

Municipal Budgeting:

By Claire Silverman, League Legal Counsel



All municipalities must prepare an annual budget. Although time periods vary depending on a municipality's process, the budget process typically commences in the summer or early fall and is in full swing during October and November when municipal officials hold public hearings on proposed budgets and eventually adopt final budgets.

Because the budget process requires municipal governing bodies to allocate scarce resources to programs, services and capital assets, it is one of the most important activities undertaken by local governments. This comment reviews

state laws governing the budget adoption process. [Note: This legal comment incorporates the material on Budgeting from the League's *Handbook for Wisconsin Municipal Officials*.]

THE STATE BUDGETING LAW

All Wisconsin municipalities must adopt an annual budget. See Wis. Stat. secs. 65.01 and 65.90. A budget is a projected financial plan or "fiscal blueprint" that outlines how municipal funds will be raised and spent.¹ Technically, for purposes of complying with state law, a budget is an ordinance or resolution enacted by the governing body that meets the requirements of sec. 65.90(2). The budget requirements applicable to first class cities (the City of Milwaukee) are set forth in different statutes, secs. 65.01 - 65.20 and are discussed below under the Board of Estimates System. Second, third and fourth class cities are governed by sec. 65.90 but may, by ordinance adopted by three-fourths of all governing body members, choose to be governed by the municipal budget system set forth in secs. 65.02, 65.03 and 65.04.

Under sec. 65.90(2), the following information must be included in a municipal budget:

- all existing indebtedness and all anticipated revenue from all sources during the ensuing year;
- all proposed appropriations for each department, activity and reserve account during the ensuing year;
- actual revenues and expenditures for the preceding year, actual revenues and expenditures for not less than the first six months of the current year and estimated revenues and expenditures for the balance of the current year;
- all anticipated unexpended or unappropriated fund balances, and surpluses.

BUDGET SUMMARY AND BUDGET HEARING

Before adopting the annual budget, a municipal governing body must hold a public hearing on the proposed budget to allow citizen comment. To inform the public about the proposed budget, the municipality must publish the following information as a class 1 notice under Wis. Stat. ch. 985, at least 15 days before the date of the public hearing on the budget:

- A budget summary that includes information specified by state law;
- A notice of the place where the proposed budget in detail may be inspected (e.g., the clerk's office);
- A notice of the time and place of the budget hearing.

Wis. Stat. sec. 65.90(3)(a).

1. *Financial Administration Handbook for Small Wisconsin Towns and Villages*, Wisconsin Department of Revenue (June 1991).

What Local Officials Need to Know

The published budget summary must contain the following information for the current budget and the proposed budget, and must also include the percentage change between the current and proposed budgets:

- General fund expenditures in the following categories: general government; public safety; public works; health and human services; culture, recreation and education; conservation and development; capital outlay; debt service; other financing uses.
- General fund revenues from the following sources: taxes; special assessments; intergovernmental revenues; licenses and permits; fines, forfeitures and penalties; public charges for services; intergovernmental charges; miscellaneous revenue; other financing sources.
- All beginning and year-end governmental and proprietary fund balances.
- The contribution of the property tax to each governmental fund and to each proprietary fund that receives property tax revenue and the totals for all funds.
- Revenue and expenditure totals, by fund, for each governmental fund, and for each proprietary fund and the revenue and expenditure totals for all funds combined.
- Revenue and expenditure totals for each impact fee imposed by the municipality.

In addition, the budget summary must include “an itemization of proposed increases and decreases to the current year budget due to new or discontinued activities or functions.”²

A municipality may publish additional budget summary information, but the additional information must be reported separately from the statutorily required information.³

A public hearing on the proposed budget must be conducted not less than 15 days after the budget summary is published. At this meeting “any resident or taxpayer of the governmental unit shall have an opportunity to be heard on the proposed budget.”⁴ Sometime after the public hearing, either at the same meeting or at a subsequent one, the budget ordinance or resolution is formally adopted by the governing body.

In cities, the budget ordinance or resolution is submitted to the mayor for his or her approval. Mayors are authorized to veto actions of the common council.⁵ If the mayor vetoes the budget, it is sent back to the council where a two-thirds vote of all the members is required to override the veto.

Statutory law does not authorize a partial veto by a mayor. However, it is the League’s view that cities may rely on their constitutional home rule powers to enact a charter ordinance providing for partial line or item veto of the municipal budget by the mayor.⁶ The League’s *Handbook for Wisconsin Municipal Officials* (2012) contains a sample charter ordinance giving the mayor partial veto authority over the budget on p. 246 in the appendix at the end of chapter VII which deals with Finance and Taxation.

Once a budget has been adopted by the governing body and, in cities, approved by the mayor, it provides the authorization to levy taxes and spend the authorized appropriations. The provisions of an adopted budget are obligatory and may be amended only by following certain procedures described below.

*Municipal Budgeting
Continued on page 234*

2. Wis. Stat. sec. 65.90(3)(bm).

3. Sec. 65.90(3)(d).

4. Sec. 65.90(4).

5. Sec. 62.09(8)(c).

6. League Legal Opinion Ordinances & Resolutions 353.

Municipal Budgeting
From page 233

DEADLINE FOR ADOPTING A MUNICIPAL BUDGET

State law does not set forth a specific date by which a municipal budget must be enacted. Certainly the budget must be adopted by the end of the year because villages and cities operate on a calendar fiscal year.⁷ For all practical purposes, however, the budget should be adopted by the end of November or, at the latest, the beginning of December. Otherwise, the municipality will be unable to comply with certain other deadlines relating to the property tax collection process. For example, village boards must determine the village's tax levy by December 15.⁸ Also, the municipal clerk must transfer the tax roll to the municipal treasurer by December 8.⁹ This deadline is extended to the 3rd Monday in December if the municipality has in effect a policy of issuing refund checks to taxpayers whose escrow check for property taxes exceeds the actual tax bill within 15 business days after receiving the escrow payment.¹⁰

In addition, the clerk must return the annual "Statement of Taxes," showing all taxes levied in the municipality, to the Department of Revenue and county treasurer on or before the 3rd Monday in December.¹¹

Moreover, many municipalities have their tax bills printed by the county or a private service provider. In such situations, the municipality will need to have its budget adopted in time to comply with the county's or private service provider's deadline for receiving the tax roll. Thus, practically speaking, the deadline for adopting a budget is dictated by other deadlines, both statutory and otherwise, designed to ensure that tax bills are sent to taxpayers by Christmas so that taxpayers can pay their property tax bills before the end of the year.

BUDGET CHANGES

The law on changing an adopted budget is important because it is a key consideration in deciding how detailed the budget should be. A two-thirds vote of the entire governing body is required to change an adopted budget, and a class 1 notice of the change must be published under ch. 985 with-

7. Wis. Stat. secs. 61.51(3) and 62.12(1).

8. Sec. 61.46.

9. Sec. 74.03(1).

10. Sec. 74.03(2).

11. Wis. Stat. sec. 69.61.

in 10 days after the change is made or the change is invalid.¹² This process must be followed when altering the amount of tax to be levied, the amounts of the various appropriations and the purposes for such appropriations stated in the budget. The law is unclear on whether transfers from the contingency fund to other budgeted accounts may be done under normal voting requirements, or require an extraordinary vote and a class 1 notice publication.¹³

NON-LAPSING RESERVE FUNDS

In general, municipalities may not accumulate unappropriated surplus funds. However, cities and villages may

1. maintain reasonable amounts of unappropriated funds on hand to meet immediate cash flow needs, and
2. accumulate needed capital in non-lapsing funds to finance specifically identified future capital expenditures (e.g., new fire truck, village hall or library).

Wis. Stat. sec. 65.90(1) provides that every municipality must annually, “prior to the determination of the sum to be financed in whole or in part by a general property tax, **funds on hand** or estimated revenues from any source, formulate a budget and hold public hearings thereon.” (Emphasis added.) In *Immega v. City of Elkhorn*,¹⁴ a taxpayer sued the City of Elkhorn to recover an amount of increased taxes he paid under protest that he claimed was due to Walworth County’s failure to use surplus funds on hand to reduce its tax levy. The City tendered defense of the action to the county and the county accepted. Before adopting its budget, the county board had adopted a resolution reciting its desire to set aside funds for future use in building a new courthouse. It also had changed the name of a no-longer needed sinking fund that had been started and used to retire a bond issue from “Special

Sinking Fund” to “New Court House Fund.” However, the board failed to actually appropriate any funds for the construction of a new courthouse.

The *Immega* court stated that it was inappropriate for a local government to levy a tax to enrich the public treasury or to accumulate funds for no specific purpose. The court concluded that the unappropriated surplus must be treated as “funds on hand” and could not be carried forward as a separate sinking fund into the new fiscal year but rather must be used to reduce taxes. The Wisconsin Supreme Court held that year-end balances in accounts, if not designated for any particular purpose, must be considered “funds on hand” under Wis. Stat. sec. 65.90(1) and used to defray budgetary costs and reduce the tax levy for the ensuing year.

In general, municipalities may not accumulate unappropriated surplus funds.

The general rule announced in *Immega* against accumulating surpluses for undesignated purposes was first qualified in *Fiore v. City of Madison*.¹⁵ In *Fiore*, a taxpayer sued for a refund of taxes claiming that approximately \$600,000 appropriated by the city to a city-county non-lapsing building reserve fund should have been considered unallocated surplus “funds on hand” under Wis. Stat. sec. 65.90(1) and used to defray budgetary expenses. The *Fiore* court disagreed and held that, unlike the county board in *Immega*, the Madison city council had adopted a resolution appropriating approximately \$600,000 into a city-county non-lapsing building reserve fund which it had lawfully created pursuant to its broad home rule powers under sec. 62.11(5).

The court concluded that because of the appropriation, the amount ceased to be an unallocated surplus available to defray budget expenses. With regard to the plaintiff’s claims that the city failed to take into account other large sums of unallocated surplus funds when fixing the tax rate, the *Fiore* court

*Municipal Budgeting
Continued on page 236*

12. Wis. Stat. sec. 65.90(5)(a).

13. In 32 Op. Att’y Gen. 301 (1943), the Attorney General opined that transfers from a contingent account for a purpose not within the budget would not constitute a budget amendment since the very purpose of a contingency fund is to provide for moneys on hand to be available for emergency and other unforeseen matters not contemplated and otherwise provided for in the budget. This opinion was retreated from in 57 Op. Att’y Gen. 134 (1968) and 76 Op. Att’y Gen. 145 (1987) but these opinions are not clearly applicable to cities and villages since they were based, in part, on statutes specifically applicable to county contingent funds and were addressed to counties; See also League opinion, Financial Procedure 182 (intended allocation of funds from village’s contingency account to pay for newly created, although previously anticipated, positions would merely constitute a transfer of funds which would not require a two-thirds vote).

14. 253 Wis. 282, 34 N.W.2d 101 (1948).

15. 264 Wis. 482, 59 N.W.2d 460 (1953).

Municipal Budgeting
From page 235

agreed that if there were such funds they must be applied to finance the budget. However, the court said that ordinary business principles permit municipalities to retain reasonable working cash balances in the municipal treasury. In other words, every “last cent [of unallocated surplus funds] need not be devoted to reduction of taxes in aid of the budget.”¹⁶

Subsequent judicial decisions, an attorney general opinion and a statutory change have further qualified the general prohibition in *Immega* against accumulating unappropriated surpluses. In *Blue Top Motel, Inc. v. City of Stevens Point*,¹⁷ the Wisconsin Supreme Court analyzed the *Immega* and *Fiore* cases as follows: “Taken together, *Immega* and *Fiore* establish generally that a city may retain funds to meet its needs, but may not simply carry a large surplus which has not been designated for any particular use.”¹⁸

In *Barth v. Monroe Board of Education*,⁶ the Wisconsin court of appeals stated in dicta that “[i]t is possible that a sinking fund dedicated to all current and future capital expenditures without relation to specific capital projects has so little public purpose that it violates the prohibition against taxing for purposes other than a public purpose.”¹⁹ The *Barth* court declined to resolve the matter, however, because the school board specifically dedicated the funds at issue in the case to construct a swimming pool before the suit was filed.

A 1987 Wisconsin Attorney General opinion reads the *Immega*, *Fiore*, *Blue Top Motel* and *Barth* line of cases to mean that while municipalities may not lawfully create and accumulate unappropriated surplus funds, they may “maintain reasonable amounts necessary in the exercise of sound business principles to meet their immediate cash flow needs during the current budgetary period or to accumulate needed capital in non-lapsing funds to finance specifically identified future capital expenditures.”²⁰

In 1988, Wis. Stat. sec. 65.90 was amended to authorize municipalities to set up, operate and dissolve liability reserve funds. In the League’s opinion, these provisions were unnecessary as regards city and village authority to establish reserve funds, and can in fact be read to create limits on what

a municipality can do with respect to establishing liability reserve funds.

The provisions provide that municipalities may set up and levy taxes for a liability reserve fund to pay liability claims or insurance premiums. The fund may accumulate from year to year. The annual taxes levied for the fund may not exceed the amount recommended by an actuary, in accordance with generally accepted actuarial principles, sufficient to pay the premiums and uninsured portion of the claims anticipated to be made for occurrences during the year. Payment of the premiums and claims may be made either directly from the reserve or transferred from the reserve to an operating account for the payments.

BOARD OF ESTIMATES BUDGET SYSTEM

The budget development and adoption process set forth in Wis. Stat. sec. 65.90 applies to nearly all Wisconsin municipalities. However, as mentioned above, the City of Milwaukee follows the budget system set forth in secs. 65.01 - 65.20. Any other city may, by ordinance adopted by three-fourths of all the members of the common council, adopt the budget development process set forth in secs. 65.02 - 65.04. Only a few municipalities, such as the City of Madison, have done so. Under this alternative budget development process, the city must create a Board of Estimates made up of key city officers such as the mayor, president of the common council, city attorney, and comptroller. The Board of Estimates receives budget requests from each city department and prepares and submits a proposed budget to the common council by October 25 each year. The proposed budget must comply with sec. 65.02(5) - (11).

RECOMMENDED BUDGET PRACTICES

So far, this discussion of municipal budgeting has focused almost exclusively on the minimum requirements imposed by state law regarding the adoption of an annual budget. As the National Advisory Council on State and Local Budgeting (NACSLB) explains in its Recommended Budget Practices: A Framework for Improved State and Local Government Budgeting (1998), published by the Government Finance Officers Association (GFOA), “[a] good budget process is far

16. 264 Wis. at 486.

17. 107 Wis.2d 392, 320 N.W.2d 172 (1982).

18. 320 N.W.2d at 175.

19. 322 N.W.2d at 698.

20. 76 Op. Att’y Gen. 77 (1987).

more than the preparation of a legal document that appropriates funds for a series of line items. Good budgeting is a broadly defined process that has political, managerial, planning, communication, and financial dimensions.”

Wis. Stat. sec. 65.90 is silent about how a municipality is to develop a proposed budget for consideration by the governing body. This absence of a statutorily prescribed process for preparing a budget leaves substantial discretion to local governments in determining their own budgeting procedures. Consequently, there are wide differences in budget practices among municipalities.

Many municipalities have developed formal procedures set out in ordinances or resolutions and in guidelines furnished to department heads. See The League’s *Handbook for Wisconsin Municipal Officials* (2012) Ch. VII appendix for a sample “budget system” ordinance. The budget process in smaller municipalities is often less formal. Nevertheless, in most, if not all, municipalities, the process of developing a budget “is governed by a mixture of law, tradition, agreements, understandings — and politics.” Donoghue, “Local Government in Wisconsin,” *Wisconsin Blue Book* 1979-80.

Some communities treat budgeting as a seasonal occurrence — something to be done each October and November. However, as the discussion below of recommended budget practices implies, the budget process is a continuous, year-round process that involves three main components: 1) preparation; 2) consideration and adoption; and 3) administration.

In many communities, the budget process begins early in the calendar year when each department head or local official reviews his or her operations for the current and previous year and prepares a budget request for the ensuing year. In some cases, the municipal clerk or administrator may do this for some departments. The municipal clerk, administrator or finance officer compiles the requests. The compilation then is reviewed by the finance or budget committee of the governing body and a preliminary budget is developed. This is a legislative budget.

A number of other municipalities follow an executive budget system, where the municipal administrator, mayor or manager

reviews the budget requests. The chief executive considers the whole budget and may make reductions or additions. After this process, the chief executive presents the recommended budget to the governing body. In some instances, the executive budget is accompanied by an executive budget message, which highlights the major goals of the budget and any significant anticipated or proposed changes in revenues or expenditures.

Executive budgets are most common in cities with a council-manager form of government or a full-time mayor. Some municipalities with an administrator also use the executive budget. The council or village board may review the preliminary budget either by referring the budget to a standing committee for consideration or by having the entire governing body undertake the budget review. Following this review, the reviewing body develops a proposed budget and a public hearing is held. The governing body then adopts the budget, which includes a levy of the necessary property taxes. The League’s *Handbook for Wisconsin Municipal Officials* ch. VII appendix contains a sample ordinance for adopting a budget and levying a property tax.

FEATURES OF A GOOD BUDGET PROCESS

Some or all of the NACSLB’s 59 recommended budget practices might serve as a blueprint for Wisconsin local governments seeking to improve their budget process. As the NACSLB points out in the introduction to its recommended budget practices, “the quality of decisions resulting from the budget process and the level of their acceptance depends on the characteristics of the budget process that is used.” Thus:

A budget process that is well integrated with other activities of government, such as the planning and management functions, will provide better financial and program decisions and lead to improved governmental operations. A process that effectively involves all stakeholder selected officials, governmental administrators, employees and their representatives, citizen groups, and business leaders and reflects their needs and priorities will serve as a positive force in maintaining good public relations and enhancing citizens’ and other stakeholders’ overall impression of government.²¹

Municipal Budgeting
Continued on page 238

21. National Advisory Council on State and Local Budgeting *Recommended Budget Practices: A Framework for Improving State and Local Government Budgeting* (1998).

Municipal Budgeting
From page 237

The NACSLB document further explains that a good budget process has the following essential features:

- Incorporates a long-term perspective;
- Establishes linkages to broad organizational goals;
- Focuses budget decisions on results and outcomes;
- Involves and promotes effective communication with stakeholders;
- Provides incentives to government management and employees.

These key characteristics of good budgeting make clear that the budget process is more than an annual exercise in balancing revenues and expenditures. It is strategic in nature, encompassing a multiyear financial and operating plan that allocates resources on the basis of identified goals. A good budget process moves beyond the traditional concept of line item expenditure control, providing incentives and flexibility to managers that can lead to improved program efficiency and effectiveness.²²

Finally, the NACSLB's list of recommended budget practices emphasizes that communication and involvement with citizens and other stakeholders is integral to the budget process. The term "stakeholder" refers to anyone who is affected by or has a stake in government. This term includes citizens, customers, elected officials, management, employees and their representatives (whether unions or other agents), businesses, other governments, and the media. As the NACSLB document explains:

It is vital that the budget process include all stakeholders. The budget process should accomplish the following:

- involve stakeholders,
- identify stakeholder issues and concerns,
- achieve stakeholder buy-in to the overall budgeting process,
- achieve stakeholder buy-in to decisions related to goals, services, and resource utilization,
- report to stakeholders on services and resource utilization, and
- serve generally to enhance the stakeholders' view of government.

The importance of this aspect of the budget process cannot be overstated. Regular and frequent reporting is necessary to provide accountability, educate and inform stakeholders, and improve their confidence in the government. Communication and involvement is an essential component of every aspect of the budget process.²³

A copy of the NACSLB's *Recommended Budget Practices: A Framework for Improved State and Local Governmental Budgeting* is available from the Government Finance Officers Association (GFOA) for a small fee. Other budgeting guidebooks available from the GFOA are: *The Operating Budget: A Guide for Smaller Governments*; *Capital Improvement Programming: A Guide for Smaller Governments*; *The Best of Governmental Budgeting: A Guide to Preparing Budget Documents*, and *Best Practices in Public Budgeting*. The GFOA's telephone number is (312) 977-9700; its web site is www.gfoa.org.

Financial Procedure 237R

22. *Id.*

23. *Id.*