

# Local Government Budget Act (LGBA)

## FAQ

R.S. [39:1301](#) - [1315](#)

### Overview:

The following is a summary of the general principles and guidelines concerning Louisiana's Local Government Budget Act. This document is presented in a frequently asked questions (FAQ) format. While fairly detailed, it is important to remember that every situation is unique and as a result each situation deserves careful individual review.

There are numerous links within the document directing your attention to areas within the document and to other related documents posted on the Louisiana Legislative Auditor's website and on external websites to facilitate your use of this document. For example, under the index section, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, there are several links to direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number, a link to the index allows you to select another question to view.

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## **Introduction**

**Q.1. What is the Local Government Budget Act (LGBA)?** **R.S. 39:1301-1315**

**A.1.** The Local Government Budget Act (LGBA), found in R.S. 39:1301-1315, directs political subdivisions of the State as to the manner in which the [budget](#) of the political subdivisions shall be adopted, implemented, and amended. These laws, collectively called the LGBA, direct a political subdivision to allow for public participation prior to the adoption of a budget. The laws further call for financial planning and budgeting practices, which will secure the public dollars entrusted to the leaders of the political subdivision. The requirements of the laws shall be considered minimal requirements. A political subdivision may require even [more stringent](#) financial planning and budget practices.

**Q.2. May an entity require more stringent rules than the LGBA?**

**A.2.** Yes. The requirements of the LGBA are considered minimal requirements. A political subdivision may require even more stringent financial planning and budget practices. AG Op. No. 09-0107 states that a political subdivision operating under a Home Rule Charter form of government is subject to the minimum standards established by the LGBA.

**Q.3. What is a public budget?**

**A.3.**

- It is a legal document;
- It is a public document;
- It is a one-year plan for accounting for revenues and expenditures of the political subdivision;
- It is a complete financial plan; and
- It includes the general fund and each special revenue fund.

## **Entities**

**Q.4. What entities are subject to the LGBA?** **R.S. 39:1303**

**A.4.** The LGBA applies to [all political subdivisions](#) (as defined in R.S. [39:1302](#)) of the state with a [general fund or a special revenue fund](#).

Special public participation rules are triggered if the subject entity plans to spend [\\$500,000 or more](#).

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Additionally, the LGBA applies to municipalities governed by the Lawrason Act, political subdivisions operating under a home rule charter or plan of government adopted or in existence pursuant to and under the authority of Article VI of the Louisiana Constitution of 1974 to the extent that governments operating under home rule charters are subject to this law as minimum standards.

### **Q.5. How are political subdivisions defined under the LGBA?**

**R.S. 39:1302**

#### **A.5.** Political subdivisions are defined in the LGBA to mean any:

(a) Parish governing authority and all districts, boards, or commissions created by such parish governing authority either independently or in conjunction with other units of government. (A governing authority is the body which exercises the legislative functions such as the police jury or the parish council.)

(b) Municipality and all boards and commissions created by such municipality, either independently or in conjunction with other units of government.

(c) [School board](#).

(d) Special district created pursuant to and under the authority of Article VI, Section 16 or 19 of the Louisiana Constitution.

(e) [City court](#).

(f) District public defender office.

(g) Housing authority.

(h) Mortgage authority.

(i) Political subdivisions of the state not included within the state's Comprehensive Annual Financial Reports.

(j) Registrar of voters.

(k) Independently elected parish offices, including the office of assessor, clerk of district court, coroner, [district attorney](#), sheriff, and judges, but only insofar as their judicial expense funds, as provided for in Title 13 of the Louisiana Revised Statutes of 1950.

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### **Q.6. Does the LGBA apply to school boards?**

**R.S. [39:1302](#)**

**A.6.** Yes. However, the LGBA applies only to the extent that it does not conflict with R.S. [17:88A](#) requiring each city and parish school board to adopt no later than September 15<sup>th</sup> of each year a budget for the general fund and each special revenue fund for the fiscal year, July 1<sup>st</sup> through June 30<sup>th</sup>. The revenue/receipts shall be those normally expected from constitutional, statutory, and regular sources and shall not include probable revenues/receipts that may arise from doubtful or contingent sources.

Further, the school board shall submit to the State Superintendent a copy of its adopted budget no later than September 30<sup>th</sup> as required by R.S. [17:88C](#).

### **Q.7. Does the LGBA apply to charter schools?**

**A.7.** Yes. Charter schools must comply with the LGBA according to Attorney General (AG) Opinion No. 06-0334 based on R.S. [17:3996\(G\)](#).

### **Q.8. Does the LGBA apply to the courts?**

**R.S. [39:1302](#)**

**A.8.** Yes. The LGBA applies to the courts, but only as to judicial expense funds. Thus, the courts must prepare a budget document related to those funds. Criminal court funds are reported with the parish and must have budgets created by the parish authorities.\*

### **8(b). What is the deadline for the courts?**

**R.S. [39:1306](#)**

**A.8(b)** Budgets for judicial expense funds shall be completed and made available for public inspection as provided for in R.S. [39:1308](#) no later than fifteen days prior to the beginning of each fiscal year.

### **Q.9. Does the LGBA apply to District Attorneys?**

**R.S. [39:1303\(E\)](#)**

**A.9.** Yes. However, the LGBA does not apply to funds received by the District Attorney pursuant to (1) R.S. [16:15](#) – worthless check collection fees; and (2) incentive payments for child support enforcement activities; unless proposed expenditures exceed \$50,000.

### **9(b). What is the deadline for District Attorneys?**

**R.S. [39:1306](#)**

**A.9(b)** District Attorneys must complete their budgets and make them available for public inspection as provided for in R.S. [39:1308](#) no later than fifteen days prior to the beginning of each fiscal year.

**Q.10. Does the LGBA apply to quasi public entities?**

**A.10.** Quasi public entities are not subject to the LGBA unless they are declared a political subdivision under the definitions contained in R.S. [39:1302\(1\)](#). The AG found that a volunteer fire department (VFD) that is primarily funded with public funds, and which serves a public purpose and renders a public service is classified as a quasi public body in AG Op. No. 06-0171. However, although a volunteer fire department is a quasi public entity, it is not considered a political subdivision; therefore it is not required to comply with the LGBA. Although the AG opines that a VFD is not considered a political subdivision, a federal court has held that a VFD is a public agency because it was a political subdivision of the state, received public funds, performed a governmental function and was under the control of the governing authority. (*Wilcox v Terrytown*, 897 F. 2d 765 (5<sup>th</sup> Cir. 1990), cert. denied, 498 U.S. 900, (1990).

In another example, a housing authority is a quasi public entity that is included in the definition of political subdivision in R.S. [39:1302\(1\)\(g\)](#).

**Funds**

**Q.11. What are general and special revenue funds?**

**A.11.** The LGBA does not define general and special revenue funds in the law. The AG described these funds in Op. No. 03-0300 based on principles established by the Governmental Accounting Standards Board (GASB). The AG stated in the Opinion, “There are three categories of funds: government funds, proprietary funds, and fiduciary funds. Government fund types include the general fund and special revenue funds.

The general fund accounts for most of the basic services provided by a governmental unit. The general fund is responsible for all resources not found in some other fund and accounts for all the assets and resources that finance the general operations of the governmental unit.

Special revenue funds account for restricted sums that are intended for specific purposes. Each special revenue funds is financed by a tax or other source of revenue that is reserved for the purpose of the fund.”

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**Q.12.** Is a judicial expense fund considered a special revenue fund subject to written notification requirements under R.S. [39:1311B](#)? **R.S. [39:1302](#)**

**A.12.** No. A judicial expense fund is not considered a special revenue fund according to AG Op. No. 03-0300. Therefore, the written notification requirements provided in R.S. [39:1311B](#) do not apply to judicial expense funds. Judicial expense funds are, however, general funds, and are therefore budgets must be developed and the written notification requirements would apply if the funds meet or exceed \$500,000.

### **Procedures**

**Q.13.** What are the special public participation rules for political subdivisions that propose to spend \$500,000 or more? **R.S. [39:1307](#)**

**A.13.**

- Give Notice via [Publication](#) that the budget is available for inspection;
- Give Notice via Publication of Public Hearing – Notice should be given at least 10 days prior to the hearing;
- Give Notice via Publication in the Official Journal;
- Must have at least 1 Public Hearing; and
- After Public Hearing certify completion by Publication.

**Q.14.** What are the budget procedures for political subdivisions that propose to spend less than \$500,000? **R.S. [39:1307](#)**

**A.14.** All of the initial budget procedures required under the LGBA apply to political subdivisions that propose to spend less than \$500,000. Entities that do not meet the threshold do not have to advertise as required under R.S. [39:1307](#). All other public participation [rules](#) apply including the adoption of the budget and amendments in an open meeting and the opportunity for public inspection. See AG Op. Nos. 87-190 and 89-512 for comment.

**Q.15.** What type of budget is required under the LGBA? **R.S. [39:1303](#)**

**A.15.** A comprehensive budget presenting a complete financial plan for each fiscal year for the general fund and each special revenue fund must be prepared by each political subdivision.

### **Preparation of Budget**

**Q.16.** Who is responsible for preparing the budget? **R.S. [39:1305](#)**

**A.16.** The chief executive or administrative officer of the political subdivision or, in the absence of such positions, the equivalent thereof shall prepare the proposed budget.

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### **Q.17. What must be included in the budget?**

**R.S. [39:1303](#)**

**A.17.** The budget is the document that sets forth the proposed financial plan for the general fund and each special revenue fund. The budget must include the following:

(1) A budget message signed by the budget preparer which shall include:

- a summary description of the proposed financial plan, policies, and objectives, assumptions, budgetary basis, and
- a discussion of the most important features.

(2)(a) A statement for the general fund and each special revenue fund showing the:

- estimated fund balances at the beginning of the year;
- estimates of all receipts and revenues to be received;
- revenues itemized by source;
- recommended expenditures itemized by agency, department, function, and character;
- other financing sources and uses by source and use; and
- the estimated fund balance at the end of the fiscal year.

School boards shall itemize revenues and expenditures in accordance with guidance provided by the Louisiana State Department of Education.

The total of proposed expenditures shall not exceed the total of estimated funds available for the ensuing fiscal year, i.e. the beginning fund balance and any anticipated revenues.

### **Q.18. Who submits, receives and adopts the budget document?**

**R.S. [39:1305](#)**

**A.18.** The chief executive or administrative officer of the political subdivision prepares the proposed budget. If the political subdivision has a governing board such as a police jury, city or parish council, the chief executive or administrative officer submits it to all of the members of the governing board. If the board does not adopt the proposed budget through an ordinance or resolution, then the chief executive must re-submit the proposed budget.

The school board must submit the adopted budget to the State Superintendent of Education by September 30<sup>th</sup> according to R.S. [17:88\(C\)](#).

### **Q.19. What process is required to prepare and publish the proposed budget?**

**A.19.** The process depends on whether it is an [entity or an independently elected official](#).

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**Q.20. What document must accompany the proposed budget? R.S. [39:1305](#)**

**A.20.** A proposed [budget adoption instrument](#) should be submitted along with a proposed budget.

**Q.21. What type of budget adoption instrument should accompany the proposed budget? R.S. [39:1305](#)**

**A.21.** The type of instrument required varies according to the type of governmental entity involved. For example, a Lawrason Act municipality requires an ordinance. The budget adoption instrument for:

- independently elected parish offices shall consist of a letter from the independently elected official authorizing the implementation of the adopted budget. Independently elected officials include sheriffs, assessors, coroners, district attorneys, courts, and clerks of court. For example, a sheriff prepares the budget, publishes the budget and provides an opportunity for inspection. The sheriff does not have a board that will approve the budget.
- any municipality, parish, school board, or special district shall be an appropriation ordinance, adoption resolution, or other legal instrument necessary to adopt and implement the budget document. President of a police jury will prepare and submit the budget for approval by the police jury or parish council.

**Q.22. What is an ordinance?**

**A.22.** An ordinance is a written instrument that is enacted after certain delay periods occur. The manner in which the ordinance is enacted depends on the particular rules of the entity.

**Q.23. What should the adoption instrument include? R.S. [39:1305](#)**

**A.23.** The adoption instrument shall define the authority of the chief executive and administrative officers of the political subdivision to make changes within various budget classifications without approval by the governing authority, as well as those powers reserved solely to the governing authority.

**Q.24. What should the political subdivision include in the budget document which sets forth the proposed financial plan for the general fund and each special revenue fund? R.S. [39:1305](#)**

- A.24.**
- A budget message signed by the budget preparer
  - A statement for the general fund and each special revenue fund
    - In addition to the estimates previously required by R.S. 39:1305(C)(2)(a), beginning January 1, 2011, the estimates shall also include:

**A clearly presented side-by-side detailed comparison of such information for the current year, including the fund balances at the beginning of the year, year-to-date actual receipts and revenues received and estimates of all receipts and revenues to be received the remainder of the year; estimated and actual revenues itemized by source; year-to-date actual expenditures and estimates of all expenditures to be made the remainder of the year itemized by agency, department, function, and character; other financing sources and uses by source and use, both year-to-date actual and estimates for the remainder of the year; the year-to-date actual and estimated fund balances as of the end of the fiscal year; and the percentage change for each item of information. (Act 966 2010 Regular Session)**

- School boards shall itemize revenues and expenditures in accordance with guidance provided by the state Department of Education.
- If, upon the request of the governing authority, the political subdivision fails to submit its budget document showing the information concerning revenue sources as mandated by this Subsection, the governing authority shall not appropriate any general funds to such political subdivision.

**Q.25. What public entity must receive the proposed budget?**

**R.S. 39:1306**

**A.25.** The chief executive and administrative officers must submit the proposed budget to the governing authority. For example, the parish president must send the proposed budget to the police jury or parish council.

Independently elected officials do not have a governing board; thus, they do not “submit” the budget to any entity. For example, a sheriff adopts the budget without a board’s approval.

**Q.26. When must the public have an opportunity to participate in the budget process?**

**R.S. 39:1307**

**A.26.** Before the adoption of the budget, political subdivisions with total proposed expenditures of \$500,000 or more from the general fund and any special revenue funds in a fiscal year or other similar budgetary period must give the public an opportunity to participate in the budgetary process.

**Q.27. What are the notice, publication and public hearing requirements for political subdivisions, elected officials and school boards to facilitate public participation?**

**R.S. 39:1307**

**A.27.** The required notice, publication and public hearing requirements depend on the type of entity or official involved. In general, political subdivisions and elected officials shall publish a notice that states that the proposed budget is available for public inspection and

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when the public hearing will occur. School boards have the same requirement subject to different time periods.

### Notice Requirements:

The notice published in the [official journal](#) shall state that:

- the proposed budget is available for public inspection;
- a public hearing on the proposed budget shall be held; and
- the date, time, and place of the hearing.

### Publication Requirements:

The notice shall be published at least 10 days prior to the date of the first public hearing.

Where applicable, publication shall be in the official journal of the political subdivision. Where there is no requirement that the political subdivision have an official journal, publication shall be in the official journal of the governing authority of the parish in which the political subdivision is located. In cases where the political subdivision is located within the boundaries of more than one parish, publication shall be in the official journal of the governing authority of each parish.

### Public Hearing Requirements:

The public hearing for political subdivisions and elected officials shall occur no sooner than 10 days after publication of the notice. The public hearing for school boards shall occur prior to September 15<sup>th</sup> of fiscal year according to R.S. [17:88\(A\)](#).

### **Q.28. What is the official journal?**

**A.28.** The LGBA requires that certain information be published in the political subdivision's official journal. The official journal is typically the publication with the broadest circulation for the parish that has existed for a certain amount of time. Official journal is not defined in the LGBA but is defined in other statutes.

### **Q.29. How many public hearings must occur prior to consideration for adoption?**

**R.S. [39:1307](#)**

**A.29.** No proposed budget shall be considered for adoption or otherwise finalized until at least one (1) public hearing has been conducted on the proposal. One or more political subdivisions may conduct joint public hearings.

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### **Q.30. When must the proposed budget be made available for public inspection?**

**R.S. [39:1306](#)**

**A.30.** The time when a proposed budget must be made available for public inspection depends on the type of public entity involved. Proposed budgets for:

- Political subdivisions with a governing authority including municipalities, parishes, school boards, and special districts shall be completed and submitted to the governing authority of that political subdivision and made available for public inspection as provided for in R.S. [39:1308](#) no later than 15 days prior to the beginning of each fiscal year;
- School boards shall be completed and submitted to the school board and made available for such public inspection no later than 15 days prior to the date for budget adoption by school boards as required in R.S. [17:88\(A\)](#);
- Parishes shall be completed and submitted to the parish governing authority and made available for such public inspection prior to the 15th day of the fiscal year for which the budget is to be applicable; and
- Elected public officials including a registrar of voters, the office of assessor, clerk of district court, coroner, district attorney, and sheriff shall be completed and made available for public inspection as provided for in R.S. [39:1308](#) no later than 15 days prior to the beginning of each fiscal year.

### **Q.31. Where should the proposed budget document be available for public inspection?**

**R.S. [39:1308](#)**

**A.31.** The proposed budget of a political subdivision shall be available for public inspection at the following locations:

- (1) Municipalities: at the office of the mayor or municipal governing authority;
- (2) School boards: at the school board office;
- (3) Special districts: at the office of the governing authority of the special district;
- (4) All other political subdivisions: at the office of the individual political subdivision;  
and
- (5) Elected public officials who have no board, i.e. sheriffs: at the primary office of the elected public official.

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In cases where the political subdivision is located within the boundaries of more than one parish, the proposed budget shall be available at the office of the parish governing authority of each parish.

**Q.32. How does a political subdivision certify that the notice process has been completed? R.S. [39:1307](#)**

**A.32.** The political subdivision shall publish a notice in the official journal that certifies that all required action has taken place. This “certification notice” must be completed in the same manner that that is required for notice related to the proposed budget and public hearing. Certification may not occur until after completion of the budgeting process.

**Q.33. Does the budget have to be adopted in an open meeting? R.S. [39:1309](#)**

**A.33.** It depends on whether it is an entity or an elected official that is adopting the budget. All entities with a governing board must adopt the budget in an open meeting. Elected officials do not adopt the budget in an open meeting because there is no governing authority that votes. R.S. [39:1309](#) states: “All action necessary to adopt and otherwise finalize and implement the budget for a fiscal year shall be taken in open meeting and completed before the end of the prior fiscal year except for school boards and parishes.” The requirements for political subdivisions, parishes, school boards and elected officials are noted below:

Political Subdivisions:

Must adopt the budget in an open meeting before the end of the prior fiscal year.

Parishes:

Must adopt the budget in an open meeting prior to the 30<sup>th</sup> day of the new fiscal year.

School boards:

Must adopt the budget in an open meeting by September 15th of fiscal year as required by R.S. [17:88\(A\)](#). In addition, the budget must be sent to the State Superintendent by September 30th for approval as required by R.S. [17:88\(C\)](#).

Elected Officials:

No open meeting is required for an elected official to adopt the budget.

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### **Q.34. What information must be included in the adopted budget? R.S. [39:1309](#)**

**A.34.** The adopted budget shall contain the same information as that required for the proposed budget.

### **Q.35. How does a Lawrason Act municipality adopt and amend budgets?**

**A.35.** Any act of the board of a Lawrason Act municipality that would provide for the appropriation of funds, the incurrence of debt, or the issuance of bonds or other evidences of indebtedness shall be by ordinance. However, the board may, by resolution adopted by the affirmative vote of a majority of the members of the board, require the expenditure of funds previously appropriated. Such resolution shall be presented to the mayor within three days after its adoption for his approval or disapproval in accordance with and subject to the rules and requirements of R.S. [33:406\(C\)](#). See R.S. [33:406A\(3\)](#).

An ordinance is a written instrument that is enacted after certain delay periods occur. The Lawrason Act provides rules for the adoptions of ordinances by municipalities subject to it, R.S. [33:406](#). “Other legal instrument” likely includes a formal motion presented at a public meeting.

### **Q.36. Who retains a certified copy of the adopted budget and adoption document?**

R.S. [39:1309](#)

**A.36.** Upon adoption, the chief executive or administrative officer shall retain a certified copy of the adopted budget and adoption instrument. For example, the school superintendent must retain a copy of the school board’s budget at the main office of the school district.

## **Amendment**

### **Q.37. How is the budget amended? R.S. [39:1310](#)**

**A.37.** Governing authorities and elected officials have slightly different procedures for amending budgets. Lawrason Act municipalities must adopt amendments by ordinance according to R.S. [33: 406\(A\)\(3\)](#). Budget amendments may not be adopted that propose expenditures which exceed the total of estimated funds available for the fiscal year.

### **Q.38. What is considered a “change in operations” that triggers a budget amendment?**

**A.38.** The LGBA does not define what a “change in operations” means in R.S. [39:1310](#). There has been little interpretation of this phrase by the courts or the AG. One court held that an economist’s testimony regarding various revenue-producing elements of an adopted budget was not sufficient to trigger a “change in operations” that would allow a budget amendment because the information was too speculative. The court also suggested that “...curtailing, eliminating or adding a particular service for the people would meet the criteria, as well as adopting additional revenue producing measures to permit the

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enhancement of services for the people.” See *Tardo v. Lafourche Parish Council*, 476 So.2d 997, (La.App. 1 Cir.,1985).

The AG stated in Op. Nos. 86-214 and 84-488 that “... the transfer of budgeted funds or funds designated for a specific purpose within a department from one program or function to another program or function constitutes a change in operations upon which the original adopted budget was developed.” Such a change must be adopted in an open meeting by the governing authority (i.e. police jury or parish council).

### **Q.39. How do governing authorities amend budgets?**

**R.S. 39:1310**

- A.39.** Governing authorities shall amend the budget if they have either received notification pursuant to R.S. [39:1311](#), or there has been a [change in operations](#) upon which the original adopted budget was developed. The governing authority shall adopt a budget amendment in an open meeting to reflect such change.

The AG states that the jurisprudence interpreting R.S. 39:1310 is not harmonious as to when budget amendments are allowed. One court determined that R.S. 39:1310 provides two instances where it is mandatory that the government authority amend its budget. *Yenni v. Parish Council of Parish of Jefferson through Evans*, 625 So.2d 301, (La. App. 4 Cir., 1993).

The First and Fourth Circuit courts conflict in their treatment of the statutory standard in that the former allows budget amendments only if one of the two prerequisites of R.S. 39:1310 have been met (i.e., where the governing authority has received notification pursuant to R.S. 39: 1311 or where there has been a change in operations upon which the original adopted budget was developed), whereas the latter allows budget amendments where there are no legal prohibitions against such amendments. (AG Op. No. 09-0107)

### **Q.40. How do independently elected parish officials amend budgets?**

**R.S. 39:1311**

- A.40.** An independently elected parish official shall amend the budget if he has received notification pursuant to R.S. [39:1311\(A\)](#), or when there has been a change in operations upon which the original adopted budget was developed. The independently elected official shall adopt a budget amendment and publish such amendment in the official journal as described by R.S. [39:1307\(B\)](#).

### **Q.41. How does the government use the adopted budget and adopted amendments?**

**R.S. 39:1311**

- A.41.** The adopted budget and any adopted amendments form the framework from which the chief executive or administrative officers and members of the governing authority of the political subdivision monitor revenues and control expenditures.

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**Q.42. What are the revenue, expenditure, and fund balance that require the chief executive officer with a budget of \$500,000 or more to alert the governing authority in writing of the situation? R.S. 39:1311**

**A.42.** The chief executive or administrative officer of a political subdivision subject to public participation with a budget of \$500,000 or more must advise the governing authority or independently elected official in a **written notice** when:

(1) Total revenue and other sources plus projected revenue and other sources for the remainder of the year, within a fund, are failing to meet total budgeted revenues and other sources by 5% or more.

(2) Total actual expenditures and other uses plus projected expenditures and other uses for the remainder of the year, within a fund, are exceeding the total budgeted expenditures and other uses by 5% or more.

(3) Actual beginning fund balance, within a fund, fails to meet estimated beginning fund balance by 5% or more and fund balance is being used to fund current year expenditures.

- The written notice and resulting budget amendment shall only be statutorily required for a special revenue fund with anticipated expenditures of \$500,000 or more.
- Only the notice required in paragraph (2) above shall be required for special revenue funds that are expenditure driven.
- The budget and any amendments constitute the authority of the political subdivision to incur liabilities and to authorize expenditures.
- The elected chief of police shall advise the governing authority in writing when total actual expenditures plus projected expenditures for the rest of the year exceed the total budgeted expenditures by 5% or more, and the chief shall make recommendations in writing for responsive action.

**Q.43. Does the governing authority have to adopt a budget amendment if there is a 5% variance in revenues or expenditures or beginning fund balance?**

**A.43.** Yes. If there has been a change in operations or the governing authority has received R.S. 39:1311 notice discussed in Q.42., the governing authority must adopt a budget amendment if there is a 5% or greater shortage in revenue or a 5% or greater overage in expenditures as described in Q.42., or if there is a 5% or greater variance in the actual fund balance at the beginning of the year.

Although the case law is not consistent regarding permissive instances for amendments, the case law and the statutes are clear regarding when a budget must be amended.

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**Q.44. Who retains a copy of the written notification required by R.S. [39:1311](#)?**

**R.S. [39:1311](#)**

**A.44.** The written notification as well as any responsive action taken by the governing authority or independently elected official shall be transmitted to and retained by the chief executive or administrative officer.

**Q.45. Are the written notification requirements provided in R.S. [39:1311](#) only applicable to special revenue funds of \$500,000 or more?**

**R.S. [39:1311](#)**

**A.45.** Yes. The written notification and the resulting budget amendment shall only be statutorily required for **special revenue funds** with anticipated expenditures that equal or exceed five hundred thousand dollars. (Paragraph B). Furthermore, only the written notification of R.S. [39:1311\(A\)\(2\)](#) shall be required for **special revenue funds** whose revenues are expenditure driven. Once the governing authority receives the written notice, then the governing authority amends the budget pursuant to R.S. 39:1310. **General funds**, regardless of the budgeted amount, even if under five hundred thousand dollars are still required to be amended when 5% variance is reached as discussed in [Q.42](#).

**Q.46. What is the difference between a general fund and a special revenue fund?**

**A.46.** The accounting systems of governmental organizations operate on a fund basis. A fund records cash and other financial resources, together with all related liabilities or balances, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Government fund types include the general fund and special revenue funds. The general fund accounts for most of the basic services provided by a governmental unit. The general fund is responsible for all resources not found in some other fund and accounts for all the assets and resources that finance the general operations of the governmental unit. Special revenue funds account for restricted sums that are intended for specific purposes. Each special revenue funds is financed by a tax or other source of revenue that is reserved for the purpose of the fund.

**Q.47. Who may incur liabilities and authorize expenditures on behalf of the political subdivision from the respective budgeted funds during the fiscal year?**

**R.S. [39:1311](#)**

**A.47.** Only the chief executive or administrative officers of the political subdivision are authorized through the adopted budget and any adopted amendments to incur liabilities and authorize expenditures from the respective budgeted funds during the fiscal year.

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**Q.48. Does the LGBA limit the entity's ability to contract?**

**R.S. 39:1311**

**A.48.** The LGBA does not prevent the making of contracts for governmental services or for the capital outlay for a period exceeding one year if such contracts are allowed otherwise by law. Any such contracts shall be executory only for the amounts agreed to be paid for such services to be rendered in succeeding years.

**Q.49. Are there any special notification requirements for elected chiefs of police?**

**R.S. 39:1311**

**A.49.** Yes. The authorities of elected and appointed chiefs of police are different. The elected Chief of Police of a Lawrason Act municipality has the inherent authority to control police department funds on a day-to-day operational basis subject to the funds being budgeted and appropriated pursuant to municipal ordinance. AG Op. No. 93-0666. The elected municipal chief of police shall advise the municipal governing authority in writing when total actual expenditures plus projected expenditures for the remainder of the year within the police department exceed the total budgeted expenditures by 5 % or more, and shall make recommendations in writing to the governing authority for responsive action.

**Q.50. What happens if the political subdivision does not appropriate funds in each fiscal year?**

**R.S. 39:1312**

**A.50.** If, at the end of any fiscal year, the appropriations necessary for the support of the political subdivision for the ensuing fiscal year have not been made, then 50% of the amounts appropriated in the appropriation ordinance or resolution for the last validly passed budget year shall be deemed re-appropriated for the several objects and purposes specified in such ordinance or resolution. This 50% limitation will continue until a new budget is approved.

**Q.51. What certified documents do the chief executive or administrative officer have to keep and where must they be located?**

**R.S. 39:1313**

**A.51.** The chief executive or administrative officer shall retain and file certified copies of the adopted budget, budget adoption instrument, budget amendments, and copies of supporting schedules and correspondence related to the budget at the domicile of the governing authority.

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### **Q.52. Do emergencies prohibit the expenditure of funds?**

**R.S. [39:1314](#)**

**A.52.** No. Nothing shall prohibit the expenditure of funds in cases of emergency. The LGBA defines emergency to mean "...an unforeseen event bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury." This strict definition of an emergency is intended to prevent poor planning from being characterized as an emergency.

### **Q.53. Are there penalties for violating the LGBA?**

**R.S. [39:1315](#)**

**A.53.** Yes. The fiduciary responsibilities of a public official or officer charged with the responsibility of planning, adopting, amending, and implementing the budget are significant and serious. Any public official who knowingly or intentionally adopts, amends, and implements a budget wherein the expenditures exceed the funds available may be found guilty of malfeasance of office and subject to the penalties contained within that criminal statute (R.S. [39:1305\(E\)](#)).

### **Q.54. What actions may an individual pursue to force compliance with the LGBA?**

**R.S. [39:1315](#)**

**A.54.** Any person may file a suit in a court of competent jurisdiction for the parish in which the political subdivision is domiciled for mandamus, injunctive, or declaratory relief to require compliance with the LGBA.

### **Q.55. What statutes are included in the Local Government Budget Act?**

**A.55.**

R.S. 39: <a href="#">1301</a>	Short title
R.S. 39: <a href="#">1302</a>	Definitions
R.S. 39: <a href="#">1303</a>	Legislative intent
R.S. 39: <a href="#">1304</a>	Uniform chart of accounts
R.S. 39: <a href="#">1305</a>	Budget preparation
R.S. 39: <a href="#">1306</a>	Completion and submission of the proposed budget
R.S. 39: <a href="#">1307</a>	Public participation
R.S. 39: <a href="#">1308</a>	Inspection of the proposed budget
R.S. 39: <a href="#">1309</a>	Adoption
R.S. 39: <a href="#">1310</a>	Amending the budget
R.S. 39: <a href="#">1311</a>	Budgetary authority and control
R.S. 39: <a href="#">1312</a>	Governing authority's failure to make appropriation
R.S. 39: <a href="#">1313</a>	Budget filing
R.S. 39: <a href="#">1314</a>	Emergencies
R.S. 39: <a href="#">1315</a>	Violations

**Q.56. What Attorney General Opinions are helpful?**

**A.56. Note: The following AG opinions are subject and fact specific and should be used as information only. They should not be used as a substitute for either independent legal research or obtaining an opinion from the AG on your specific matter.**

**General Issues**

[AG Op. No. 08-0236](#) - Discussing the Parish Transportation Act, the AG states that the LGBA mandates that all proposed expenditures are approved by the council as a whole as part of the overall budgetary process. (Published January 22, 2010)

**Salaries/Operating Budget**

[AG Op. No. 09-0187](#) – A mayor cannot unilaterally refuse to pay a budgeted salary previously and properly approved by the mayor and the board and if appropriations have been made.

[AG Op. No. 07-0216](#) - Salaries must be budgeted in accord with LGBA.

[AG Op. No. 04-0280](#) - A city council or police jury must budget necessary funds to allow the Registrar of Voters to discharge his duties.

[AG Op. No. 04-0053](#) - A police jury may not exercise a line-item veto in a parish budget set by a library control board.

[AG Op. No. 02-0276](#) - It is appropriate for the mayor to determine if a pay raise is merited as to employees who are not deemed to be municipal officers; however, the money for the raise must be budgeted in accordance with the requirements of the Local Government Budget Act, La. R.S. [39:1301](#) et seq.

[AG Op. No. 01-0325](#) - Contract signed by a parish president when no funds had been budgeted or appropriated for such a contract is not valid.

[AG Op. No. 01-0274](#) - Section 6-04 of the City of Baker's Charter, which states that if Baker's city council fails to adopt a budget by the appropriate date set forth in the city's charter, it shall be presumed to have adopted the budget submitted by the mayor, is constitutional. **This opinion does not apply to Lawrason Act municipalities.**

[AG Op. No. 00-0355](#) - A mayor may only change the salary approved in an adopted budget if the adoption instrument authorized such action.

**Budget Amendments**

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[AG Op. No. 09-0107](#) – Discusses the conflicting rulings of the first and fourth circuit courts regarding R.S. 39:1310 on budget amendments.

[AG Op. No. 06-0024](#) - A city council has the authority to amend its budget to change the travel allowed for its employees through an ordinance or “proposed budget adoption instrument.”

An economist’s testimony regarding various revenue-producing elements of an adopted budget was not sufficient to trigger a “change in operations” that would allow a budget amendment because the information was too speculative. The court also suggested that “...curtailing, eliminating or adding a particular service for the people would meet the criteria, as well as adopting additional revenue producing measures to permit the enhancement of services for the people. See *Tardo v. Lafourche Parish Council*, 476 So.2d 997, (La.App. 1 Cir.,1985). *Tardo v. Lafourche Parish Council*, 476 So.2d 997, (La.App. 1 Cir.,1985).

### Courts

AG Opinion Nos. [04-0391](#); [03-0300](#); [93-0690](#) - The LGBA applies to the courts, but only as to judicial expense funds. Thus, judges must prepare a budget document related to those funds.

### Home Rule Charter

[AG Op. No. 09-0152](#) – Addresses various questions related to the budget adoption process.

[AG Op. No. 05-0083](#) - This opinion examines several questions including the necessity of an ordinance to employ legal counsel.

[AG Op. No. 02-0179](#) - Examines situation where a parish council failed to adopt a new budget.

[AG Op. No. 01-0279](#) - Examines whether the Lafourche Parish Charter conflicts with the LGBA.

### School Boards

[AG Op. No. 05-0081](#) - The AG examined the impact of delinquent contributions to the Office of Group Benefits under the LGBA.

### Penalties

[AG Op. No. 05-0031](#) - The AG examined the penalty provisions of the LGBA in response to questions relating to a town council.

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[AG Op. No. 00-0451](#) - The notification requirements should not be “...misinterpreted to afford a chief of police a five-percent margin of error if he in fact intentionally violates the law...”

### Liabilities and Expenditures

[AG Op. No. 03-0355](#) - The LGBA authorizes the chief executive and not the parish council to incur liabilities and authorize expenditures from budgeted funds.

### Payment of Bills

[AG Op. No. 09-0132](#) – A mayor cannot unilaterally hire and pay an attorney to defend him at the cost of the municipality without the concurrence of the board of aldermen. If the funds have already been appropriated for legal expenses in the budget and the mayor’s actions in the lawsuit arise out of his duties, then the mayor could authorize expenditures from the budgeted funds under authority given to him under the LGBA.

[AG Op. No. 00-0205](#) - The mayor is also able to pay specific bills without the approval of the board of aldermen as long as the bills fall within a category in the approved budget and proper appropriations have been made. Only after the budget is amended can the mayor pay additional bills of the municipality.

**Q.57. Is there a chart that summarizes how the LGBA applies to Political Subdivisions, Elected Officials and School Boards?**

**A.57.** Yes. Click [here](#) to view it.