
Coates' Canons Blog: Amending the Budget Ordinance—

By Kara Millonzi

Article: <https://canons.sog.unc.edu/amending-the-budget-ordinance%e2%80%94/>

This entry was posted on August 03, 2009 and is filed under Budgeting & Appropriations, Finance & Tax

Anxieties are running high among many local government officials as they await the adoption of the State's budget to learn the fate of local revenue sources. In fact, according to a July 30, 2009, bulletin update from the North Carolina League of Municipalities, pursuant to State budget negotiations as of that date, counties and municipalities potentially stand to lose at least a portion of their beer and wine tax proceeds, resulting from state excise taxes on beer, fortified wine and unfortified wine. The prospective aggregate loss to local governments is \$33 million. The revenue loss to any one local unit may not be substantial. But, because many, if not most, local governments already have adopted their budget ordinances for this fiscal year, local units are going to have to make at least some adjustments. Which raises the question, what are the rules governing if, when, and how a local unit may amend its budget ordinance once it has been adopted?

First, a little context—Each year, a local government or public authority must adopt an annual budget ordinance. Among other requirements, the budget must be balanced—meaning the sum of estimated net revenues and appropriated fund balances is equal to appropriations. In other words, the total amount of revenue a unit expects to generate itself (through taxes, fees, assessments, etc.), receive from outside sources (through state-shared revenue, grants, donations, etc.), and use from its reserves (fund balance), must equate to the total amount of expenditures the unit expects to make during the fiscal year. Generally, a budget ordinance is adopted by July 1, or shortly thereafter, each year and applies until the following June 30.

One need look no further than this past year to understand how revenue projections made in June or July might appear absurd by the following spring, in the wake of a national financial meltdown. But, it does not take an emergency of this magnitude to cause budget estimates to be off. In fact, local units routinely must recalibrate projections throughout a fiscal year to deal with natural revenue swings. The percentage of property tax collections may be lower (or higher) than anticipated. A unit may receive an unexpected grant or donation during the fiscal year, or, conversely, an expected grant or donation may fall through. And, of course, the State may withhold payment of certain state-shared revenues to local units. Likewise, a unit may need to (or simply decide it wants to) appropriate monies for expenditures that were not included in the budget ordinance.

What, then, are the rules governing if and when a local unit may amend its budget ordinance once it has been adopted?

North Carolina General Statute § 159-15 clearly authorizes the governing board of a local unit to amend its budget ordinance "at any time after the ordinance's adoption in any manner, so long as the ordinance, as amended, continues to satisfy [all of the statutory requirements, including the balanced budget requirement]." This provision affords wide-latitude to governing boards, not only to adjust to changing circumstances in their communities, but also to voluntarily choose to alter policy prerogatives. There are a few limitations on this authority—two of particular importance: (1) the restriction on property tax changes, and (2) the restriction on reducing appropriations to public schools.

Restriction on Property Tax Changes

The first, and perhaps most important, limitation is that a local government may not "increase or reduce a property tax levy or in any manner alter a property taxpayer's liability," unless pursuant to one of three statutory exceptions. This means that, unless one of the exceptions applies, a local unit may not raise or lower the property tax rate once the budget ordinance has been adopted. (Note that the limitation only applies to the property tax levy, not other taxes or fees.)

This brings us to the exceptions. A local unit may alter its property tax levy if ordered to do so by a court or state agency.

But these exceptions rarely apply.

A third exception, however, potentially provides a local unit with more flexibility to make property tax changes. Specifically, if a local unit “receives revenues that are substantially more or less than the amount anticipated” when it adopted the budget ordinance, the governing board may increase or reduce the property tax levy accordingly. It must adopt the new rate by January 1. This exception was added by the General Assembly during the 2002 Legislative Session, in response to then-Governor Easley’s withholding of certain reimbursements and State-shared revenue distributions to local units during the Spring of 2002.

What though, does it mean for a local unit to “receive revenues?” There is no case law interpreting this provision. Arguably, the exception only applies to revenues a local unit obtains from external sources (grants, shared-revenues, donations); as opposed to revenues it generates itself (property tax, other local taxes and fees). Although there may be some support for this argument based on the fact that the exception was added to give local units recourse to deal with an unexpected loss of revenue from the State, the definition of “receive” is not so limited. Instead, it likely applies to all revenues that a local unit obtains, from whatever source. Also arguably, the exception only applies if a unit actually has obtained the revenues (*i.e.* has the cash in hand), as opposed to merely anticipating a significant decrease or increase in revenues over the course of the fiscal year. It strikes me that this interpretation is unduly restrictive, though. I think a better reading of this provision is that the exception is triggered if (after it adopts its budget ordinance, but before January 1) a local unit reasonably expects to receive more or less revenue over the course of the fiscal year.

Restriction on Reducing Appropriations to Public Schools

The second 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. A question often arises as to what constitutes a general reduction in county expenditures. Does this require an across-the-board cut to all county departments or all county expenditures? Does it mandate the same percentage of reduction across the board? There is no case law interpreting this provision. Based on the plain language, it does not require a uniform, across-the-board reduction to all appropriations. It appears to envision a fairly broad-based cut to county expenditures, though.

Finally, let us look at the “how.” In other words, what is the process for amending a budget ordinance?

The usual method is for the governing board to adopt an ordinance that amends the budget ordinance. 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.

The governing board may also permit the budget officer to make certain budget ordinance amendments. Specifically, the board may authorize the budget officer to “transfer moneys from one appropriation to another within the same fund,” subject to whatever limitations the board prescribes. This authority does not apply to changes to revenues, including increasing the amount of appropriated fund balance. Nor does it apply to changes between funds (such as between the general fund and an enterprise fund). If the budget officer is empowered to amend, he or she must report each such amendment to the board at its next regular meeting, and the board must record the report in its minutes.

Links

- www.nclm.org/programs-services/publications/bulletins/2009/Pages/20090731.aspx
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-113.82.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-113.80.html
- 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_159-13.html