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## Coates' Canons Blog: Amending a Newly Adopted Budget Ordinance Before July 1

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After a contentious and stressful budget season, Carolina County's governing board adopts its annual budget ordinance on June 13, 2011. The budget reflects tough decisions by the board about how to allocate limited resources among competing priorities. However, because the state's budget has not been enacted (the State Appropriations Act—**HB 200** was ratified by the General Assembly, but the **Governor vetoed it** on June 12, 2011) there is at least some uncertainty about potential additional county expenditures or additional cuts to county revenue. It is this uncertainty that leads one of the county's governing board members, Commissioner Ian Decisive, to question several of the appropriations and the property tax rate levied in the budget ordinance. A few days after the budget is adopted, he suggests to the county manager and the board chairman that the board call a special meeting on June 20 to adopt a new budget ordinance which appropriates less money to many of the county departments and reduces the county's property tax rate. The county manager, Prudence Smith, is leery of re-opening the budget process. She also thinks there may be some legal problems with changing the budget ordinance. Commissioner Decisive insists that adopting a new budget ordinance is in the best interest of the citizens of the county. He assures Prudence that there is no legal problem because the budget deadline is not until July 1. According to the commissioner, the board is free to adopt a new budget ordinance or make any changes to the existing budget ordinance until July 1. Is the commissioner correct?

Not exactly. The commissioner is correct that the governing board generally is free to modify its budget ordinance at any time after it is adopted. There are a few key limitations to this authority, though, including a prohibition on altering the property tax rate unless one of two limited exceptions applies. Furthermore, the authority to modify the budget ordinance, and its limitations, are not conditioned on the date the budget ordinance is adopted or the date it is amended. That means that the same amendment authority and restrictions apply to a budget ordinance adopted (or amended) before July 1 as to a budget ordinance adopted (or amended) on or after July 1.

The following provides a brief refresher for Commissioner Decisive (and any other interested local government officials) on local government budget ordinance adoption and amendment requirements, processes, and limitations.

### Adopting the Budget Ordinance

Each local government (and public authority) must adopt an annual budget ordinance, see **G.S. 159-13**, which is “the ordinance that levies taxes and appropriates revenues for specified purposes, functions, activities, or objectives during a fiscal year.” **G.S. 159-7(b)(2)**. In the budget ordinance, a unit's governing board must make its appropriations “by department, function, or project and show revenues by major source.” **G.S. 159-13**. And with few exceptions all public monies must be appropriated through the budget ordinance before they are expended by the local unit. **G.S. 159-13; G.S. 159-28**.

Local governing boards have much discretion to determine the total amount of appropriations and the specific items of expenditure that are included in the budget ordinance. There are a few statutory requirements that must be met, though. See **G.S. 159-13**. Key among those requirements are the following:

— The budget ordinance must be balanced. Specifically, the “sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations” in each fund.

— The budget ordinance must “levy taxes on property at rates that will produce the revenue necessary to balance appropriations and revenues, after taking into account the estimated percentage of the levy that will not be collected during the fiscal year.” (Note that, as discussed in a previous **post**, a local governing board generally is under no

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obligation to levy a property tax. A property tax levy is not necessary, for example, if estimated revenues from all other sources equal appropriations.)

— There must be sufficient funds appropriated to cover outstanding debt service payment obligations during the fiscal year.

— The budget ordinance must appropriate sufficient funds to “meet the amounts to be paid during the fiscal year under continuing contracts previously entered into . . . unless [a] contract reserves to the governing board the right to limit or not to make such appropriation.”

The Local Government Budget and Fiscal Control Act also prescribes a specific process for adopting the budget ordinance. The unit’s budget officer must prepare a proposed budget for consideration by the governing board by June 1. **G.S. 159-11.** On the same day that the budget officer submits the proposed budget to the governing board he or she must file a copy of it in the clerk’s office. **G.S. 159-12.** The clerk must make the proposed budget available for public inspection until the budget is adopted. *Id.* The clerk also must make a copy of the budget available to all news media in the county and publish a statement that the proposed budget has been submitted to the governing board and is available for inspection. *Id.* The notice must state the time and place of the public hearing (or hearings) to be held on the budget. *Id.* The governing board must wait at least 10 days after the proposed budget is presented to the board and filed in the clerk’s office before adopting the budget ordinance. **G.S. 159-13.** At some point after the proposed budget is submitted to the board but before it is adopted, the governing board also must hold at least one public hearing on the budget, “at which time any persons who wish to be heard on the budget may appear.” **G.S. 159-12.** The statutes do not specify the exact timing of the public hearing. As my colleague, Frayda Bluestein, recently explained in a post to the **ccmanagers listserv**,

The statute (G.S. 159-12) doesn’t specifically say how long before the hearing the ad must be placed. What it says is that the hearing must be advertised at the time that the budget is presented to the clerk. Indeed, a literal reading of the statute is that the notice should go out the same day the budget is filed. Then G.S. 159-13 says that the board must wait at least 10 days after the budget is presented before adopting the budget. It’s possible to infer from that language that the purpose is to provide the public with at least ten days to review and comment on the budget prior to adoption, and if that is the case, it could be read as an implied 10-day minimum notice for the public hearing, if the board is to adopt the budget on the shortest possible schedule. On the other hand, since the statute doesn’t specifically say that, it’s possible that if the notice is given on the day the budget is submitted and the hearing is held 7-10 days later, a court might well find that to be sufficient notice. Obviously, a longer period may be provided as well. I don’t recommend scheduling the public hearing for a date with less than a week’s notice, as I would be concerned that a court might find this would not provide a reasonable period for public notice.

Many local boards hold multiple budget hearings, focusing each on a different section of the budget appropriation. There must be at least one public hearing on the entire budget ordinance, though, to meet the statutory requirement. **G.S. 159-13** directs a governing board to adopt its budget ordinance on or before July 1. (Note that counties have additional procedural requirements for adopting the annual budget ordinance. G.S. 115C-429 directs a local school board to submit its proposed budget to the board of county commissioners by May 15. The county board then holds the public hearing on the county budget, including public school appropriations.) The budget ordinance may be adopted at either a regular or special meeting of the governing board “by a simple majority of those present and voting” as long as a quorum is present. **G.S. 159-17.** Failure to adopt the budget ordinance by July 1 does not impair the legal validity of the budget ordinance, but it could impede government operations. That is because of the requirement that most public funds must be included in the budget ordinance before they can be expended by a local government.

If a governing board is unable or unwilling to adopt its budget by July 1, **G.S. 159-16** directs the board to adopt an interim budget to make “appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the [unit] for the interval between the beginning of the budget year and the adoption of the budget ordinance.” A governing board could adopt an interim budget if, for example, it wants to wait until the state enacts its appropriations act or if it wants to wait until it receives final revaluation figures.

### **Altering / Amending the Budget Ordinance**

What if the governing board does not wait until July 1 to adopt its budget—can it amend the budget ordinance before the

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July 1 deadline? The short answer is “yes.” As detailed in a previous **post**, a governing board has broad authority to amend its budget ordinance at any time. **G.S. 159-15**. The contours of that authority are not determined by the date on which the budget ordinance is adopted, though. In fact, the date on which the budget ordinance is adopted is completely irrelevant. A governing board has the same authority, for example, to amend its budget if the budget was adopted on June 13, July 1, or July 7. An amendment may be adopted at a regular or special meeting, on the day it is introduced, and by a simple majority of those voting as long as a quorum is present.

There are a few significant limitations to this amendment authority, though. **And it is important to note that all of these limitations apply as soon as the budget ordinance is adopted, even if it is adopted before July 1.**

- First, as amended, the budget ordinance must continue to be balanced, in accordance with **G.S. 159-8**, and it must continue to satisfy all of the requirements imposed by **G.S. 159-13** (some of which are listed above).
- Second, the governing board may not increase or reduce the property tax levy or alter a property taxpayer’s liability unless (1) the board is ordered to alter the property tax levy by a court or state agency with the power to compel the levy of taxes by the board; or (2) after July 1 the local government receives revenues that are substantially more or less than the amount anticipated when the budget ordinance was adopted. Under the second exception, the board must take action before January 1 following the adoption of the budget. (Click **here** for a more detailed discussion of this exception.)
- The third limitation applies to counties only. According to **G.S. 159-13(b)(9)**, a county may not reduce its appropriations to a local school administrative unit after it adopts the county budget ordinance, except under two circumstances. A county may reduce its appropriation if the local board of education agrees to the reduction. The local board of education must adopt a resolution indicating its agreement with the proposed reduction. A county also may reduce its appropriations to a local school administrative unit, without the consent of the local board of education, if it is pursuant to “a general reduction in county expenditures . . . because of prevailing economic conditions.” But, before a county may reduce appropriations without the consent of the local board of education, it must first hold a public meeting, at which the school board is given an opportunity to present information on the impact of the reduction, and then the board of county commissioners must take a public vote on the reduction.
- Finally, as discussed **here**, a governing board likely may not alter (increase or decrease) its own compensation after the budget ordinance is adopted.

### Hypothetical Example

Back to Carolina County. Commissioners Decisive and his fellow commissioners are free to amend the budget ordinance at any time (before or after July 1) to modify its appropriations or its expected revenue. However, the board may not alter its property tax rate(s) unless ordered to do so by a court of state agency or unless it receives (after July 1) substantially more or less revenue than it anticipated at the time it adopted the budget.

### Links

- [www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H200v8.pdf](http://www.ncga.state.nc.us/Sessions/2011/Bills/House/PDF/H200v8.pdf)
- [www.ncga.state.nc.us/Sessions/2011/h200Veto/govsig.pdf](http://www.ncga.state.nc.us/Sessions/2011/h200Veto/govsig.pdf)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-13.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-13.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-7.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-7.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-28.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-28.html)
- [canons.sog.unc.edu/?p=4316](http://canons.sog.unc.edu/?p=4316)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-11.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-11.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-12.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-12.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-17.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-17.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-16.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-16.html)
- [canons.sog.unc.edu/?p=103](http://canons.sog.unc.edu/?p=103)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-15.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-15.html)
- [www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_159/GS\\_159-8.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_159/GS_159-8.html)
- [canons.sog.unc.edu/?p=3653](http://canons.sog.unc.edu/?p=3653)