

## **CHAPTER 40-40 MUNICIPAL BUDGET LAW**

### **40-40-01. Short title.**

This chapter shall be known and cited as the municipal budget law.

### **40-40-02. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Governing body" means the city council, board of city commissioners, park commissioners, or city manager.
2. "Municipality" means any city or park district in this state.

### **40-40-03. Fiscal year of municipality.**

The fiscal year of each municipality shall commence on the first day of January of each year and shall terminate on the thirty-first day of December of that same year.

### **40-40-04. Municipality to prepare preliminary budget statement.**

The governing body of each municipality, annually on or before August tenth, shall make an itemized statement known as the preliminary budget statement showing the amounts of money which, in the opinion of the governing body, will be required for the proper maintenance, expansion, or improvement of the municipality during the year.

### **40-40-05. Contents of preliminary budget statement.**

The preliminary budget must include a detailed breakdown of the estimated revenues and appropriations requested for the ensuing year for the general fund, each special revenue fund, and each debt service fund of the municipality. The revenue and expenditure items for the preceding year and estimates of the revenue and expenditures for the current year must be included for each fund to assist in determining the estimated revenues and appropriation requested for the ensuing year. The budget must also include any transfers in or out and the beginning and ending fund balance for each of the funds. The budget must be prepared on the same basis of accounting used by the municipality for its annual financial reports.

The amount paid for salaries may be shown as a single line item expenditure in each fund. There must be on file with the governing body and open to public inspection a detailed statement showing the names of all persons receiving salaries, the annual amount paid to each person, and the fund charged.

While preparing the budget, municipal officials may include an expenditure item for equipment replacement, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing year, based on current costs, of all equipment owned by the municipality. The expenditure for equipment replacement must be placed in a separate special revenue fund. No expenditure may be paid from the equipment replacement fund except for equipment purchases to replace equipment that is worn out, damaged, or obsolete. The term "equipment" does not include structures or building fixtures.

While preparing the budget, municipal officials may include an expenditure item for a building reserve fund, the amount of which may not exceed the total of the anticipated reasonable costs of depreciation for the ensuing year, based on the original costs of all buildings and structures owned by the city. The expenditure for building reserve must be placed in a separate capital projects fund. No expenditures may be paid from the building reserve fund except for the purchase, construction, or remodeling of buildings or structures that are obsolete, substandard, or generally unfit for public use.

### **40-40-06. Notice of preliminary budget statement - Contents - How given.**

1. On or before August tenth of each year, after the governing body has prepared the preliminary budget statement, the auditor of the municipality shall:
  - a. Provide the county auditor with a copy of the preliminary budget statement.

- b. Set a public budget hearing date no earlier than September seventh and no later than October seventh for the purpose of adopting the final budget and making the annual tax levy.
  - c. Provide notice of the public budget hearing date to the county auditor.
2. For municipalities anticipating levying less than one hundred thousand dollars in the current year, notice must:
- a. Contain a statement of the total proposed expenditures for each fund in the preliminary budget, but need not contain any detailed statement of the proposed expenditures;
  - b. Be published at least once, not less than six days prior to the budget hearing, in a newspaper published in the municipality, if there is one, and if no newspaper is published in the municipality, the notice must be published not less than six days prior to the meeting in the official city newspaper as provided by section 40-01-09; and
  - c. Provide that any taxpayer may appear and discuss with the governing body any item of proposed expenditures or may object to any item or amount.

**40-40-07. Copy of preliminary budget sent to county auditor - Open to inspection.**

Repealed by S.L. 1965, ch. 291, § 1.

**40-40-08. Hearing of protests and objections - Changes in preliminary budget - Preparation of final budget - Contents.**

The governing body shall meet at the time and place set pursuant to section 40-40-06 and shall hear any and all protests or objections to the items or amounts set forth in the preliminary budget statement. At the hearing, the governing body shall make any changes in the items or amounts shown on the preliminary budget statement as it may deem advisable except as limited in this chapter, and shall prepare the final budget, which must consist of the preliminary budget with the addition of columns showing:

- 1. The final appropriations for the various expenditure items specified in the preliminary budget statement. The final appropriation of any fund total may not exceed the total amount requested in the preliminary budget.
- 2. The estimated amount of unencumbered cash on hand at the end of the current year may not include cash or investments of the equipment replacement fund as provided in section 40-40-05.
- 3. The levy amount determined by subtracting the total resources from the total appropriations and cash reserve for each fund. The governing body may increase the levy an additional five percent for delinquent tax collections.
- 4. The certificate of levy which includes a summary of the amount levied for each fund and the total amount levied.

**40-40-09. Determination of amount to be levied - Adoption of levy - Limitations.**

After completing the final budget on or before October seventh, the governing body shall proceed to make the annual tax levy in an amount sufficient to meet the expenses for the ensuing year as determined at the budget meeting. In determining the amount required to be levied, the governing body first shall ascertain its net current resources by adding the estimated revenue for the ensuing year other than property taxes, any transfers in, and the estimated fund balance at the end of the current year. Then the governing body shall ascertain its appropriation and reserve by adding the final appropriation for the ensuing year, any transfers out, and the cash reserve. The net current resources must be deducted from the appropriation and reserve and the balance shall be considered the amount that is required to be raised by taxation during the ensuing year. The determination of the amount of the levy that can be collected within the ensuing year must be made by the governing body based upon the past experience of the district. The levy as finally adopted must be approved by a majority vote of the members of the governing body and noted in the proceedings of the governing body. The amount levied is subject to the limitations as prescribed by the laws of this state and is subject to the further

limitation that the amount may not exceed the levy requested by the municipality. The levy adopted must appropriate in specific amounts the money necessary to meet the expenses and liabilities of the municipality.

**40-40-10. Certified copies of levy and final budget sent to county auditor.**

Immediately after the completion of the final budget and the adoption of the annual tax levy by the governing body of a municipality in accordance with the provisions of this chapter, and in no case later than October tenth, the auditor of the municipality shall send to the county auditor a certified copy of the levy as adopted and a certified copy of the final budget.

**40-40-11. County auditor to calculate and reduce tax rates - Extending tax levy.**

After the county auditor has available the data showing the total taxable valuation of a municipality, the auditor shall calculate the necessary tax rates to produce the sums called for in the final budget. If the auditor finds that any amount or amounts called for in the levy cannot be produced by a tax rate within the limitation prescribed by the laws of this state, the auditor shall reduce the amount so that it can be produced by a tax rate within legal limitations. The auditor shall extend the levy, including the levy for judgments against the municipality, upon the tax lists of the county for the current year against each description of real property and all personal property within the municipality in the same manner and with the same effect as other taxes are extended. The county auditor shall notify the governing body of the municipality at once of any reductions made in the levy.

**40-40-12. County auditor to transmit annual tax levy and final budget to state auditor.**

Repealed by S.L. 2001, ch. 122, § 11.

**40-40-13. County treasurer to collect municipal taxes.**

The county treasurer shall collect all municipal taxes, together with the interest and penalties thereon, if any, in the same manner as the general taxes are collected, and shall pay over to the city auditor, on or before the tenth working day of each calendar month, all taxes so collected during the preceding month, with interest and penalties collected thereon.

**40-40-14. Municipal taxes collected to be credited to appropriate funds.**

The city auditor shall apportion the amounts received for taxes from the county treasurer and shall credit each fund with its proportion or share according to the levy made by the governing body of the municipality. The county treasurer, at the time of paying over such funds, shall furnish the city auditor with a statement of the amount collected for each year separately, and such amount shall be credited to the proper funds for the year for which it was collected.

**40-40-15. Expenditures made or liabilities incurred beyond appropriation - Joint and several liability of members of governing body.**

Except as otherwise provided in section 40-40-18, no municipal expenditure may be made nor liability incurred, and no bill may be paid for any purpose in excess of the appropriation made therefor in the final budget. Expenditures made, liabilities incurred, or warrants issued in excess of the appropriations are a joint and several liability of the members of the governing body who authorized the making, incurring, or issuing thereof or who were present when they were authorized and did not vote against authorizing the same.

**40-40-16. State's attorney to sue for excessive expenditures.**

Upon good and sufficient information presented to the state's attorney by any taxpayer in the municipality or obtained from any other source, the state's attorney of the county in which the municipality lies shall bring suit to recover from the members of the governing body, jointly and severally, the amount of expenditures, payments, or warrants in excess of the amount shown in any group of the final budget.

**40-40-17. Transfer from other items of appropriation when appropriation insufficient.**  
Repealed by S.L. 1987, ch. 497, § 3.

**40-40-18. Amounts taken from various funds and borrowings to meet emergency - Vote required - Contents of resolution.**

Upon the happening of any emergency caused by the destruction or impairment of any municipal property necessary for the conduct of the affairs of the municipality, or by epidemic or threatened epidemic, or by the entry by a court of competent jurisdiction of a judgment for damages against the municipality, the governing body may meet any such emergency in the manner provided in this section. If there is a sufficient unexpended balance in any fund or funds except funds established for debt retirement to provide for the emergency, the governing body, by a resolution adopted by the vote of two-thirds of the members present at any meeting, or, if the governing body consists of less than three members, by a unanimous vote of all the members thereof, may take the amount necessary to meet the emergency from any such fund or funds. If the municipality has not reached its debt limit, the governing body, by the vote required to take moneys from a designated fund, may order its executive officer and financial committee to borrow an amount sufficient to meet the emergency. Any amount so borrowed must be for a time not to extend beyond the close of the fiscal year, and such amount and the interest thereon must be a part of the next budget. The resolution authorizing any emergency expenditure must recite the facts showing the existence of an emergency of the kind specified in this section.

**40-40-19. Liabilities may be incurred after July first and before a new appropriation is made - Exception.**

Repealed by S.L. 1983, ch. 464, § 5.

**40-40-20. Contracts made prior to appropriation prohibited - Contracts for water for fire protection excepted.**

Except as otherwise provided in this chapter or in section 40-05-05, no contract shall be made by the governing body of a municipality and no expense shall be incurred by any officers or departments of the corporation unless there shall have been a previous appropriation providing for such expense. The governing body may enter into contracts with persons, associations, corporations, or limited liability companies for the furnishing of water for fire protection to the municipality, and in case such contract extends over a term of years, it shall be unnecessary that a previous appropriation shall have been made except to cover the amounts payable under the contract for the first year thereof. Such a contract shall not be made for a longer period than twenty years.

**40-40-21. Balance at end of fiscal year to become part of unappropriated balance - When special appropriation to lapse.**

At the end of the fiscal year, the balance to the credit of each annual appropriation becomes a part of the general unappropriated balance in the municipal treasury, except that the unused balance to the credit of the equipment replacement fund provided for in section 40-40-05 does not become a part of the general unappropriated balance in the municipal treasury, but no special appropriation lapses until the work for which it was made has been completed, the bills paid, and the accounts closed. The governing body of a city may elect, at the end of the fiscal year, to carry over the unencumbered cash balance in the general fund or other budgeted funds and designate the balances for subsequent years.