

New Jersey. County and Municipal Law
Revision Commission.

Second draft. Title 40A. Municipal-
ities and Counties. Chapter 4. Local
Budget Law

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Second draft
N.J. County and Municipal Law Revision Commission.

*[Second draft. Title 40A. Municipalities and
counties. Chapter 4. Local Budget Law.]*

An act to adopt a supplement to the Revised Statutes consisting of, and to be known as, Chapter 4, Title 40A, Municipalities and Counties, repealing certain sections of Title 40 of the Revised Statutes, as amended and supplemented.

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BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The revision of Chapter 2 of Title 40 of the Revised Statutes of New Jersey, prepared under the direction of the County and Municipal Law Revision Commission, is adopted as a supplement to the Revised Statutes, consisting of, and to be known as, Chapter 4, Local Budget Law, Title 40A, Municipalities and Counties.

2. The said revision shall be deemed to be a part of the general and permanent statutes of this State. In any citation, the abbreviation "N.J.S.", meaning New Jersey Statutes, shall be equivalent to a reference to the said revision; and sections of such revision and of any subsequent revision may be cited by section number only, preceded by such abbreviation.

3. The repeal herein of any sections of Title 40 of the Revised Statutes shall not affect any right now vested in any person pursuant to the provisions of said Title, nor any remedy where an action or proceeding thereunder has heretofore been instituted and is pending on the effective date of said repeal.

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4. The said repeal of said sections of Title 40 of the Revised Statutes, as amended and supplemented, shall not of itself be deemed to revive any common law, right or remedy abolished by any provision of the said title.

5. The provisions of said Chapter 4 of Title 40A not inconsistent with those of prior laws shall be construed as a continuation of such laws.

6. The classification and arrangement of the several sections of said Chapter 4 of Title 40A have been made for the purpose of convenience, reference and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom.

7. In the construction of said Chapter 4 of Title 40A, or any part thereof, no outline or analysis of the contents of said chapter, article or other part thereof, no cross-reference or cross-reference note and no headnote or source note to any section of said Chapter 4 of Title 40A shall be deemed to be a part of the said chapter.

8. If said chapter, or any section or provision thereof shall be declared to be unconstitutional, invalid or inoperative in whole or in part, by a court of competent jurisdiction, such chapter, section or provision shall, to the extent that it is not held to be unconstitutional, invalid or inoperative, be enforced and effectuated, and no such determination shall be deemed to invalidate or make ineffectual the remaining provisions of the said chapter or section of said title.

9. The provisions of section R.S. 1:1-8 and sections R.S. 1:1-11 to R.S. 1:1-21, both inclusive, shall be applicable to the enactment and operation of said Chapter 4 of Title 40A.

10. The said revision of Chapter 2 of Title 40, constituting Chapter 4, Local Budget Law, Title 40A, Municipalities and Counties, is as follows:

[Text of 40A, Chapter 4]

11. This act shall take effect January 1, 1961.

TITLE 40A MUNICIPALITIES AND COUNTIES

CHAPTER 4 LOCAL BUDGET LAW

40A:4-1. Short title.

This chapter may be cited as the "local budget law".

40A:4-2. Definitions.

The following words, as used in this chapter, shall have the following meanings unless the context clearly indicates a different meaning:

"local government board" means the Local Government Board in the Division of Local Government in the Department of the Treasury;

"budget" means the budget of a local unit;

"cash basis budget" means a budget prepared in accordance with this chapter, and in such form that based on the limitations, percentages and estimates hereinafter provided there will be sufficient cash collected to meet all debt service requirements, necessary operations of the local unit for the fiscal year and, in addition, provide for any mandatory payments required to be met during the fiscal year;

"director" means the Director of the Division of Local Government in the Department of the Treasury;

"fiscal year" means the calendar year beginning on January 1 and ending on December 31;

"full membership of a governing body" means the number of members of the body when all the seats are filled;

"governing body" means the board of chosen freeholders of a county, or the commission, council, board or body having control of the finances of a municipality;

"local unit" means a county or municipality.

40A:4-3. Annual budget.

The governing body of each local unit shall adopt a budget for each fiscal year. The budget of each local unit shall be prepared on a cash basis unless otherwise permitted by law.

40A:4-4. Procedures for adoption of budget.

A budget shall be introduced, approved, amended and adopted by resolution passed by a majority of the full membership of the governing body, and all subsequent proceedings shall also be by resolution.

The procedure shall be as follows:

- a. Introduction and approval.
- b. Public advertising.
- c. Public hearing.
- d. Amendments and public hearings, if required.
- e. Adoption.

40A:4-5. Introduction and approval.

The governing body shall introduce and approve the annual budget:

a. In the case of a county, not later than the 26th day of January of the fiscal year.

b. In the case of a municipality, not later than the 10th day of February of the fiscal year.

c. Upon the approval of the budget by the governing body, it shall fix the time and place for the holding of a public hearing upon the budget.

Approval thereof shall constitute a first reading. Two certified copies of the approved budget shall be transmitted to the director within 3 days after approval.

40A:4-6. Public advertisement.

Every budget shall be advertised after approval. The advertisement shall contain a copy of the budget and shall set forth the date, the time and the place of the hearing. It shall be published at least 10 days prior to the date fixed therefor in at least 1 newspaper circulating in the local unit.

40A:4-7. Notice of public hearing.

No budget shall be adopted until a public hearing has been held thereon and taxpayers and other interested persons shall have been given an opportunity to present objections.

Such hearings shall be held not less than 28 days, in the case of a municipality, and not less than 18 days, in the case of a county, after approval of the budget.

40A:4-8. Public hearing.

The public hearing on the budget shall be held at the time and place specified in the advertisement thereof, but may be adjourned from time to time until the hearing is closed. After closing the hearing, the governing body may adopt the budget, with or without amendments.

40A:4-9. Amendments.

a. Amendments to budgets required by the director may be made prior to the time of holding the public hearing on the budget without public advertisement.

b. The governing body may amend the budget during or after the public hearing. All amendments so made shall be forthwith submitted to the director.

1. No amendment shall be effective until the governing body shall have granted taxpayers and other interested persons a public hearing thereon, if such amendment shall:

(a) add a new item of appropriation in an amount in excess of 1% of the total amount of appropriation as stated in the approved budget, or

(b) increase or decrease any item of appropriation

by more than 10%, or

(c) increase the amount to be raised by taxes by more than 5%,

unless the same is made to include an emergency temporary appropriation only.

Notice of hearing on any amendment shall be advertised at least 3 days before the date set therefor. Any such amendment must be published in full in the same manner as an original publication.

2. No budget shall be finally adopted until all such amendments have been approved and certified by the director.

40A:4-10. Adoption.

No budget shall be adopted unless the director shall have previously certified his approval therefor.

The budget shall be adopted in the case of the county not later than the 25th day of February, and in the case of a municipality not later than the 20th day of March of the fiscal year, except that the governing body may adopt the budget at any time within 10 days after the director shall have certified his approval thereof and returned the same.

Two certified copies of the budget, as adopted, shall be transmitted to the director within 3 days after adoption.

Upon adoption, the budget shall constitute an appropriation for the purposes stated therein and an authorization of the amount

to be raised by taxation for the purposes of the local unit.

40A:4-11. Budget to be transmitted to county board of taxation.

The clerk of the local unit shall transmit a certified copy of the budget as adopted to the county board of taxation not later than March 31 of the fiscal year.

40A:4-12. Amount to be raised by taxation for local purposes.

The amount to be raised by taxation, as stated in the county budget, shall be the amount to be raised by taxation for county purposes. The amount to be raised by taxation, as stated in the municipal budget, shall be the amount to be raised by taxation for municipal purposes and for school purposes in part, where certain school district costs are required to be included in the municipal budget. These taxes shall be assessed, levied and collected within the respective taxing districts in the manner prescribed by law.

40A:4-13. Inclusion of amount required for school purposes.

The amount to be raised by taxes for school purposes, required to be certified to the governing body of a municipality for inclusion in its budget, shall be set forth in a separate section of the budget upon adoption and shall be added to the amount to be raised by taxes for school purposes, if any, which were included in the approved budget upon the final adoption of the budget, or it may be omitted from the budget as approved and may be added to the budget, by resolution, on final adoption without public advertisement.

40A:4-14. School items; separate certification.

In making the certifications of the budget for transmission to the county board of taxation, the amount to be raised by taxes for school purposes by a municipality shall be separately stated and

a. In municipalities in which the amount to be raised by taxes for school purposes is required to be certified to the governing body for inclusion in its budget, there shall be deducted from the "municipal tax levy"

1. the amount appropriated for debt service after first deducting therefrom the amount of the State school building aid, if any, and

2. the amount of any emergency appropriation for school purposes certified to the municipality and approved by the governing body thereof.

b. In all other municipalities, there shall be deducted from the municipal tax levy any appropriations for school purposes required.

c. The amount appropriated for school capital improvements for land, buildings and equipment.

Said items shall be added by the county board of taxation to the amounts to be raised by taxation for school purposes.

40A:4-15. Late approval of budget.

The director may certify any budget not filed with him within the time prescribed. Such budget must be accompanied by a statement

of reasons, satisfactory to the director, for such delay.

All actions subsequently taken by the director and the local unit with respect to certification and adoption of the budget are to be taken forthwith and as if the introduction, approval, hearing or filing had occurred on time.

40A:4-16. County board to advise director of failure to receive budget.

Where the county board of taxation shall fail to receive a copy of the budget resolution or other evidence showing the amount to be raised by taxation for the purposes of a taxing district by the 31st day of March of the fiscal year, the said board shall immediately notify the director of such failure.

40A:4-17. Director's certificate to the county board of taxation.

The director shall forthwith, after receipt of such notice, transmit to the county board of taxation a certificate setting forth the amount required for the operation of the local unit for the fiscal year. The operating budget of the preceding year shall constitute and limit the appropriations of the current year with suitable adjustments for debt service, other mandatory charges and changes in revenues, but excluding the amount to be raised for taxes for school purposes where required to be included in the municipal budget.

The certificate shall be prepared by using the revenues and appropriations appearing in the adopted budget of the preceding

year with suitable adjustments to include, without limitation:

a. Any amounts required for principal and interest of indebtedness falling due in the fiscal year;

b. Any deferred charges or statutory expenditures required to be raised in the fiscal year, and

c. In addition, the director shall adjust the revenues, local tax requirements and surplus revenues appearing in the adopted budget of the preceding year in such manner that the cash basis provisions of this chapter shall apply.

40A:4-18. Table of aggregates for late budgets.

Immediately upon receipt of the director's certificate and, in any event, on or before April 10 of the fiscal year, the county board of taxation shall fill out the table of aggregates required by R.S. 54:4-52 and shall determine the amount of "other local taxes" for the year based upon the certificate of the director.

If the local unit shall have adopted a budget for the fiscal year and shall have transmitted a certified copy thereof to the county board of taxation on or before April 10, the said board may substitute the adopted budget in the place of the amount certified by the director, but no such substitutions shall be made after April 10 of the fiscal year.

40A:4-19. Temporary appropriations.

The governing body may and, if any contracts, commitments or payments are to be made prior to the adoption of the budget, shall, by resolution adopted prior to January 31 of the fiscal year, make appropriations to provide for the period between the beginning of the fiscal year and the adoption of the budget.

The total of the appropriations so made shall not exceed 25% of the total of the appropriations made for all purposes in the budget for the preceding fiscal year excluding, in both instances, appropriations made for interest and debt redemption charges, capital improvement fund and public assistance.

Nothing herein contained shall prevent or relieve the governing body from making appropriations for all interest and debt redemption charges maturing during the fiscal year at any time between the 20th day of December of the year preceding the beginning of the fiscal year and the date of the adoption of the budget.

40A:4-20. Emergency temporary appropriations.

In addition to temporary appropriations necessary for the period prior to the adoption of the budget and regular appropriations, the governing body may, by resolution adopted by a 2/3 vote of the full membership thereof, make emergency temporary appropriations for any purposes for which appropriations may lawfully be made for the period between the beginning of the current fiscal year and the date of the adoption of the budget for said year.

The amount of such emergency temporary appropriations shall be included under the correct headings in the budget as adopted. If they are adopted after the introduction and approval of the budget and were not included in the budget as approved, they shall be included by amendment in the budget as adopted, except that no public advertisement or public hearings shall be required as to their adoption as amendments.

A copy of each resolution making such emergency temporary appropriations shall be filed forthwith with the director.

40A:4-21. Separate sections required.

The budget shall provide separate sections for:

- a. Operation of local unit (current fund).
- b. Operation of any municipal public utility.
- c. Dedicated assessment budget.
- d. Dedicated by rider.

40A:4-22. Form and content of current budget.

Every budget shall be prefaced by an explanatory statement of its contents and shall be itemized according to the respective objects and purposes for which appropriations are made. Itemization shall be in the form, classification and detail prescribed by regulations of the local government board.

The itemization, form and arrangement of the budget shall be such as to facilitate the exercise of the comptroller function.

The budget shall consist of a tabulated statement of:

- a. all anticipated revenues applicable to the expenditures for which appropriations are made in the budget, and
- b. the appropriations to be made for all purposes for which such revenues are to be expended.

The total of anticipated revenues must equal the total of appropriations.

40A:4-23. Arrangement of revenues; current fund.

The anticipated revenues shall be classified as "surplus anticipated", "miscellaneous revenues", "receipts from delinquent taxes", and "amount to be raised by taxes to support municipal budget appropriations".

In parallel columns to the right of the several items of anticipated revenues, the following shall be stated:

- a. The amounts estimated to be realized from the several items of revenue in the current fiscal year.

b. The amounts anticipated from the same source in the preceding year.

c. The amounts actually received in cash or realized in accordance with regulations of the local government board during such preceding year.

40A:4-24. Surplus.

"Surplus" in the current section of accounts shall consist of the excess of quick assets such as cash, investments, State or other public aid receivable, and deferred charges over legal and demand liabilities.

Unless the director shall give his prior written consent thereto, the amount of any item of "surplus anticipated" included in any budget shall not exceed the amount of surplus held in cash or quick assets at the beginning of the fiscal year.

40A:4-25. Miscellaneous revenues.

"Miscellaneous revenues" shall include such amounts as may reasonably be expected to be realized in cash during the fiscal year from known and regular sources, or from sources reasonably capable of anticipation, and lawfully applicable to the appropriations made in the budget, other than dedicated revenues, revenues from taxes to be levied to support the budget, receipts from delinquent taxes, and surplus. Miscellaneous revenues stated in the budget shall be classified according to their respective sources.

40A:4-26. Miscellaneous revenues limited to cash receipts; exemption.

No miscellaneous revenues from any source shall be included as an anticipated revenue in the budget in an amount in excess of the amount actually realized in cash from the same source during the next preceding fiscal year, unless the director shall determine upon application by the governing body that the facts clearly warrant the expectation that such excess amount will actually be realized in cash during the fiscal year and shall certify such determination, in writing, to the local unit

40A:4-27. Miscellaneous revenues; sale of property.

A local unit may anticipate as a miscellaneous revenue the total amount of all payments due and payable to the local unit during the fiscal year, directly or indirectly as a result of the sale of property by the local unit, when the obligation to make such payment is entered into prior to February 10 of the fiscal year.

40A:4-28. Miscellaneous revenues; sinking fund surplus.

Whenever the sinking funds to the credit of the several issues of term bonds of a local unit equal the principal of such issues and there is a cash surplus in the sinking fund, such surplus may, upon written application by the sinking fund commission and the approval of the director, be used, in whole or in part, as an anticipated miscellaneous revenue in the budget of such local unit.

40A:4-29. Receipts from delinquent taxes.

Delinquent taxes shall consist of taxes levied for prior fiscal years unpaid and owing to the county or municipality, and in the case of a municipality, also the lien value of tax titles to real estate standing in the name of the municipality.

The maximum amount which may be anticipated as "Receipts from Delinquent Taxes" shall be computed in the manner set forth in the following paragraph.

A determination of the percentage of collection of delinquent taxes for the year immediately preceding the fiscal year. This percentage shall be determined by dividing the amount of prior year's delinquent taxes collected by the amount of delinquent taxes unpaid and owing on the first day of the year, after adjusting such amount by the addition of prior year's taxes added during such fiscal year, less any prior year's delinquent taxes abated, remitted or cancelled during such year. The maximum which may be anticipated is the sum produced by the multiplication of the amount of delinquent taxes unpaid and owing to the county or municipality on the first day of the current fiscal year by the percentage of collection of delinquent taxes for the year immediately preceding the current fiscal year.

40A:4-30. Amount to be raised by taxes to support municipal budget.

The amount to be raised by taxes shall be the amount required to be levied by taxation for the support of the municipal budget. It is the difference between the total of all general municipal

budget appropriations, including Chapter 6 school debt service (R.S. 18:6 et seq.), and such deferred charges and statutory expenditures for Chapter 6 schools as are required to be raised in the municipal budget, less the total of anticipated revenues. It shall include the amount required to be appropriated for the "reserve for uncollected taxes" in accordance with, and subject to, the limitations of 40A:4-41 and 40A:4-42.

40A:4-31. Arrangement and itemization of appropriations.

The several items of appropriations shall set forth in parallel columns to the right thereof the following:

- a. Amount of appropriations for current year.
- b. Amount of appropriations for preceding year.
- c. Amount of appropriations by emergency resolution.
- d. Amount of total appropriations for preceding year as modified by all transfers.
- e. Amounts expended (paid or charged).
- f. Amounts expended (reserved).

40A:4-32. Separate items of appropriations.

Separate items shall be included for at least:

- a. Administration, operation and maintenance of each office, department, institution or other agency of the local unit.
- b. Contingent expenses in an amount not more than 3% of the total amount stated pursuant to subdivision a of this section.

- c. Interest and debt redemption charges.
- d. Deferred charges and statutory expenditures.
- e. The payment of all judgments not for capital purposes and for which notes or bonds cannot be lawfully issued.
- f. Such reserves as may be required by this chapter, or deemed advisable by the governing body.
- g. Cash deficit of preceding year.

40A:4-33. Operation of municipal utility.

The anticipated revenues from the operation of any publicly owned or operated utility or enterprise and the appropriations to be made therefor shall be set forth in a separate section of the budget.

Dedicated revenues, derived from publicly owned or operated utilities or enterprises, shall not be stated in the budget in an amount which is in excess of the appropriation therein to the purposes to which the same are applicable, or in excess of the amount actually realized in cash from the same source during the preceding fiscal year, unless the director shall, upon application of the governing body, determine that the facts clearly warrant the expectation that such excess amount will actually be realized in cash during the fiscal year and shall certify such determination in writing to the local unit.

40A:4-34. Appropriations for municipal utility.

Appropriations shall be in the form and detail prescribed by regulations of the local government board and shall include, at least

- a. Operations.
- b. Interest and debt retirement.
- c. Deferred charges and statutory expenditures.

40A:4-35. Utility operations; surplus; deficit.

If, in any year as a result of the operation of such utility or enterprise under the system of accounting thus directed, there shall be a surplus, or such surplus can be reasonably anticipated, then such surplus, when authorized by the board or body controlling the utility or enterprise, may be included in the budget as an item of miscellaneous revenue, under the caption of "Surplus from(designation of the utility fund)".

If, in any year as a result of such operation, there shall be a deficit or an anticipated deficit, then an appropriation for such deficit shall be included in the budget under the caption of "Deficit in(designation of the utility fund)". If any anticipated deficit shall exceed the appropriation therefor, the excess shall be provided for in the budget of the following year. This section shall not, however, supersede the specific dedication of receipts from a utility or enterprise as

provided in any law which authorized the establishment or creation of such utility or enterprise unless so directed by the board or body controlling the same.

40A:4-36. Dedicated revenues; general definition.

"Dedicated revenues" shall include all amounts reasonably expected to be realized in cash during the fiscal year from any source other than the issuance of bonds or notes and required by law to be applied to a specific purpose.

Dedicated revenues stated in the budget shall be classified according to their respective sources and shall be stated in a separate section of the budget, together with the appropriations to the purposes to which such dedicated revenues are applicable. The total of anticipated revenues must equal the total of appropriations.

In the event such appropriations include payments to be made for the principal of or interest on bonds or notes, the amount required for such purposes shall be separately stated.

Any anticipated deficit in expenditures to which dedicated revenues are applicable shall be provided for by an appropriation in the budget.

40A:4-37. Dedicated assessment budget.

Every dedicated assessment budget shall include revenues derived from the collection of special assessments on property specially benefited. No amount shall be stated in the budget in

excess of the required appropriation to which such revenues are applicable or in excess of the amount of the revenues so derived, held in cash at the beginning of the fiscal year. Nothing herein contained shall prevent a local unit from paying in full, or on account at maturity, any note or notes to which such revenues are applicable, even though such note or notes may not have been included in such dedicated budget.

40A:4-38. Appropriation in dedicated assessment budget.

Every dedicated assessment budget shall contain an appropriation for the payment of principal of bond anticipation notes or bonds maturing during the fiscal year.

40A:4-39. Dedication by rider.

a. In the budget of any local unit, dedicated revenues anticipated during the fiscal year from any dog tax, dog license, solid fuel license, sinking fund for term bonds, bequest, escheat, Federal grant, motor vehicle fine dedicated to road repairs and, subject to the prior written consent of the director, other items of like character when the revenue is not subject to reasonably accurate estimate in advance, may be included in said budget by annexing to said budget a statement in substantially the following form:

"The dedicated revenues anticipated during the year _____ from _____ (here insert 1 or more of the sources above, as the case may be), are hereby anticipated as revenue and are hereby appropriated for the purposes to which said revenue is dedicated by statute or other legal requirement."

b. Dedicated revenues included in accordance with this section shall be available for expenditure by the local unit as and when received in cash during the fiscal year. The inclusion of such dedicated revenues shall be subject to the approval of the director, who may require such explanatory statements or data in connection therewith as he deems advisable for the information and protection of the public.

40A:4-40. Arrangement of appropriations.

The several items or appropriations shall set forth in parallel columns to the right thereof the following:

- a. Amount of appropriations for current year.
- b. Amount of appropriations for preceding year.
- c. Amount of appropriations by emergency resolution.
- d. Amount of total appropriations for preceding year as modified by all transfers.
- e. Amounts expended (paid or charged).
- f. Amounts expended (reserved).

40A:4-41. Reserve for uncollected taxes; appropriation.

There shall be included in each budget an appropriation for "reserve for uncollected taxes" sufficient in amount so that the anticipated cash receipts for the fiscal year shall at least equal the sum of the following items, each of which is hereinafter referred to as a "lawful yearly expenditure":

a. The total of all current budget appropriations (except for reserve for uncollected taxes);

b. The amounts due or to become due for school, county, State, local and special district taxes prior to the end of the fiscal year, and

c. The amounts of any other anticipated current expenditures for the fiscal year.

In the event that the exact amount of any such lawful yearly expenditure shall not be known at the time of the adoption of the budget, the amount thereof shall be estimated, but no such estimate shall be less than the amount of such lawful yearly expenditure for the next preceding fiscal year.

40A:4-42. Anticipated cash receipts for purpose of computing reserve for uncollected taxes.

For the purpose of determining the amount of the appropriation for "reserve for uncollected taxes" required to be included in each annual budget where less than 100% of current tax collections may be and are anticipated, anticipated cash receipts shall be as set forth

in the budget of the current year, and in accordance with the limitations of statute for anticipated revenue from, surplus appropriated, miscellaneous revenues and receipts from delinquent taxes.

Receipts from the collection of taxes levied or to be levied in the municipality, or in the case of a county for general county purposes and payable in the fiscal year, shall be anticipated in an amount which is not in excess of the percentage of taxes levied and payable during the next preceding fiscal year which was received in cash by December 31 of such preceding fiscal year.

40A:4-43. Required appropriation for cash deficit.

An appropriation for "cash deficit of preceding year" shall appear in each annual budget in the amount by which the liabilities and cash disbursements of the local unit for expenditures in the fiscal year next preceding exceed the cash receipts and other realized revenues in such next preceding fiscal year, except to the extent that such lawful yearly expenditures have been provided for by surplus anticipated in the budget of such years.

40A:4-44. Capital budgets; definition.

The governing body may and shall, when directed by the local government board, prepare, approve and adopt a budget for the expenditure of public funds for capital purposes to give effect to general improvement programs.

A capital budget shall be a plan for the expenditure of public funds for capital purposes, showing as income the revenues, special

assessments, free surplus, and down payment appropriations to be applied to the cost of a capital project or projects, expenses of issuance of obligations, engineering supervision, contracts and any other related expenditures.

40A:4-45. Form, arrangement and detail of capital budgets.

The local government board shall adopt, and may from time to time amend, reasonable rules and regulations for capital budgets. Regulations may classify the type of budget required, according to the size of the local unit, the nature of the capital projects or any other reasonable basis of distinction, and shall require a statement of capital undertakings underway or projected for a period not greater than over the next ensuing 6 years as a general improvement program.

After promulgation of regulations by the local government board, the governing body shall expend or incur obligations for capital purposes only after the adoption of a capital budget and in accordance with such budget except for the preliminary expense of plans, specifications and estimates.

40A:4-46. Separate capital budgets.

The board may require separate capital budgets to give effect to a general improvement program as follows:

a. A special capital budget for the expenditure of funds realized from the sale of obligations and adopted at the time such sale is authorized.

b. A separate capital budget adopted at the same time and as part of the annual budget.

c. A consolidated capital budget providing for the consolidation of capital projects, with the annual budget treating borrowed funds and other receipts as special revenue and capital projects as separately itemized appropriations under the proper office, department, institutions or other agency of the local unit.

d. Any other type or form of budget adapted to planning and guiding expenditures for capital improvement programs.

40A:4-47. Emergency appropriations.

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure, to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal year.

40A:4-48. Emergency appropriations provided for in next budget.

The total amount of all emergency appropriations shall be provided in full by the governing body as a deferred charge in the budget of the next succeeding fiscal year, except to the extent, if any, that provision for paying, funding or refunding any such emergency appropriation or for financing the purpose of the expenditures pursuant thereto shall previously have been made by authorization of bonds pursuant to 40A:1-

40A:4-49. Emergency appropriations not exceeding, with other appropriations, 3% of the operating appropriations.

An emergency appropriation which, together with all prior emergency appropriations made during the same year, does not exceed 3% of the total of current and utility operating appropriations made in the budget adopted for that year shall be made as follows:

a. The governing body shall, by resolution adopted by not less than 2/3 vote of its full membership, declare that an emergency exists requiring a supplementary appropriation.

b. The resolution shall be in the form and content prescribed by the local government board and shall set out the nature of the emergency in full.

c. A copy of the resolution shall be filed forthwith with the director.

40A:4-50. Emergency appropriations exceeding, with other appropriations, 3% of the operating appropriations.

An emergency appropriation which together with all prior emergency appropriations made during the same year exceeds 3% of the total current and utility operating appropriations in the budget for that year shall be made as follows:

a. The governing body shall, by resolution adopted by not less than $\frac{2}{3}$ vote of its full membership, petition the director for permission to exceed the limitation of 3%.

b. The resolution shall be in the form and content prescribed by the local government board, and shall set out the nature of the emergency in full.

c. The director shall consider the resolution and, if requested by local taxpayers or by the governing body, hold a hearing thereon.

d. The director shall, within 5 days after receipt of the resolution, or if a hearing is held, after the hearing, determine whether an emergency exists which requires such appropriation.

e. If the director determines that such appropriation is necessary, he shall fix the maximum amount and the governing body shall not exceed that amount.

40A:4-51. Emergencies financed from surplus.

A local unit may finance any emergency appropriation from surplus funds available, or may borrow money and issue its "emergency notes" as provided for in this chapter to finance any such appropriation.

40A:4-52. Emergency notes authorized.

Any local unit may borrow money and issue its negotiable notes to meet an emergency appropriation. Each such note shall be authorized by resolution of the governing body, shall be designated an "emergency note", and may be renewed from time to time. All such notes, and any renewals thereof, shall mature not later than the last day of the fiscal year next succeeding the fiscal year in which such notes were issued and the emergency appropriation authorized. The provisions of this chapter relating to tax anticipation notes shall apply to emergency notes except for limitations as to maturity and renewals.

40A:4-53. Conclusiveness of emergency appropriations upon affidavit of finance officer.

An affidavit of a financial officer of the local unit shall be a conclusive determination of the total amount of any such emergency appropriations made in any fiscal year and of the amount of all budget appropriations for such year.

If any resolution providing for the issuance of notes to meet any such emergency appropriation shall recite or determine that such appropriation was required to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide for temporary housing or public assistance, such recital or determination shall be deemed to be true for the purpose of determining the validity of such notes and the local unit issuing such notes and all others interested shall forever thereafter be estopped from denying the same.

40A:4-54. Special emergency appropriations.

A local unit may adopt an ordinance authorizing special emergency appropriations for the carrying out of any of the following purposes:

- a. Preparation of an approved tax map.
- b. Preparation and execution of a complete program of revaluation of real property for the use of the local assessor.
- c. Engagement of special consultants for the preparation, and the preparation of a master plan or plans, when required to conform to the planning laws of the State.

A copy of all ordinances or resolutions as adopted relating to special emergency appropriations shall be filed with the director.

40A:4-55. Special emergency appropriations; extraordinary expense.

A local unit may adopt a resolution authorizing special emergency appropriations to cover the cost of extraordinary expense for the repair, reconstruction of streets, roads or bridges, or other public property damaged by flood or hurricane where such expense was not foreseen at the time of the adoption of the budget.

40A:4-56. Special emergency notes.

After the adoption of an ordinance or resolution for special emergency appropriations, the local unit shall by 2/3 vote of the full governing body adopt a resolution setting forth:

- a. The amount appropriated.
- b. Provision for the borrowing of money and the issuance of

"Special Emergency Notes" which may be renewed from time to time, but at least $1/5$ of all such notes, and the renewals thereof, shall mature and be paid in each year, so that all notes and renewals shall have matured and have been paid not later than the last day of the fifth year following the date of the emergency resolution. The provisions of this chapter relating to tax anticipation notes shall apply to special emergency notes.

c. A local unit may finance such appropriation from surplus funds available or borrow money in the manner prescribed above. Where any appropriation is financed from surplus funds available, at least $1/5$ of the amount thereof shall be included in each annual budget until the appropriation has been fully provided for.

40A:4-57. Contracts of special or technical nature.

A local unit may, if it so elects, enter into a contract for the purposes set forth in 40A:4-54 without advertising, provided the governing body shall, by resolution duly adopted by not less than $2/3$ vote of the full membership thereof, determine that the services to be rendered are of a special technical nature and thus will not permit of special advertising. In the case of the purpose set forth in 40A:4-54, the provisions of general laws relating to contracts and public bidding shall control.

40A:4-58. Expenditures void without appropriations.

No officer, board, body or commission shall, during any fiscal year, expend any money (except to pay notes, bonds or interest thereon), incur any liability, or enter into any contract which by its terms involves the expenditure of money for any purpose for which no appropriation is provided, or in excess of the amount appropriated for such purpose.

Any contract made in violation hereof shall be null and void, and no moneys shall be paid thereon.

Nothing in this section contained, however, shall prevent the making of contracts or the spending of money for

a. Capital projects to be financed in whole or in part by the issuance of notes or bonds;

b. For the making of contracts of lease, or for services, or for fuel to be used for heating purposes, or for snow or garbage removal for a period exceeding the fiscal year in which such contract is made, when otherwise provided by law.

Provided, further, that nothing in this section, nor in section R.S. 40:50-6 of this title, shall prevent a municipality from making a contract for the spending of money for the purchase of the right, title and interest in the right-of-way of any street railway company in the municipality, when said right-of-way extends in, over and along any public street or highway in this State and the improving or paving of said right-of-way after the same has been acquired.

40A:4-59. Appropriation transfers during last 2 months of fiscal year.

a. Should it become necessary, during the last 2 months of the fiscal year, to expend for any of the purposes specified in the budget an amount in excess of the respective sums appropriated therefor and there shall be an excess in any appropriations over and above the amount deemed to be necessary to fulfill the purpose of such appropriation, the governing body may, by resolution setting forth the facts, adopted by not less than 2/3 vote of the full membership thereof, transfer the amount of such excess to those appropriations deemed to be insufficient; no transfers may be made to appropriations for contingent expenses or deferred charges.

b. No transfers may be made under this section from appropriations for

1. contingent expenses,
2. deferred charges,
3. cash deficit of preceding year,
4. reserve for uncollected taxes,
5. down payments,
6. capital improvement fund,
7. interest and redemption charges.

40A:4-60. Appropriation transfers during first 3 months of succeeding year.

a. If, during the first 3 months of any fiscal year, the amount of any appropriation reserve for the immediately preceding fiscal year is insufficient to pay the claims authorized or incurred during said preceding year which were chargeable to said appropriation, and there shall be an excess in any appropriation reserves over and above the amount deemed to be necessary to fulfill its purpose, the governing body may, by resolution adopted by not less than a 2/3 vote of the full membership thereof, transfer the amount of such excess to an appropriation reserve or an appropriation in the prior budget deemed to be insufficient to fulfill its purpose or for which no reserve was provided. No transfers may be made to appropriation reserve for contingent expenses or deferred charges.

b. No transfers may be made under this section from appropriation reserves for

1. contingent expenses,
2. down payments,
3. capital improvement fund.

40A:4-61. Unexpended balances cancelled by resolution.

Any unexpended balances of appropriations may, by resolution of the governing body, be cancelled prior to the end of the fiscal year. Said resolution shall set forth the titles of the appropriations and the amounts to be cancelled therefrom.

At the end of the next succeeding fiscal year, all remaining

unexpended balances shall forthwith lapse, and no disbursement shall thereafter be made therefrom, except to cover specific contracts or agreements in existence at the close of such succeeding fiscal year.

40A:4-62. Assessment revenue fund.

All receipts derived from special assessments on property specially benefited by any local improvements shall be segregated by the municipality and kept in a separate fund to be known as an "assessment revenue fund". They shall be applied only to the payment of that part of the cost of any such improvements which has been specially assessed on property specially benefited or of any bonds or notes issued to finance such part of the cost of any such improvements until all such bonds or notes shall have been paid.

40A:4-63. Public utility funds.

All moneys derived from the operation of publicly owned or operated utility or enterprise and any other moneys applicable to its support, shall be segregated by the local unit and kept in a separate fund which shall be known as "utility fund" and shall bear a further designation identifying the utility or enterprise and, except as provided in section 40A:4- , shall be applied only to the payment of the operating and upkeep costs, and the interests and debt redemption charges upon the indebtedness incurred for the creation of such utility or enterprise.

40A:4-64. Money in separate funds treated as trust funds.

Moneys held in any separate fund shall be treated by the officers of the local unit as moneys held in trust for the purpose for which such separate fund was created, and no banking institution accepting any such fund as provided for in this chapter shall divert the moneys to any other purpose.

40A:4-65. Tax anticipation notes.

In any fiscal year, in anticipation of the collection of taxes for such year, whether levied or to be levied in such year, or in anticipation of other revenues for such year, any local unit may, by resolution, borrow money and issue its negotiable notes, each of which shall be designated "tax anticipation note of 19____" (stating the fiscal year).

40A:4-66. Application of proceeds.

The proceeds of the sale of tax anticipation notes, unless used to pay outstanding notes issued in anticipation of the collection of taxes of the same fiscal year, shall be applied only to purposes provided for in the budget or for which taxes are levied or to be levied for such year, and shall not be applied to any other purpose.

40A:4-67. Limitation of amount.

The amount of tax anticipation notes of any fiscal year outstanding at any one time shall not exceed an amount certified as the

gross borrowing power, and no such notes shall be authorized in excess of an amount certified as the net borrowing power, each computed and certified as follows:

a. The gross borrowing power in respect to tax anticipation notes of such fiscal year, being 30% of the tax levy of the next preceding fiscal year, for all purposes in the case of a municipality and for county purposes in the case of a county, plus 30% of the amount of miscellaneous revenues realized in cash during the next preceding fiscal year, is \$_____.

b. The amount of notes outstanding in anticipation of the collection of taxes of such fiscal year, except such notes as will be renewed by or paid from the proceeds of the notes to be issued, is \$_____.

c. The net borrowing power, being the excess of the first over the second of the two above amounts, is \$_____.

Such certificate shall be made by the financial officer who is designated to sign such notes, filed in the office of the clerk, and quoted in full in the resolution authorizing such notes.

40A:4-68. Limitation of maturity and renewals.

Tax anticipation notes may be renewed from time to time, but all such notes and any renewals thereof shall mature, in the case of municipalities not later than March 31 of the succeeding fiscal year, and in the case of counties not later than June 30 of the succeeding fiscal year.

40A:4-69. Interest rate.

No tax anticipation notes shall bear interest at a rate not exceeding 6% per annum.

40A:4-70. Form, registration and redemption.

All tax anticipation notes may be in registered form or in coupon form with or without privileges of registration, and may be made redeemable prior to maturity at the option of the local unit at not exceeding par and accrued interest.

40A:4-71. Recital of borrowing power; authorization.

In the text of each tax anticipation note there shall appear in substance the following recital:

"This note is issued pursuant to the local budget law and in anticipation of the collection of taxes of the budget year 19____ (stating the budget year); the gross borrowing power in respect of such notes, as determined in accordance with said act, is \$____ (stating the gross borrowing power as shown on the certificate quoted in the resolution authorizing such note); the amount of such notes outstanding, including all notes delivered simultaneously with this note, is \$____."

Such recital shall be deemed to be made by any financial officer who signs the note, and his signature to the note shall constitute a declaration to the other officers who sign such note

that the recital is correct. Such recital shall constitute conclusive evidence to the holder or holders of such note that the same was fully authorized under and within the powers, limitations and provisions of this chapter.

40A:4-72. Execution of notes or coupons.

All tax anticipation notes shall be executed in the name of the local unit by such financial officer and by such other officer as may be designated by resolution, and shall be under the seal of the local unit and attested by the clerk. Coupons, if any, attached to a note shall be authenticated by the facsimile or manual signature of the financial officer who signs the note.

40A:4-73. Sale and report of sale.

All tax anticipation notes may be sold at not less than par and accrued interest at private sale without previous public offering, either by resolution of the governing body or by a financial officer authorized to sell such notes by resolution of the governing body.

The financial officer making any such sale shall report in writing to the governing body at the next meeting the amount, description, interest rate and maturities of the notes sold, the price obtained and the name of the purchaser, and such report shall be entered in full on the minutes of such meeting.

40A:4-74. Conclusive presumption of validity of proceedings and notes.

Unless a suit, action or proceeding questioning the authorization, sale or execution or otherwise questioning the validity of tax anticipation notes be begun prior to the delivery of such notes, any such notes reciting that they are issued pursuant to this chapter shall, after delivery thereof, be conclusively presumed to be fully authorized by all the laws of this State and to have been sold, executed and delivered by the local unit in conformity therewith. The validity of such notes shall not be questioned by either a party plaintiff or a party defendant or by the local unit or any taxpayer thereof or any other interested party in any court, anything herein or in other statutes to the contrary notwithstanding.

40A:4-75. Liability on notes.

The power and obligation of a local unit to pay tax anticipation notes or any or all obligations issued pursuant to this chapter, or the act of which this chapter is a revision, shall be unlimited and the local unit shall have power and be obligated to levy ad valorem taxes upon all the taxable property within the local unit for the payment of such notes or obligations and interest thereon, without limitation of rate or amount.

40A:4-76. Examination of budget.

The director shall examine the budget filed in his office with reference to all estimates of revenue and to the following appropriations:

- a. Payment of interest and debt redemption charges.
- b. Deferred charges and statutory expenditures.
- c. Cash deficit of preceding year.
- d. Reserve for uncollected taxes.
- e. Other reserves and nondisbursement items.

The director shall also examine the budget for detail and accuracy of itemization and for compliance as to form, arrangement and content with the provisions of this chapter and the regulations of the local government board.

40A:4-77. Scope of examination.

The director shall determine upon the basis of information and data available whether:

- a. all estimates of revenue are reasonable, accurate and correctly stated;
- b. items of appropriation are properly set forth;
- c. in itemization, form, arrangement and content, the budget will permit the exercise of the comptroller function within the local unit;
- d. the budget complies with the requirements of law and the regulations of the local government board.

40A:4-78. Approval or disapproval by director.

If the director finds that all requirements of law and of the regulations of the local government board have been met, he shall approve the budget, otherwise he shall refuse to approve it.

The director, in refusing to approve a budget, shall not substitute his discretion with respect to the amount of an appropriation when such amount is not made mandatory because of the requirements of law.

40A:4-79. Certification of director.

Immediately after the making of his examination of the budget, the director shall certify the results of his determination to the governing body. A governing body shall not finally adopt a budget until a certification of approval by the director has been received.

40A:4-80. Action on disapproved budget.

If the budget is disapproved, a full statement of reasons with instructions for corrections of the budget shall be transmitted to the local unit with notice of the refusal by the director to approve the same. The certification of disapproval of the director shall be published at least once in a newspaper of general circulation within the local unit. Cost of such publication shall be borne by the local unit.

40A:4-81. Amendment of disapproved budget.

A governing body shall amend a disapproved budget in accordance with the instructions of the director except that the governing body may petition the local government board for a hearing upon the budget. If a petition for hearing is filed with the local government board, the director shall postpone the time required for final adoption to permit a reasonable opportunity for such hearing and redetermination.

40A:4-82. Judicial review of local government board's determination.

If an aggrieved party applies for judicial review of a final determination made by the local government board, the governing body shall, nevertheless, adopt a budget in accordance with the local government board's determination, subject to such subsequent adjustment as may be consonant with the court's decision.

If the final decision of the court is adverse to the board's determination, the director shall forthwith, in writing, order the immediate amendment of the budget in accordance with the court's decision.

40A:4-83. Regulations by the local government board and director.

The local government board and the director may make such rules and regulations as may be necessary to carry out the provisions of this chapter. The director may hold hearings and make such investigations as may be appropriate to the exercise of his powers in accordance with law.

40A:4-84. Orders of director binding.

A final order of the director shall be binding upon the governing body and shall be complied with. The Superior Court may enforce the order in a proceeding in lieu of prerogative writ, instituted by the director.

If a governing body fails or refuses to comply with a final order of the director, the members of a governing body who wilfully fail or refuse to comply shall each be subject to a personal penalty of \$25.00 for each day after the date fixed for final action that failure or refusal to comply continues. The amount of the penalty may be recovered by the director in the name of the State as a personal debt of the member of the governing body, and shall be paid, upon receipt, into the State Treasury.

40A:4-85. Power to change title or text of appropriation.

The director may, at the request of the governing body, make such correction of the title, text or amount of any item of appropriation appearing in the adopted budget only as shall be necessary to make said item of appropriation available for the specific purpose or purposes required by the local unit. To this end, the director may limit or approve adjustment of items of appropriations, but no item of appropriation required for debt service, contingent expenses, deferred charges, statutory expenditures, judgments or reserves shall be so reduced or limited.

40A:4-86. Correction of revenue item.

The director may correct an item of revenue appearing in any adopted budget if any law requires such correction or makes such correction advisable. If such correction shall require that the local purpose levy of the local unit shall be adjusted, the director shall order the correction or adjustment of the local tax levy accordingly, unless the tax rate for the year shall have been struck and shall certify such adjustment to the county board of taxation.

40A:4-87. Special items of revenue and appropriations.

The director may approve the insertion of any special item of revenue in the budget of any local unit when such item shall have been made available by law and the amount thereof shall not have been determined at the time of the adoption of the budget, and may approve the insertion of an appropriation item of equal amount for the purpose of carrying out the purposes of the law making such item of revenue available for expenditure.

A local unit may borrow money and issue its negotiable notes to meet such purpose. Such notes shall be authorized by resolution adopted by the governing body of the local unit and shall be designated as "Special (here insert purpose) Aid Notes".

Such notes shall mature not later than 3 months from their date and may be renewed from time to time until the end of the third month after the purpose for which the appropriation was made shall have been

completed, or until the end of 31 days after the receipt in full by such local unit of all moneys anticipated from grants-in-aid or other sources for such purpose, whichever shall be later.

Any such notes that shall remain unpaid at the close of the first full fiscal year after the purpose shall have been completed shall be included in the budget of the then next succeeding fiscal year as an item of appropriation for the payment thereof. The provisions of this chapter relating to tax anticipation notes shall apply to such notes.

40A:4-88. Effective date.

This act shall take effect on January 1, 1961.