
Coates' Canons Blog: S.L. 2020-3 (SB 704) Makes (Limited) Changes to Budget Process

By Kara Millonzi

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In response to COVID-19, the legislature adopted two comprehensive bills that touch on a variety of areas, including a few local government finance-related issues. One of those issues is the annual budget ordinance adoption process. This post explains the normal process and details the recent (limited) legislative changes.

Annual Budget Ordinance

The annual budget ordinance is the legal document that recognizes revenues, authorizes expenditures, and levies taxes for the local government or public authority (collectively local unit) for a single fiscal year. The budget ordinance must be adopted by the unit's governing board. And no public monies may be expended, regardless of their source, unless the monies have been properly budgeted through the annual budget ordinance (or through a project or grant ordinance). See G.S. 159-8. The only exceptions to this are for internal service funds or monies collected by a local unit that do not belong to that unit.

The Local Government Budget and Fiscal Control Act (G.S. 159, Art. 3) sets out the basic process for adopting the budget ordinance. It also imposes certain substantive requirements and limitations on the budget ordinance. In response to COVID-19, the legislature made a few changes to the process, but did not change any of the substantive requirements and limitations. The following details the statutory process requirements and then discusses the legislative modifications that apply for this budget cycle only. These modifications expire August 1, 2020.

Process to Adopt Annual Budget Ordinance

Although most units engage in a more expansive budgeting process, below are the minimum process requirements imposed by statute.

- By April 30: Department heads and other staff must submit budget requests to the budget officer. G.S. 159-10.
- By May 15: [Counties Only] School board(s) must submit budget requests to county commissioners, unless commissioners agree to a later date. G.S. 115C-429.
- By June 1: Budget officer must submit proposed budget to governing board. G.S. 159-11(b).
- By July 1: Governing board must adopt annual budget ordinance or an interim budget. G.S. 159-13(a).

The only deadline that really matters is July 1. That is because the prior year's budget ordinance (right now that means the FY2019-2020 budget ordinance) expires at midnight on July 1. It no longer provides any authority to obligate or disburse monies. All of the unspent revenues (to the extent that they were actually realized) revert to fund balance. And a local unit is not authorized to spend money directly out of fund balance.

There are a few other process requirements.

- First, at the same time that the proposed budget is submitted to the board, a copy must be filed in the clerk's office and made available for public inspection. G.S. 159-12(a).
- Second, the clerk must publish notice in a newspaper of general circulation in the county in which the local unit is located. The notice must state that the proposed budget is available for public inspection in the clerk's office and specify the date, time, and location of the public hearing on the budget. *Id.*
- Third, the board must hold at least one public hearing on the whole budget. G.S. 159-12(b).
- Fourth, the board must wait at least 10 days between the date the budget officer submits the proposed budget and the date the board adopts the budget ordinance. G.S. 159-13(a).
- Finally, there are different voting rules for adopting the budget ordinance. The budget ordinance may be adopted at

any regular or special meeting, by a simple majority of members present and voting, as long as a quorum is present. G.S. 159-17.

Legislative Changes for this Budget Cycle Only

The legislature made some modest changes to these process requirements for the FY 2020-2021 budget ordinance adoption.

Public Inspection of Proposed Budget. Sect. 4.27 of S.L. 2020-3 (SB 704) amends G.S. 159-12(a) until August 1, 2020, to temporarily eliminate the requirement that a copy of the proposed budget ordinance be available for public inspection in the clerk's office. This amendment applies to all local governments and public authorities.

For units of local government, which are defined in G.S. 159-7 to include counties, municipalities, sanitary districts, consolidated municipal-county governments, county water and sewer districts, metropolitan sewerage districts, metropolitan water districts, mosquito control districts, special airport districts, and regional public transportation authorities, the amendment further provides that "the clerk to the board may post a copy of such budget on the Web site of the unit of local government and shall provide copies in accordance with [the public records law]." Although technically this part of the amendment does not apply to public authorities, those local units already have an independent obligation to provide copies of the proposed budget upon request under the public records law.

Note, however, that a local unit may satisfy its public records obligation to allow for inspection or provide a copy of a public record

by making public records available online in a format that allows a person to view the public record and print or save the public record to obtain a copy. If the public agency or custodian maintains public records online in a format that allows a person to view and print or save the public records to obtain a copy, the public agency or custodian is not required to provide copies to these public records in any other way.

G.S. 132-6(a1). And even if not done to satisfy the public records obligation, a local unit is well advised to post the proposed budget to its website and various social media outlets.

Public Hearing. As detailed in a [post](#) by my colleague, Frayda Bluestein, Sect. 4.31 of S.L. 2020-3 (SB 704) also specifically authorizes remote meetings and public hearings, upon issuance of a declaration of emergency under G.S. 166A-19.20.

With respect to public hearings, the legislation provides that

A public body may conduct any public hearing required or authorized by law during a remote meeting, and take action thereon, provided the public body allows for written comments on the subject of the public hearing to be submitted between publication of any required notice and 24 hours after the public hearing.

Because we are under a Governor-declared emergency, a local unit now has clear authority to conduct its required public hearing for the FY 2020-2021 budget ordinance remotely. However, the new law imposes a new requirement. The board must wait to formally adopt the budget ordinance for at least 24 hours after the hearing. That is because the legislation affords citizens the right to submit written comments for up to 24 hours after the hearing. And, recall that G.S. 159-12(b), which mandates the public hearing on the budget, specifies that any person who wishes to be heard on the budget must be given an opportunity to do so. One might argue that the board could simply adopt the budget ordinance immediately after the public hearing, and then potentially amend the ordinance based on comments it receives after the fact. It is true that local governing boards have broad authority to amend the budget ordinance at any time. G.S. 159-15. However, as detailed [here](#), once the board adopts the budget, it may not alter the property tax rate absent exceptional circumstances listed in G.S. 159-15, even if the adoption occurs before July 1. Setting the property tax rate is one of the biggest, if not the biggest, policy decisions that the board makes in the budget. To fully afford citizens their right to comment on the budget and potentially influence the board, the board should schedule a meeting at least 24 hours after the public hearing to adopt the budget ordinance. (Note that the 24-hour waiting period only applies if the board is conducting a remote public hearing, pursuant to the new legislation. It does not apply if the board meets in person and holds a traditional public hearing on the budget.)

Budgeting Options in Face of Uncertainty

What if the board does not want to adopt the budget ordinance by July 1, in the face of so much revenue uncertainty? Here are three previously authored blog posts that set out options for the board:

Local Government Budgeting Options when Revenue Streams are Uncertain

Interim Budget

Taxes, Reappraisals, and Budgets in the COVID-19 Era