nine categories, there must be specific voter approval at a regular or special town meeting. "The voters of a municipality may authorize specific public improvements and the acquisition of capital assets and finance the same, temporarily or permanently, through debt instruments other than bonds for a term not to exceed the reasonably anticipated useful life of the improvements or assets as provided in this section." 24 V.S.A. § 1786a.

If the improvements or assets are to be financed for a term of five years or less, the borrowing is approved at a regular or special town meeting. If the financing is for a term of more than five years, the municipality must go through the traditional bond authorization process, even if the final form of the borrowing is not a bond. 24 V.S.A. §§ 1755, 1756, and 1786a(c).