



South Carolina Association of Counties

James R. Frazier, President
Horry County

Michael B. Cone
Executive Director

December 9, 2014

MEMORANDUM

To: County Officials
From: SCAC Staff
Subject: *A Handbook for County Government in South Carolina*, Revised Edition

Due to recent changes in state laws, SCAC has updated several chapters of *A Handbook for County Government in South Carolina*. Although a full reprint is not warranted at this time, the most recent edition of the electronic publication can be accessed at <http://www.sccounties.org/publications>. Please refer to this edition when seeking current information on county government. We recommend you save a copy of this memo with your printed copy of the publication and download the electronic publication for your records.

The most significant revisions relating to county government operations are outlined below:

- The U.S. Supreme Court ruling on the formula determining which states are subject to preclearance as unconstitutional. (*Shelby County, Ala. v. Holder*)
- Statements of economic interest must be filed electronically prior to March 30. (S.C. Code Ann § 8-13-1140)
- A referendum to reimpose an existing capital project sales tax must be held at the time of the general election. (Act No. 243 of 2014)
- The S.C. Supreme Court ruling on amending agendas during a meeting does not violate FOIA. (*Lambries v. Saluda County*)
- The S.C. Supreme Court ruling on autopsy reports being exempt from FOIA. (*Perry v. Bullock*)
- All county elections and voter registration boards must be combined into a single board of voter registration and elections in each county. The Executive Director of the State Election Commission has oversight and supervision of the conduct of the county boards of elections and voter registration. (Act No. 196 of 2014)

Although the revised handbook is an excellent primer, it is not intended to be the final word on laws, court cases, and regulations that impact county government operations. **It is important to consult your county attorney if you have a question regarding the law.** Should you need additional assistance, the SCAC staff is available to assist you with any questions that may arise. You may call the Association of Counties at 1-800-922-6081 or send e-mail to scac@scac.sc.



A Handbook for County Government In South Carolina



Fifth Edition

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A Handbook for County Government In South Carolina

South Carolina Association of Counties
Building Stronger Counties for Tomorrow

1919 Thurmond Mall • PO Box 8207 • Columbia, SC 29202-8207

Phone: (803) 252-7255 • (800) 922-6081

Fax: (803) 252-0379

scac@scac.sc

www.sccounties.org

**A Handbook for County Government in South Carolina
Fifth Edition, Revised**

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Foreword

Nearly 40 years ago, county government was run from the state house by legislative delegations through individual county supply bills. Since the passage of the Home Rule Act in 1975, not only has county government moved to the county seats, it has also grown larger and more diversified in order to meet the increased demands and needs of its citizens. County officials must be knowledgeable and attuned to the many laws, regulations, court decisions and policies affecting county government in South Carolina today.

A Handbook for County Government in South Carolina is a project of the South Carolina Association of Counties in response to requests from our membership. Our goal in compiling this publication is to provide county officials with a single source to which they can refer, not only for background information on a particular area, but as a reference for additional in-depth information, if needed. For newly-elected officials, this handbook is an excellent primer on the many areas and issues that comprise county government in this state.

The publication would not have been possible without the assistance of many persons who offered their time and expertise to this effort. The South Carolina Association of Counties would like to thank the authors who donated their time and talents to make *A Handbook for County Government in South Carolina* possible.

The South Carolina Association of Counties is dedicated to providing programs and services to further equip county officials with the knowledge and tools necessary to govern effectively. It is our hope that this handbook serves as an invaluable resource for all county officials.

South Carolina Association of Counties



Acknowledgements

First published in 1990 as a joint project of the South Carolina Association of Counties and the University of South Carolina's Institute for Public Service and Policy Research, *A Handbook for County Government in South Carolina* has become an invaluable resource for elected and appointed county officials throughout the state.

Numerous experts from Clemson University, the College of Charleston, the S.C. Department of Archives and History, the S.C. State Election Commission and the University of South Carolina have contributed to the content of this publication over the years. Several county officials also have served as authors or editors based on their areas of technical expertise. The South Carolina Association of Counties wishes to thank these experts who have contributed to the prior and current editions of this important publication.

Specifically, the South Carolina Association of Counties would like to give credit to the following individuals who served as an original author of a chapter that has appeared in prior editions of this publication:

Chapter 1 – History of County Government: Past, Present and Future
Charlie B. Tyer, PH.D., formerly with the University of South Carolina

Chapter 2 – The Governing Body: County Council
Edwin C. Thomas, formerly with the University of South Carolina

Chapter 3 – Other County Officials
Jon B. Pierce, PH.D., formerly with the University of South Carolina

Chapter 6 – County Government Budgeting and Financial Management
James E. Kirk, formerly with the University of South Carolina

Chapter 12 – The Judicial System
Steven W. Hays, formerly with the University of South Carolina



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History of County Government: Past, Present and Future

Dennis N. Lambries, Ph.D., University of South Carolina

Introduction

South Carolina's counties are general purpose local governments. They have the authority to provide and perform a wide array of governmental services. However, unlike municipal governments which were created to meet specific citizen service demands, county governments were initially created as creatures of the state for the purpose of providing state level services such as the judicial system, schools, and roads and bridges. Until passage of the Home Rule Act in 1975, county government in South Carolina experienced very little expansion of the services it was required to provide. Since passage of the Home Rule Act, the responsibilities of county government have expanded to today where counties provide services that have been traditionally considered "municipal" services (water, sewer, sanitation, recreation and animal control, to name a few). Today's county government has essentially the same powers, duties and responsibilities of municipal governments.

Despite their similarities, there are at least four major differences between county and municipal governments in South Carolina:

1. Most county officials are elected from districts, while municipal officials tend to be elected at-large. In South Carolina, roughly one-third of municipalities elect their council members through at-large elections compared to only two of the 46 counties.
2. Counties have other elected constitutional and statutory offices. The S.C. Constitution mandates a county clerk of court, coroner and sheriff, while the S.C. Code of Laws mandates the auditor, treasurer and probate judge (see Chapter 3 for a discussion of the relationship between county council and other constitutional and statutory officials).
3. County elections are required to be partisan, raising the element of party competition that can often reduce the number of potential candidates to only those who have some party identification. Municipal and school board elections in South Carolina have the option of being either partisan or nonpartisan.
4. County councils are more likely to elect their chair from among the membership of council rather than have a chair elected at-large, as are the majority of municipal mayors in South Carolina. Only six counties in South Carolina elect their chair "at-large."¹ (This does not include the four counties operating under the supervisor form of government.)

Home rule can be broadly defined as the degree of self-governance or autonomy that is granted to the local government by the state. Early county government in South Carolina was an absolute creature of the state, and its functions were very limited in scope. **The Home Rule Act redefined the responsibilities of county government in the state.**

¹ Aiken, Clarendon, Horry, Kershaw, Saluda and Spartanburg counties elect their council chair at-large. (The Home Rule Act permitted these counties to retain this method of election of the council chair.)

Since its passage, South Carolina's counties operate under "limited home rule," because the specific powers and duties of county government are defined by the constitution and by actions of the General Assembly. Perhaps the most obvious examples of this limited nature of home rule are the limitations placed on county government by the General Assembly that impact its authority and flexibility to generate alternative revenue sources to support and grow its operations.

In understanding the development of contemporary counties in South Carolina, the passage of the Home Rule Act provides a convenient break point in the history of county government in the state.

Pre-Home Rule County Government

Counties were not a significant entity during the early history of our state. Government was concentrated in Charleston. In the 18th century, when the Anglican Church was the official establishment church in the colony, church parishes served the purpose that modern day counties serve for things such as elections, roads, vital statistics recordkeeping and so forth.

After the American Revolution, counties were laid out and county courts created. These courts existed within a larger set of judicial districts, however, so that counties still were not the recognizable entity they are today. There was no regular system of county taxation during this period of our history.

In 1868, following the Civil War, the state constitution changed the judicial districts into counties, and a board of county commissioners was created in each county. This board could tax and spend for what was considered "county purposes"; that is, a narrow range of services. Reconstruction politics intruded, and the constitutional provisions dealing with county government were repealed in 1890.

The Constitution of 1895, which amended is the present day S.C. Constitution, brought counties back again. Duties and powers were specified, but the General Assembly was restricted in its power to authorize taxes for county purposes other than limited purposes. Thus, the county was relegated to providing for schools, roads, ferries, bridges, public buildings and similar services. This limited role for the county was referred to as the "county purpose doctrine" in

later court cases and greatly restricted what counties could do until the early 1970s.



Photo courtesy of Richland County Public Information Office

Home rule can be broadly defined as the degree of self-governance or autonomy granted to local government by the state. Early county government was an absolute creature of the state, and its functions were limited in scope. The Home Rule Act redefined the responsibilities of county government in South Carolina.

Thus, for much of South Carolina's history, counties were actually governed by the General Assembly through their legislative delegation. The delegation was composed of the state senator and the house members from each county. A "supply bill" was passed each year as local legislation to provide the county's budget. Delegations deferred to one another, so each county delegation essentially ruled within the county's boundaries; and the senator was particularly prominent and powerful, since there

was only one from each county. State legislators played two roles: state representatives for statewide issues and local legislators for their particular county. Thus, the expectation was that legislators were local governing officials as well as state policymakers.

With World War II and growth coming to South Carolina, it became harder for state lawmakers to serve their dual roles in many places. Charleston County led the change to a local county council and a manager in the late 1940s. Others waited, however, until federal court cases forced a change beginning in the 1960s.

The federal courts in cases such as *Baker v. Carr*² (forced the Tennessee legislature to adopt a reapportionment scheme based on population) and *Reynolds v. Sims*³ (required that representation in the state legislature must be based “substantially” on population) established the one-man, one-vote concept for electoral representation at the state level. Legislators were now supposed to represent more or less equal numbers of people. Because of the varying distribution of South Carolina’s population, some counties lost their resident senator, and their House members now came from districts that could cross county lines. Reapportionment, therefore, spurred movement to reform South Carolina county government statewide. In 1966, the General Assembly created a constitutional revision committee to recommend changes to the constitution. The local government changes recommended were put before the citizens of the state in the 1972 general election, approved and later ratified by the General Assembly in 1973 as Article VIII of the state constitution. This was followed by implementing legislation passed in 1975 (the Home Rule Act).

Post-Home Rule County Government

The powers and duties of contemporary South Carolina counties are specified in our state constitution and statutes. Article VIII, § 7 of the S.C. Constitution, passed in 1973 as part of the Home Rule amendment, allowed the legislature to provide for up to five forms of county government. As initially passed, Act No. 283 of 1975 provided for five forms of county government. The county commissioner form was ruled unconstitutional by the S.C. Supreme Court in *Duncan v. County of York* in 1976,⁴ because it failed to provide county government with the powers mandated by the constitution. Counties operate under one of the four remaining forms of county government.

The form of government adopted by a county can still be changed in one of two ways: the county council can call for a referendum to change the form of government, or citizens of the county may petition the council for a referendum. A petition requires the signatures of at least 10 percent of the county’s registered voters.⁵ A majority of those voting in a referendum must vote for a change before the form of government can be changed. If the referendum fails, a minimum of four years must elapse before another referendum can be held on a change in the form of government.

Forms of County Government

There are four forms of county government available in South Carolina: 1) the council form; 2) the council-supervisor form; 3) the council-administrator form; and 4) the council-manager form. In 2012, six counties operate under the council form, four counties operate under the council-supervisor form, 34 counties operate under the council-administrator form, and two counties operate under the council-manager form.

² 369 U.S. 186 (1962).

³ 377 U.S. 533 (1964).

⁴ 267 S.C. 327, 228 S.E.2d 92 (1976).

⁵ S.C. Code Ann. § 4-9-10(c).

There are some important differences between the various forms of county government. The council and council-supervisor forms can be considered “traditional” forms of government because administrative and legislative authority rests with elected council members. The council-administrator and council-manager forms of government can be considered “reformed” forms of government, because the elected council members retain legislative authority while administrative authority rests with an appointed administrator or manager. The table on page 5 shows the form of government and election information for each of South Carolina’s 46 counties.

The Council Form⁶

In the council form of government, both legislative and administrative responsibility is vested in the county council. Council may designate one of its members, such as the chair, to act on its behalf and assign additional administrative duties as appropriate. As an alternative, council may appoint an employee to perform day-to-day administrative functions at its direction. The council consists of not less than three nor more than 12 members. Council members are elected for terms of two or four years.

The Council-Supervisor Form⁷

In the council-supervisor form of government, a supervisor is elected at-large. The supervisor serves as both chair of the county council and as the chief administrative officer. The supervisor may vote only to break tie votes on the council. The council-supervisor form of government consists of not less than two nor more than 12 council members. The supervisor and all council members are elected for two- or four-year terms.

The salary of the supervisor is determined by the council by ordinance and may be changed during the term for which he/she is elected, so long as the supervisor does not vote on the question.

State law prescribes the powers and duties of the county supervisor. They include, but are not limited to, the following:

- Serve as chief administrative officer of the county;
- Execute the policies and legislative actions of the council;
- Direct and coordinate the operations of the county;
- Prepare annual operating and capital budgets for the council;
- Supervise the expenditure of county funds;
- Prepare reports for the council on finances and administrative activities;
- Recommend measures to the council for adoption;
- Serve as presiding officer of the council and vote in ties;
- Serve as official spokesman for the council;
- Inspect the books, accounts, records or documents pertaining to the property, money or assets of the county;
- Administer the county’s personnel policies approved by the council, including salary and classification plans; and
- Employ and discharge personnel, including the county attorney, subject to the appropriation of funds by council.

⁶ S.C. Code Ann. § 4-9-310.

⁷ S.C. Code Ann. §§ 4-9-410 to 4-9-440.

General County Government Information

<u>County</u>	<u>Form of Government</u>	<u>Method of Election</u>	<u>Council Members</u>	<u>Term Length</u>
Abbeville	Council	Single Member	7	4 yrs.
Aiken	Council-Administrator	Single Member/ Chair At-Large	9	4 yrs.
Allendale	Council	Single Member	5	4 yrs.
Anderson	Council-Administrator	Single Member	7	2 yrs.
Bamberg	Council-Administrator	Single Member	7	4 yrs.
Barnwell	Council	Single Member	7	4 yrs.
Beaufort	Council-Administrator	Single Member	11	4 yrs.
Berkeley	Council-Supervisor	Single Member	9	4 yrs.
Calhoun	Council	Single Member	5	4 yrs.
Charleston	Council-Administrator	Single Member	9	4 yrs.
Cherokee	Council-Administrator	Single Member	7	4 yrs.
Chester	Council-Supervisor	Single Member	7	4 yrs.
Chesterfield	Council-Administrator	Single Member	9	4 yrs.
Clarendon	Council-Administrator	Single Member/ Chair At-Large	5	4 yrs.
Colleton	Council-Administrator	Single Member	5	4 yrs.
Darlington	Council-Administrator	Single Member	8	4 yrs.
Dillon	Council-Administrator	Single Member	7	4 yrs.
Dorchester	Council-Administrator	Single Member	7	4 yrs.
Edgefield	Council-Administrator	Single Member	5	2 yrs.
Fairfield	Council-Administrator	Single Member	7	4 yrs.
Florence	Council-Administrator	Single Member	9	4 yrs.
Georgetown	Council-Administrator	Single Member	7	4 yrs.
Greenville	Council-Administrator	Single Member	12	4 yrs.
Greenwood	Council-Manager	Single Member	7	4 yrs.
Hampton	Council-Administrator	At-Large	5	4 yrs.
Horry	Council-Administrator	Single Member/ Chair At-Large	12	4 yrs.
Jasper	Council-Administrator	At-Large	5	4 yrs.
Kershaw	Council-Administrator	Single Member/ Chair At-Large	7	4 yrs.
Lancaster	Council-Administrator	Single Member	7	4 yrs.
Laurens	Council	Single Member	7	4 yrs.
Lee	Council-Administrator	Single Member	7	4 yrs.
Lexington	Council-Administrator	Single Member	9	4 yrs.
Marion	Council-Administrator	Single Member	7	4 yrs.
Marlboro	Council-Administrator	Single Member	8	4 yrs.
McCormick	Council-Administrator	Single Member	5	4 yrs.
Newberry	Council-Administrator	Single Member	7	4 yrs.
Oconee	Council-Administrator	Single Member	5	4 yrs.
Orangeburg	Council-Administrator	Single Member	7	4 yrs.
Pickens	Council-Administrator	Single Member	6	4 yrs.
Richland	Council-Administrator	Single Member	11	4 yrs.
Saluda	Council	Single Member/ Chair At-Large	5	4 yrs.
Spartanburg	Council-Administrator	Single Member/ Chair At-Large	7	4 yrs.
Sumter	Council-Administrator	Single Member	7	4 yrs.
Union	Council-Supervisor	Single Member	7	4 yrs.
Williamsburg	Council-Supervisor	Single Member	8	4 yrs.
York	Council-Manager	Single Member	7	2 yrs.

State law provides that the council may not remove any county administrative officers or employees appointed by the supervisor or his subordinates except by two-thirds vote of the council present and voting. The law also provides that neither the council nor individual members shall give direct orders to any county employee, publicly or privately, except for purposes of inquiries or official investigations.

The Council-Administrator Form⁸

The council in the council-administrator form of government consists of not less than three members nor more than 12 members. Council members are elected for two- or four-year terms of office. The administrator is an appointed official, employed by the council, who is the administrative head of the county government responsible for administration in all departments subject to the council's control. The council may employ the administrator for a definite term or not, at its discretion. Should the council decide to terminate the administrator, he/she must be given a written statement of the reasons for termination and has the right to a public hearing at a council meeting.

The powers and duties of the county administrator are outlined in state law and include the following:

- Serve as chief administrative officer of the county;
- Execute the policies, directives and legislative actions of the council;
- Direct and coordinate operations of the county;
- Prepare annual operating and capital budgets for the council, and require such reports, estimates and statistics as necessary from county departments and agencies;
- Supervise the expenditure of appropriated funds;
- Prepare financial and administrative reports for the council;
- Administer the county personnel policies, including salary and classification plans approved by council;
- Employ and discharge county personnel, subject to council appropriation of funds for that purpose; and
- Perform other duties as required by the council.

The administrator is specifically directed by law to inform the council of anticipated revenues and the amount of tax revenue required to meet the financial requirements of the county when he/she presents proposed operating and capital budgets to the council.

The Council-Manager Form⁹

The council in the council-manager form of government shall consist of not less than five nor more than 12 members. As in the other forms of county government, the council members are elected for either two- or four-year terms of office. The county manager is an appointed official who reports to the county council. The powers and duties are identical to those of the county administrator discussed above. In fact, the differences between the council-manager and council-administrator forms of county government concern the county treasurer and auditor, and the number of members of council. State law provides that in the manager form of government, the treasurer and auditor may be appointed by the county council rather than elected. The council must determine the method of selection and, if appointive status is preferred, must pass an ordinance to that effect.

⁸ S.C. Code Ann. §§ 4-9-610 to 4-9-670.

⁹ S.C. Code Ann. §§ 4-9-810 to 4-9-870.

If the decision is made to appoint these two officers, the auditor and treasurer are subject to control by the council and the manager in the same manner as other appointed department heads of the county. Similar restrictions apply in the manager form regarding council's powers over elected officials, as in the other forms of county government.

General Powers of County Government

The general powers of county governments are designated in state law.¹⁰ Counties have the power to tax and spend for a wide variety of purposes. The General Assembly has not extended to counties (or municipalities) fiscal home rule. That is, counties cannot impose taxes that are not specifically authorized by the General Assembly. There are other statutory limitations on county government's ability to generate revenue to support its operations. Act No. 388 of 2006 placed further limitations on the fiscal autonomy of county government. Commonly called the Property Tax Reform Act or Property Tax Restructuring Act, this act redefined the millage limitation for operating purposes and deleted the mechanism for overriding the millage limitation.¹¹ Thus, counties remain creatures of the state.

The state constitution and the Home Rule Act do, however, give counties an expanded service delivery role. Article VIII of the S.C. Constitution was revised in 1973 and provided counties service delivery authority similar to that possessed by municipal governments. Traditional county functions are retained, such as law enforcement, road and bridge construction and maintenance, but new services are now permissible. Now counties can engage in water, sewer, solid waste collection and disposal, transportation, planning, economic development, recreation, hospitals and medical care, and public health services, among others. The state constitution requires, however, that before a county acquires or constructs "water, sewer, transportation or other utility systems and plants other than gas and electric" utilities, a referendum must be held.¹²

Counties have the power to buy and sell property, to enter into contracts, to exercise the power of eminent domain, to assess and levy ad valorem property taxes and uniform service charges, including the power to tax different areas at different rates related to the nature and level of governmental services provided. Such areas are called special tax districts, and specific procedures are outlined in state law for their creation. Basically, this provision of state law was intended to put an end to the creation of special purpose districts by local legislation in the General Assembly. Indeed, Article VIII of the state constitution specifically says that "no laws for a specific county shall be enacted" any longer by the state legislature. Rather, the legislature is directed to provide by general law the structure, organization, powers, duties, functions and responsibilities of counties.

One restriction on counties, however, is that countywide taxes cannot be used to support services that a municipal government was already providing on or before March 7, 1973. This provision was aimed at preventing duplication of services or the preemption of existing city services by a county.

Additional general powers of counties include the power to establish county agencies, departments, boards and commissions, and to appoint the members of such bodies.

State law further provides that counties may establish accounting and financial reporting systems, regulate land use, regulate their bonded indebtedness subject to state debt limitations, grant franchises outside of municipal boundaries, levy uniform license taxes upon persons and businesses, participate in multi-county projects and enact ordinances to enforce the powers they have, as well as provide penalties not to exceed the penalty jurisdiction of magistrate courts.

¹⁰ S.C. Code Ann. § 4-9-30.

¹¹ S.C. Code Ann. § 6-1-320.

¹² S.C. Const. art. VIII, § 16.

Counties can carry out slum clearance and redevelopment work, conduct advisory referenda, require permits to regulate solicitation, abate nuisances and exercise other powers as authorized by general state statute. One noticeable omission in state law until 1989 was a clear grant of general police powers to counties. Act 139 of 1989 provided that counties, like municipalities, have general police powers.¹³ Such powers give a county the right to legislate for the purpose of regulating public health, safety, welfare, morals and abatement of nuisances, so long as such regulations do not contradict constitutional and statutory rights of citizens and general state law. Local government exercise of police powers under home rule was interpreted broadly in the case *Williams v. Town of Hilton Head Island*¹⁴ in which the S.C. Supreme Court explicitly struck down Dillon's Rule in South Carolina. In part, the majority opinion reads, "This Court concludes that by enacting the Home Rule Act, S.C. Code Ann § 5-7-10, *et seq.* (1976), the legislature intended to abolish the application of Dillon's Rule in South Carolina and restore autonomy to local government." Presumably, counties would be given the same interpretation as municipalities received in the *Williams* case.

Another area in which questions have arisen has been the power of the county to regulate activities within municipal boundaries, such as through building permits. Such actions require the agreement of the affected municipality's governing body before the county may regulate activities inside its boundaries. Conversely, municipalities may regulate the subdivision of land and the layout of streets up to three miles outside their boundaries, if the county formally agrees to the municipalities' regulatory activity.

As the foregoing discussion indicates, the powers of county government are extensive. Yet, questions have and will continue to arise on occasion concerning specific actions a county may desire to undertake.

County Services

South Carolina counties are general purpose local governments. They provide a variety of governmental services, usually under their police powers, but also as a result of state constitutional and statutory requirements. In this regard, they are different from special purpose governments—also called special purpose districts—which usually provide one service, with a few exceptions.

All counties provide law enforcement usually through the sheriff's office. Horry County also has a county police department set up prior to home rule. In addition, counties usually provide detention or jail facilities. Historically, counties have had some responsibility for roads and bridges, and still do—while sharing this responsibility with the state, which has oversight for a large number of roads in the interstate, primary, secondary and local road system—and with municipalities in many instances. Counties are currently responsible for 34 percent of the state's roads versus the state controlling 62 percent and municipalities 4 percent. In recent years, changes have occurred in the way state monies are spent locally on roads, with county transportation committees being created to replace the role of the legislative delegation in setting priorities.

Counties are required to provide a public library system.¹⁵ County council appoints a board of trustees to control and manage the library.

Most counties also deal with solid waste disposal. Indeed, this is one of the most expensive services with which counties are involved due to state and federal environmental mandates concerning landfills.

¹³ S.C. Code Ann. § 4-9-25.

¹⁴ 311 S.C. 417, 429 S.E.2d 802 (1993).

¹⁵ S.C. Code Ann. § 4-9-35.



Marlboro County recently opened the critically-needed Marian Wright Edelman Public Library. South Carolina's counties are required to provide a county public library system. County council appoints a board of trustees to oversee the library.

Other services provided by counties range from courts to planning and code enforcement, recreation, and emergency medical services. Services such as these find variations among the counties with some having relatively sophisticated programs, while others are still developing programs. Examples of variation include planning and zoning, which may not be found in all counties, as well as building codes.

Yet other services may be provided by the private sector in some instances and the county or another governmental entity in others. One example of this is water and sewer service, a service area assuming more prominence as growth comes to unincorporated areas. Hospitals are another example. Some hospitals are special purpose governments, some are private, and others are public, usually county affiliated.

Most all counties are responsible for a number of governmental buildings, such as the courthouse, jail, office buildings and so forth. Some of these may be used more by state offices than county offices, which is often a source of some friction between county governments and the state when tax dollars must be raised to build and maintain such facilities.

Just as services vary from county to county, so do the methods of provision. Some county services are directly provided by the county with county employees. Others, however, may be provided by private companies working under contract with a county, or under some type of franchise agreement. Still other services may be provided by another governmental entity—such as a city or even a private, nonprofit agency under a contractual arrangement with the county. The fact that a county provides a service using someone other than county employees does not mean that the county surrenders its responsibility for the service, however.

Cooperative service arrangements exist in many counties. Such money-saving ideas are likely to become more frequent, as governments struggle to restrain cost increases in services.

Boundary Alteration

South Carolina's constitution provides for a maximum of 46 counties, and state law details their boundaries.¹⁶ However, new counties may be created or the boundaries of existing counties changed. Today, most boundary alteration proposals originate within a county when citizens of a specific geographic area desire to annex to an adjacent county. The procedures for such a change are outlined in state law and will be briefly reviewed.

¹⁶ S.C. Code Ann. §§ 4-3-2 *et seq.*

In addition, state law and the constitution provide for governmental consolidation within a county, such as city-county consolidation, and county-county consolidation. No city-county consolidation has occurred thus far, however, and further refinement is needed in some of the provisions of the consolidation statute.¹⁷

Several constitutional conditions must be met before a county's boundaries may be altered. These include a requirement that a county not have less than 500 square miles of land, less than \$2 million dollars of assessed taxable property, or a population of less than 15,000. In addition, a county's boundaries cannot be altered if it would move a boundary to within eight miles of the county courthouse.¹⁸

If these restrictions are met, an alteration may be proposed by the county governing body (in the "losing" county) or by a petition of 10 percent of the registered voters in the area desiring to move to another county. Funds must be deposited to cover various costs associated with the proposed change by the county or by the petitioners, as the case may be. The Governor would then appoint an annexation commission to study the change and have a survey prepared. Plats would be filed and a report made to the Governor, who may order an election in the area proposing to shift location, and in the gaining county. Two-thirds of those voting in the area wanting to shift counties must vote in the affirmative, and a majority of those voting in the county which would gain territory must also approve. The General Assembly must provide final approval of such a change.¹⁹

In the *Shelby County v. Holder* case, the U.S. Supreme Court ruled that the formula for determining which states are subject to preclearance in the Voting Rights Act of 1965 is unconstitutional.²⁰ This means that South Carolina is no longer subject to preclearance until such time, if ever, as Congress determines there is a need for preclearance and creates a new formula. In the event a county boundary alteration is proposed, the county is encouraged to contact the Voting Section of the Civil Rights Division of the U.S. Department of Justice.

Conclusion

County government in South Carolina has evolved from being an extension of state government to meeting citizen demands as full-service, general purpose governments. It will continue to evolve in response to changes in the relationship with state government and in response to changing citizen demands for services. Many of the challenges that are being faced do not recognize political boundaries (immigration, crime, pollution and growth). Greater cooperation among national, state and local levels of government will be required to address these issues.

Many citizens do not know which government provides a particular service. All they know is that they need or want the service, and they look to government to provide it. County government must balance this increasing demand for services with a declining willingness to increase taxes or fees to pay for the service. The challenge of paying for services may require that county government rethink the services it should be providing. It may also require county government to determine whether they are the best provider of services, or whether a private sector vendor may be able to provide the service at lower cost.

¹⁷ S.C. Code Ann. §§ 4-8-10 *et seq.*

¹⁸ S.C. Const. art. VII.

¹⁹ S.C. Code Ann. §§ 4-5-120 *et seq.*

²⁰ *Shelby County, Ala. v. Holder*, 133 S.Ct. 2612, 2013 WL 3184629.

Changing demographics, attrition of employees due to retirement, and the changing image of “government” service may make it more difficult for county government to attract and retain highly qualified and motivated employees. An aging population may place increased demands on government services ranging from emergency response and emergency medical transport to recreation. Changing technology offers the twin challenges of taking advantage of the possibility of improved services at lower costs with either the lack of countywide technology infrastructure or segments of the population unwilling or unable to fully utilize this emerging technology.

Historically, county government has evolved to address changes in South Carolina’s political and social environment. The future will require no less.

Additional Resources


- Visit <http://archives.sc.gov/sccountymaps/pages/default.aspx> for detailed information and maps that trace the formation of South Carolina’s counties.
- For more information about the history of local government in our state, see the entry titled “Counties, Districts and Parishes” by Dennis N. Lambries in *The South Carolina Encyclopedia* (edited by Walter Edgar, The Humanities Council, 2006).
- For additional information regarding the U.S. Voting Rights Act and county boundary alterations, contact: Voting Section, Civil Rights Division, U.S. Department of Justice, Room 7254–NWB, 950 Pennsylvania Ave. NW, Washington, DC 20530.

The Governing Body: County Council

Dennis N. Lambries, PH.D., University of South Carolina
Anna B. Berger, South Carolina Association of Counties

Roles and Responsibilities of County Council

County council is responsible for governing the county. Members of county council are part of a leadership team that is responsible for guiding the county's growth, development, health and safety. They are responsible for identifying and communicating the direction in which the county should move. County council is also responsible for adopting the policies and budgets that will move the county in that direction. Council members must accomplish this in an often chaotic environment over which they may have little or no control. Mandates, economic conditions, national and/or international conflict, changing technology and often competing citizen demands and expectations are just a few of the challenges that the council will face. By becoming a member of county council, each member has accepted these responsibilities. They are accountable to the citizens for the wisdom of their actions, both now and in the future. Council members must always remember that the decision they make today will influence the decisions that future councils will have to make. A politically expedient decision today can have significant, unintended consequences for future generations.

A politically expedient decision today can have significant, unintended consequences for future generations. 

There is a significant difference between campaigning and governing. During the campaign, a candidate may choose to focus on a small number of issues that they believe are the most important to

the county. They will focus their efforts on communicating the importance of those issues to the future of the county. They will attempt to persuade citizens that they are the candidate who is best able to address those issues. However, successful candidates must quickly shift their focus from campaigning to governing. Oftentimes, the issues that must be addressed were not part of the campaign debate. As a member of the governing body, they now share responsibility for guiding the county through any challenges that may occur and moving the county in a direction that best meets the goals, desires, and expectations of the county's citizens. This is no easy task!

Governance, the process by which elected officials shape the future, involves at least four elements:¹

- Establishing and maintaining linkages to citizens;
- Establishing and maintaining linkages to “stakeholders”;
- Providing policy leadership to address the needs and provide the services expected or demanded by citizens and other “stakeholders”; and
- Monitoring organizational performance against those policies.

¹ Material in this chapter is adapted from John Carver, *Boards that Make a Difference: A New Design for Leadership in Non-profit and Public Organizations* (Jossey-Bass, 1990), as well as from the previous edition of this chapter by Edwin Thomas.

Each of these elements requires different skills, requires a different time commitment, and impacts the individual council member's ability to achieve the goals and address the issues that were part of his/her campaign. Balancing the demands of each of these elements will consume most of council's time and energy.

Establishing and Maintaining Linkages to Citizens

Citizens are often included in any discussion of stakeholders. However, it is important to remember that citizens are more than just one stakeholder among many. They are the owners of government. The citizens are the reason that government exists. It is the interests of the citizens that members of county council, and the other constitutional and statutory officers, are elected to represent. County government is where the citizens go for services that can range from recreation and libraries to building inspections and permits. It is to the county government that they pay their taxes. County government's first allegiance should be to the citizens of the county. Businesses know that if their customers are dissatisfied with the quality of the goods and services purchased, they can go to a competitor. If citizens are unhappy with the goods and services they receive from their government, their only choice is to move. For most citizens, this is not an option. It is the responsibility of county government to meet the needs of its citizens in a professional, cost-effective manner. Citizens are not customers, they are the owners.

County government's first allegiance should be to the citizens of the county. ☺

Establishing and Maintaining Linkages to Stakeholders

The concept of stakeholders is critically important to understand as council seeks to develop and implement policies that will help move the county forward. Stakeholders are those individuals, groups (both formal and informal), businesses and organizations that are affected by or have an interest in the activities, functions and policies of the county. At a minimum, stakeholders include taxpayers, businesses, other local governments, state agencies, legislators, organizations that receive county funding, interest groups and county employees. The number and interests of stakeholders will differ from county to county.

Every council should periodically undertake a stakeholder analysis process. This involves not only identifying stakeholders, but also identifying the expectations that each has of county government. Knowing expectations will allow county government to evaluate its success or progress in meeting these expectations. Because a county has so many stakeholders, it is critical that council identify those stakeholders who are vital to the success of the organization and focus efforts on building strong linkages to these individuals and groups. Each issue that council faces will have its own set of stakeholder expectations, either in support of or in opposition to council's proposed course of action. Often the debates that occur among members of council revolve around whose interests should take priority. It has been suggested that governments are biased in favor of the organized. Council must be able to balance the interests of organized groups that give the appearance of widespread support with those of the citizens who often lack the skill or finances to become an "organized" interest.

Along with its responsibility to build linkages to stakeholders, the council also plays a critical role in gathering information from the environment and interpreting that information for the county. Knowing what is going on in the county, the state, and at the national and international levels that may impact the county and its future is a critical responsibility of council. During the information gathering process, council should make every effort to establish and maintain strong ties with the community. It is the council's job to make the public aware of all that the council does and the functions it performs on behalf of the community.

The emphasis here is on communication and partnership rather than the more typical defensive and adversarial relationship. Most of the critical issues facing county government today are issues that are beyond the capacity of the county alone to solve, e.g., solid waste, crime, economic development, workforce readiness, pollution. To be successful, county government must build and sustain coalitions and partnerships between governments and the private sector. The importance of council serving as the link between the local government and its stakeholders and the local government and its environment cannot be overemphasized. This is a function that only the council can perform.

Building and sustaining linkages to stakeholders is both a council and individual council member responsibility. However, it should be a coordinated effort. It requires that each council member invest time beyond that which is required to prepare for and attend scheduled council and committee meetings. Council members must be willing to participate in civic organizations, community events, relevant meetings and conferences; to research issues; and to meet with the county delegation as appropriate to discuss issues of importance to citizens of the county. The information gathered in this manner should be shared with all members of council, so the county as a whole will benefit from the efforts of all council members. It is not unrealistic to expect that, on average, a council member will spend three hours of preparation for each hour that a scheduled council meeting lasts.

Providing Policy Leadership

Council governs and provides leadership through the legislative process of adopting policies that address issues of concern to the citizens of the county as well as stakeholders who have a

Many councils struggle with confusion over what is policy and what is administration. ☹

vested interest in any particular policy area. The policies that are adopted by council should be consistent with the county's vision and help move the county in this direction. While council members

may be clear about their policy-making role, they often find it hard to put it into practice. Many councils struggle with confusion over what is policy and what is administration. It is precisely at this point that councils often fail. Absent a clear understanding of their role, they often begin to deal with staff-level policy matters rather than council-level policy.

The form of government under which the council operates defines the formal nature of the relationship between its policy role and its day-to-day administrative role. However, one major symptom of a council that is not focusing on its policy role is a tendency to become involved in the day-to-day administration of the county. Council should constantly remind itself that it was elected to govern the county by establishing policies and procedures and taking other actions that address the issues of concern to citizens and stakeholders. Council governs best when it is focused on establishing policies and procedures to help ensure that all citizens and stakeholders have access to the goods and services the county provides.

While there are no precise definitions of policy or distinctions between council-level policy and staff-level policy, there are some general guidelines. Policy can be thought of as values. It is council's responsibility to establish policies that do, fund or implement those things that the community values, e.g., economic development and public safety. Council-level policies are distinguished by the fact that they are to set direction rather than provide implementation guidelines. Council should focus on the ends of policy—what to do—rather than the means of policy implementation—how to do it. For example, council may decide that it is in the public interest to undertake a countywide beautification program to include cutting grass, planting flowers and trees, and litter control. To support this policy, funds are appropriated to implement the program. By establishing this policy and funding its implementation, council is saying that it values the appearance of the county, appearance is important to quality of life, and quality of life is important to the economic development and vitality of the county.

Ideally, staff can now develop an implementation plan for this policy and carry it out. At this point, council's role should be to monitor the organization's performance in achieving the policy goals that it adopted. All too often, however, councils make the mistake of getting into staff-level policy. Having decided to beautify, they now squander their limited meeting time discussing what type of flowers and trees to plant, the type of lawn-mowing equipment that should be purchased and how often the grass should be cut. These are management decisions that, as a general rule, are best left to professional staff. Council should continue to deal with the directional leadership level of policy questions that only council can deal with and let members of staff perform the jobs they were hired to do.

There are a number of reasons that councils tend to fall into the management role. First, it is often easier and creates an immediate sense of accomplishment. Governance, on the other hand, takes much more time and effort, and the consequences of policy decisions are often not evident in the short term. Setting policy and developing strategies requires in-depth discussion, review and analysis of information and data, and knowledge of the county and its environment. Second, and perhaps more troublesome, is the council member's need to feel in control and on top of all things going on in the county. Council members want to be able to account to the citizens. Nothing is more uncomfortable than having a citizen ask a question or make a complaint about something with which the member is not familiar. Being informed and accountable is important and requires that there be good communications, reporting, and complaint management systems in place, as well as trust between the council, chief administrative officer (CAO) and staff. Absent these things, councils and individual council members can fall into the trap of dabbling in the day-to-day. This can be perceived as interference. It can damage trust, organizational efficiency and organizational effectiveness.

At a minimum, there are six areas in which council must set policy, because it is the only body that has the legitimate authority to do so. Council may at its discretion define additional policy areas based on the needs of their organization and county. However, the six essential policy areas are:

- Establishing and communicating a vision for the county;
- Defining and supporting the organization's mission in accomplishing its vision;
- Identifying and reinforcing its governing values;
- Supporting the statutory relationship with the manager or administrator;
- Supporting the statutory relationship with staff; and
- Institutionalizing the governing process and conducting council business.

Establishing and Communicating a Vision for the County

Vision is perhaps the most significant policy decision council must make. The vision articulates the desired future state of the county. Establishing a vision and charting a course toward that vision is the essence of leadership. Successful communities must have a vision or direction. They need to know where they are going and what kind of places they want to become. Having and sharing a community vision allows council the opportunity to adopt policies that will help the county achieve its vision. Through their efforts to build linkages with citizens and stakeholders, council must create a climate of trust and a process in which people can come together to discuss issues, concerns, alternatives and the future of their community.

Establishing a vision and charting a course toward that vision is the essence of leadership. 🌍

To be useful, the vision must be seen by the county's citizens and stakeholders as desirable, credible and attainable. To be desirable, the vision must be widely shared among stakeholders.

To be credible, the vision must have been developed as a result of an inclusive community planning process that brings citizens and key stakeholders together. If it is to be attainable, the vision must be supported by both the public and private sectors. The vision must draw diverse groups and organizations together in a common cause and keep them together long enough to achieve it. This is the primary responsibility of those who govern.

Far more important than the format or length of the vision statement is the fact that the county's vision statement identifies a desired future that people will work together to achieve. Only then will it become a leadership tool.

Defining and Supporting the Organization's Mission in Accomplishing Its Vision

After vision, the mission statement is the most important organizational policy. Mission is different from vision. It identifies the contributions the organization will make to help the community achieve its vision. Often county council, each department, and all boards and commissions will have a mission statement to clearly state their role in helping the county realize its vision. A mission statement should answer the following questions:

- What is the scope and purpose of the organization?
- What services are we going to provide?
- At what cost?

A surprising number of government organizations do not have a thoughtful, well-written mission statement. Many of the disputes councils have are about questions of mission. Mission defines the role of the organization. The Home Rule Act gave counties the power to collect taxes and authorize expenditures for a wide variety of purposes. It is left to council to define, within those statutory parameters, what their county government will or will not do. What will the county assume responsibility for? What does the assumption of responsibility mean? Will the county fund and provide a specific service? Will the county provide the service with funds from other sources? Will the county fund other organizations to provide that service? Should the county privatize? These are not decisions that should be made lightly or ad hoc. They should be made based on a well-developed sense of organizational mission and purpose.



Approximately 400 persons attend the Jasper County Chamber of Commerce Lowcountry Boil each year. The event brings legislators, council members and other stakeholders together to promote the community's vision. Often, county council, each department and all boards and commissions have a mission statement to define their role in helping the community achieve its vision.

Like vision, the mission statement must be communicated and shared throughout the organization and the community. Every employee should understand the mission and have a sense of how their job supports the county's mission and vision. Having a clearly communicated mission statement is critical to making budgeting and day-to-day decisions.

The vision and mission provide a structure and context within which decisions can be made.

They become the basis for policy alignment, the process through which policy decisions are measured against their support for the council’s vision and mission statements. During the policy formation process, alignment is achieved when council answers the following questions: “How does this policy or procedure contribute to achieving our vision for the community?” “How does this policy or procedure contribute to fulfilling our mission? Is it consistent with it?” Council should periodically revisit the mission statement to see if it is still relevant given the stakeholders’ expectations.

Identifying and Reinforcing the Organization’s Governing Values

Every organization has a set of values, often unwritten, that influence the policy decisions that are made. Values are set and reinforced by the organization’s leadership. They become a viable part of the organization’s culture. They are interpreted and filtered by each level of management—who have their own, hopefully, consistent values—and eventually come to be understood and supported by the entire organization. Organizational values can be felt. There can be consequences for those who do not work in support of these values. Values influence decisions and behaviors much like a magnetic force. They impact every aspect of the organization from commitment to citizen service to work ethic and ethical conduct. To the extent that these values are supported by the leadership, employees adopt their work style and priorities to comply with these values.

Values can play either a positive or a negative role in governance. If innovation and creativity are valued, the employees know that new ideas are welcomed and they are encouraged to look for new methods and processes to meet citizen needs. If innovation and creativity are not valued, then employees quickly learn to “go along to get along” and will do little to identify alternative methods and processes that could make the county more effective or efficient. The same is true of other governing values that might exist—smaller government; larger government; no new taxes; citizens will support a tax increase, if it is justified to meet a public good; government is the problem; government is the solution. Although each of these is a statement of values, all too often they are presented as a statement of fact.

Because the makeup of council changes periodically, perceptions of the governing values also change. The challenge here is to make this process an open, conscious one. Without open discussion of values, citizens, stakeholders and employees can be left with no alternative but to assume values from the actions and statements of council. It is council’s responsibility to take time to understand the organization’s values, to surface them and to determine if they are consistent with its own. Thus, this process must start with council itself.

Successful organizations have instilled such governing values as customer service, quality, efficiency, responsiveness, fairness, caring and integrity. These values are evident in what the organization does and how it does it. They serve as guideposts for decision-making at all levels of the organization. However, it should be remembered that employees pay attention to those areas and issues to which the leadership pays attention.

Support the Statutory Relationship with the Manager or Administrator

Policies concerning the organization’s vision and mission define “what” the organization will do and “why.” Policies concerning the limits on the authority of the chief administrative officer (CAO) define the boundaries within which the organization “will” do. Depending on the form of government, the title for the person who fulfills this responsibility will vary, as well as the duties that are specified for them (e.g., manager, supervisor, administrator, director). For our purposes, “CAO” will refer to the chief administrative officer, whether elected or appointed.

Policies in this area set boundaries for the CAO and staff. They reflect the council’s values. At a minimum, the council will want the county’s business to be carried out in an effective, prudent and ethical manner.

Council may set limits on indebtedness, state that there can be no tax increase, or specify that they do not want to provide a specific type of service. These policy statements specify the means the CAO and staff can use to achieve the mission and vision council has articulated.

It would be virtually impossible for the council to define all the actions it will allow the CAO to take and all the activities in which it will allow him/her to participate. Therefore, it makes more sense to define the boundaries within which the council expects the CAO to operate.

Ideally, within those boundaries, the CAO should have complete authority. By setting such policies, council creates an organizational environment that fosters innovation, teamwork, creativity and an entrepreneurial spirit.

With a vision, mission and clearly-defined limits, the CAO—and by extension the staff—is able to carry out council’s policies in a professional manner.

Supporting the Statutory Relationship with Staff

Staff is accountable to the CAO through the organization’s chain of command. The CAO is accountable to the council, and the council is accountable to the citizens and other stakeholders. This chain of command gives structure to the communication between staff and council.

In defining the relationship between county council and county staff, the form of government must be considered. Under the council form of government, county council retains administrative authority. As such, based on its rules and procedures, council members might give orders or instructions to county officers and employees. However, the council may wish to specify in more detail the roles of the council, the CAO and the staff. The other three forms of government have statutory limitations placed upon their relationship with county officers and employees; state law addresses the powers of council and its members over county staff.² As a general rule, except for the purposes of inquiries/investigations and council organizational policies it establishes, the county council does not give orders or instructions to county officers or employees.

The council, CAO and the staff have specific roles that contribute to the success of the organization. The role of the council is to set the vision and mission, establish the values of the organization and ensure they are carried out through the CAO. The council takes care of the “what” and addresses governance issues. The role of the CAO is to manage the day-to-day operations of the county. He/she handles “how” the organization accomplishes its goals, within the boundaries set by council. The role of the staff is to do the basic work of the organization at the CAO’s direction.

While the number of employees who are hired and fired by the council varies from county to county, the CAO should be the major channel of information between the council and the organization’s staff. As a general rule, staff members who are not directly hired and fired by council should not be allowed to circumvent the CAO and go directly to a council member with a concern or complaint. Council members should not direct staff members who report to the CAO in the performance of their jobs. Policies for both council and staff should be established concerning communications between the council and the staff.

Confusion over roles is one of the greatest sources of conflict between councils and CAOs. To be effective, council and the CAO must function as a leadership team. This requires open communication, trust, honesty and integrity on both sides.

Institutionalizing the Governing Process and Conducting Council Business

The final set of policies the council should develop concerns how it conducts business and how it governs itself. The council should monitor and govern itself, as well as individual council members. The council must conduct business with discipline and integrity.

² S.C. Code Ann. §§ 4-9-430, 4-9-660, 4-9-850.

The council should have operating guidelines that address council discipline and responsibilities—including attendance requirements; coming to meetings prepared to discuss issues and make decisions; reading materials sent prior to the meeting; and standards of conduct, such as treating fellow council members with respect. Council should adopt policies on rules of procedure to include an order of business, dealing with public input, length of meetings, placing items on the agenda, how far in advance of the meeting materials must be distributed, etc.

All councils should adopt a policy regarding their responsibility to “speak publicly with one voice,” once a decision has been made on an issue. Individual members are responsible to the council as a whole. It is important to keep in mind that the power to govern is vested in the council, not in individual members of

council. The outcome of council’s vote on an issue represents the county’s policy. **While an individual member may not have voted for the outcome, he/she has a duty to support the coun-**

All councils should adopt a policy regarding their responsibility to ‘speak publicly with one voice,’ once a decision has been made on an issue. ☺

ty’s policy. To do otherwise damages the credibility of the governing body, the county organization and the effectiveness of council as a team. Remember that it is often how a council and its members act after dealing with a divisive issue that defines its quality as a governing body.

Council should establish policies designed to promote teamwork. The most important among these has to do with communication. It is essential that all members of council have access to the same information in a timely manner. Nothing is more destructive than for one member, or a group of council members, to have information that is not known to the other members. If one member makes a request for information from the CAO or a department head, it should be policy that the information is provided to every member. Each member has a responsibility to his/her fellow members in this regard.

Council policies should be kept up-to-date and in a notebook. As new members come on council, either the council chair or CAO should take time to review the contents of the notebook with them.

Monitoring Organizational Performance

The council ensures that the organization is doing its job through monitoring the CAO’s performance. The council should confine its concern regarding organizational performance to that for which it holds the CAO accountable. In assessing the organization, the council asks two basic questions:

1. Were the mission and results achieved?
2. Was this accomplished within the boundaries council set?

Organizational performance is measured through monitoring. There are several types of monitoring that can provide information to the council upon which to base its assessment. These include:

- Internal reports such as periodic updates from staff;
- External reports such as audits and surveys;
- Direct inspection by the council of an activity or program; and
- Informal input from stakeholders.

Council members will want to know what information is provided to them related to organizational performance and what types of monitoring the council does.

Councils generally consider their review of financial reports and departmental activity reports as monitoring. As important as that information is, it generally only tells us about inputs (dollars spent) and outputs (number of miles of roads paved, tons of garbage collected). What council is accountable to the stakeholders for are outcomes. Did the policies achieve the desired results? Is the quality of life improving in the county? Has the economy grown? Is the county moving toward its vision? This goes beyond *how much* service the county provided and deals with *why* it provides services. In monitoring, remember that services are only a means to an end. It is the level of achievement of the ends that council must measure.

The council should evaluate the CAO's performance at least annually. Providing feedback to the CAO on a regular basis will foster the organization's success in meeting its goals and fulfilling citizen expectations.

In addition, council should evaluate itself on an annual basis. How effective has it been in living up to its policies? Does council invest in training and development for itself? Do members attend the South Carolina Association of Counties' conferences? Do they participate in the Institute of Government for County Officials? Do they participate in community activities? Does council set aside time for an annual or semi-annual retreat?

The three contributions described in this chapter—establishing and maintaining linkages to the stakeholders, setting policies and monitoring performance—are unique functions that only the council can perform. Council must carry out its responsibilities in order for the county to achieve its vision and carry out its mission. The credibility of county government depends on it.

Additional Resource

- View/download *Model Rules of Parliamentary Procedure for South Carolina Counties, Second Edition* (edited by M. Clifton Scott and Jenna Stephens, South Carolina Association of Counties, 2010) and a sample format for parliamentary procedure ordinances via www.sccounties.org/publications.

Other County Officials

Anna B. Berger, South Carolina Association of Counties

Introduction

In addition to county council, the governing body of the county, there are a number of other elected and appointed county officials who play significant roles in conducting county business. The powers and duties of some important elected officials—such as the coroner, sheriff, auditor and treasurer—are addressed in this chapter. Given the critical role they play as the day-to-day leaders and managers of county government, a discussion of the chief administrative officers for the various forms of government is presented first. Additionally, the relationships between council and other elected and appointed officials are discussed.

Chief Administrative Officers for the Various Forms of Government

As was discussed in Chapter 1, four forms of government are available to counties in South Carolina. **The major difference between the forms of government is in where the administrative responsibilities and powers of the county are vested.** What type of chief administrative officer, if any, does each form of government call for and what are the powers and duties associated with the various positions? This section will address these questions and discuss the relationship between council and the chief administrative officer.

Council (Council Form)

The council form of county government is unique in that it is the only one of the four forms in which administrative power is vested in the council. The council has responsibility for both policy making and administration of county government.¹ The council may hire someone to assist it in carrying out administrative responsibilities or may designate the chair of council to carry out such activities. The council may consist of between three and 12 members. The terms of council members in this form—as in the other forms—may be two or four years.

Supervisor (Council-Supervisor Form)

In the council-supervisor form of county government, administrative responsibility resides in the supervisor. The supervisor is elected at-large for a term of two or four years and serves as chair of the county council.² The law states that the supervisor may vote only to break tie votes for the council. Compensation for the supervisor is determined by the council by ordinance and may be changed during the term for which he/she is elected, so long as the supervisor does not vote on the question.³

Counties operating under the council-supervisor form of government may have councils with between two and 12 members. State law provides that the council shall not remove any county administrative officer or employee appointed by the county supervisor or any of his/her

¹ S.C. Code Ann. § 4-9-310.

² S.C. Code Ann. § 4-9-410.

³ S.C. Code Ann. § 4-9-100.

subordinates except by two-thirds vote of the council present and voting.⁴ The law also provides that neither the council nor individual members shall give direct orders to any county officer or employee—either publicly or privately—except for purposes of inquiries and official investigations.

State law prescribes the powers and duties of the county supervisor. They include, but are not limited to, the following:⁵

- Serving as chief administrative officer of the county;
- Executing the policies and legislative actions of the council;
- Directing and coordinating the operations of the county;
- Preparing annual operating and capital budgets for the council;
- Supervising the expenditure of county funds;
- Preparing reports for the council on finances and administrative activities;
- Recommending measures to the council for adoption;
- Serving as presiding officer of the council and voting in ties;
- Serving as official spokesman for the council;
- Inspecting the books, accounts, records or documents pertaining to the property, money or assets of the county;
- Being responsible for the administration of the county's personnel policies approved by the council, including salary and classification plans; and
- Being responsible for the employment and discharge of personnel, including the county attorney, subject to the appropriation of funds by council.

The supervisor's exercise of authority over other elected officials is limited to the implementation of organizational policies established by the council.⁶ It should be noted that debate over the exercise and scope of this authority is still ongoing; and from time to time, the debate ends up being addressed by the courts. This is discussed more fully later in this chapter.

Administrator (Council-Administrator Form)

The council-administrator form of county government places the executive responsibility in the hands of the administrator. The administrator is an appointed official, employed by the council, who serves as the administrative head of county government—responsible for administration of all departments subject to the council's control. The council may employ the administrator for a definite term. Should the council decide to terminate the administrator, he/she shall be given a written statement of the reasons for termination and has the right to a public hearing at a council meeting.⁷

The council in the council-administrator form of government may consist of between three and 12 members. State law provides that, except for purposes of inquiries and investigations, the council shall not deal with county officers and employees who are subject to the direction and supervision of the administrator except through the administrator.⁸

⁴ S.C. Code Ann. § 4-9-430.

⁵ S.C. Code Ann. § 4-9-420.

⁶ S.C. Code Ann. § 4-9-430.

⁷ S.C. Code Ann. § 4-9-620.

⁸ S.C. Code Ann. § 4-9-660.

State law also provides that neither the council nor individual members are to give orders or instructions to county employees.

The powers and duties of the administrator include:⁹

Except for purposes of inquiries and investigations, the council shall not deal with county officers and employees who are subject to the direction and supervision of the administrator except through the administrator. ☉

- Serving as chief administrative officer of the county;
- Executing the policies, directives and legislative actions of the council;
- Directing and coordinating operations of the county;
- Preparing annual operating and capital budgets for the council, and requiring such reports, estimates and statistics as necessary from county departments and agencies;
- Supervising the expenditure of appropriated funds;
- Preparing financial and administrative reports for the council;
- Administering county personnel policies, including salary and classification plans approved by council;
- Employing and discharging county personnel, subject to council appropriation of funds for that purpose; and
- Performing other duties as required by the council.

The administrator is specifically directed by law to inform the council of anticipated revenues and the amount of tax revenue required to meet the financial requirements of the county when he/she presents proposed operating and capital budgets to the council.¹⁰

The administrator's authority over elected officials, either constitutional or statutory, is restricted to organizational policies established by the governing body.¹¹

Manager (Council-Manager Form)

Executive authority under this form of county government is vested in the manager. The county manager is an appointed official who reports to the council. The powers and duties of the manager are identical to those previously listed for the administrator.¹² The scope of the manager's authority over elected officials and the scope of council's authority over county officers and employees are similar to those described for the council-administrator form.¹³

The differences between the council-administrator and council-manager forms of government concern the county treasurer and auditor and the authorized number of council members. State law provides that in the council-manager form of government, the treasurer and auditor may be appointed by the council rather than elected.¹⁴ The council must determine the method of selection and, if appointive status is preferred, must pass an ordinance to that effect.

⁹ S.C. Code Ann. § 4-9-430.

¹⁰ S.C. Code Ann. § 4-9-640.

¹¹ S.C. Code Ann. § 4-9-650.

¹² S.C. Code Ann. § 4-9-830.

¹³ S.C. Code Ann. § 4-9-850.

¹⁴ S.C. Code Ann. § 4-9-860.

Once made appointive officers, the auditor and treasurer are subject to control by the council and manager in the same manner as other appointed department heads of the county. The council in the council-manager form of government may consist of between five and 12 members.

Relationship Between Council and the Chief Administrative Officer

In addition to the legal details of the working relationship between a council and its chief administrative officer, a critical aspect of the relationship bears discussion. The most effective way for a council to shape the activity of its chief administrative officer, and by extension the activity of all county employees, is by setting the strategic direction of the county. As was discussed in Chapter 2, this includes vision, mission and governing values. While it is clear that the law envisions that the day-to-day operation and management of the county is the responsibility of the supervisor, administrator or manager, the council has the authority and responsibility collectively to determine the strategic direction of the county through its policy-making and budgetary powers.

Philosophically and practically, the council and the chief administrative officer should be viewed and should function as the primary leadership team of county government. **The success of any county government lies with both the governing and administrative arms of the entity. Both are critical to the effective and efficient operation of the county and the delivery of services to its citizens.** Care should be taken to build and sustain positive relationships between the governing body and the chief administrative officer. They must work with each other to fulfill the powers and duties prescribed to them by law and meet the expanded demands and expectations of their citizens. Neither can be successful without the other.

Other Elected Officials

In addition to county council, there are a number of other officials that are important to the operations of the county. These officers are provided for in either the S.C. Constitution or in state law. **The constitutional officers are the clerk of court, coroner and sheriff, while the statutory officers are the auditor, treasurer, probate judge and supervisor (in the council-supervisor form).** It should be noted that in the two counties operating under the council-manager form (Greenwood and York), county council appoints the auditor and treasurer.

The clerk of court, coroner and sheriff are provided for in Article V, § 24 of the state constitution, and each is elected at-large for a four-year term of office. Although provided for in the constitution, the S.C. General Assembly has the authority to determine the powers and duties of these constitutional officers. The powers and duties of the coroner, medical examiner, sheriff, auditor and treasurer are discussed in the following section. A brief discussion of the elected judicial officials is also included. Further explanation of the duties and responsibilities of elected and appointed judicial officials can be found in Chapter 12, “The Judicial System.”

Coroner and Medical Examiner

The major powers and duties of the coroner are specified in state law. The principal duty of the coroner is to investigate deaths that occur for unknown or suspicious reasons. In this regard, the coroner may order autopsies and conduct inquests to determine the cause of death. Further, coroners must carry out all legal orders of the county council. The coroner is required to forward an unidentified body to the Medical University of South Carolina, or suitable facility, for preservation for at least 30 days.¹⁵ Training requirements and other minimum standards—such as residency, age and education—are mandated for persons serving as coroners.¹⁶

¹⁵ S.C. Code Ann. § 17-5-510 *et seq.*

¹⁶ S.C. Code Ann. § 17-5-130.

Counties with a population of 100,000 or greater may have a medical examiner, which is a physician or pathologist, and is employed by a medical examiner commission.¹⁷ In counties that have both a coroner and medical examiner, the duties of the medical examiner are specified in an annual contract between the county governing body and the medical examiner.¹⁸

Sheriff

The sheriff serves as the chief law enforcement officer of the county and has a broad range of duties.¹⁹ In the event of a vacancy, the coroner is to assume responsibility for the sheriff's duties until the office is filled by appointment or election.²⁰ A major responsibility of the sheriff is to serve writs and other orders of the circuit court or any other court of the state and to make arrests pursuant to these writs and orders. Additionally, the sheriff is charged with executing the orders of the county governing body. Counties may create a county police department to carry out law enforcement duties for the county.²¹ In this case, a referendum must be held before the council ordinance is implemented. Horry County is the only county in the state that has a county police department.

Auditor

The county auditor is instrumental in the collection of the property tax—the largest source of revenue for counties—by preparing and maintaining the tax roll. The primary responsibilities of the auditor are to keep the county's records of real and personal property and to calculate individual property taxes. The auditor is elected under the council, council-administrator and council-supervisor forms of government. Under the council-manager form, the auditor may be elected or appointed by county council as set by ordinance. The county auditor prepares the official tax book, which lists the owners of taxable property, the real and personal property that they own and the equalized value of that property. A second tax book is delivered to the county treasurer by September 30 of each year. The second tax book is the treasurer's warrant for the collection of taxes, assessments and penalties. Both property tax books, held by the auditor and treasurer, are called the county duplicate. The functions and duties of the auditor are regulated by the S.C. Department of Revenue.²² A specific listing of the duties of the auditor can be found in Title 12, Chapter 39 of the Code of Laws.

Treasurer

The county treasurer's primary responsibilities are to collect the property tax, to receive other county revenues such as state aid, and to invest those funds for the county until such time as they are needed to cover county expenditures. The treasurer also is charged with the collection of delinquent taxes and the sale of seized property. The treasurer is elected under the council, council-administrator and council-supervisor forms of government. Under the council-manager form, the treasurer may be elected or appointed by county council as set by ordinance. The specific duties of the treasurer are listed and described in Title 12, Chapter 45 of the Code of Laws. The duties and activities of the treasurer are regulated by the S.C. Department of Revenue.²³

¹⁷ S.C. Code Ann. § 17-5-220.

¹⁸ S.C. Code Ann. § 17-5-510.

¹⁹ S.C. Code Ann. §§ 23-15-20 *et seq.*

²⁰ S.C. Code Ann. § 23-11-50.

²¹ S.C. Code Ann. § 4-9-33.

²² S.C. Code Ann. § 12-4-520.

²³ S.C. Code Ann. § 12-4-520.

Judicial Officials

In addition to the officials previously discussed, there are a number of elected and appointed judicial officials that are important to operations of the county and should be noted. These include the clerk of court, circuit court judge, family court judge, probate judge, magistrate, master-in-equity and solicitor. Please see Chapter 12, “The Judicial System,” for a more detailed discussion of the powers and duties of these judicial officials.

Every county is required to properly record information regarding real and personal property. In 23 counties in South Carolina, this duty is performed by the clerk of court. A separate office called the register of deeds, formerly known as the register of mesne conveyances (RMC), exists in the remaining 23 counties. The S.C. Code provides that county councils appoint the registers of deeds in 14 of these counties.²⁴ The registers of deeds in three additional counties are also appointed. In six counties the register of deeds is an elected office.

Relationships Between Council and Other Elected Officials

The relationships between council and other elected officials are critical to the effective operation of county government. State law addresses these relationships, but in reality, smooth-working relationships are often more the result of interpersonal dealings than legal prescriptions. Unfortunately, relationships between council and other elected officials are too often characterized by conflict and tension as a result of their varying duties, responsibilities and interests. With

Relationships between council and other elected officials are critical to the effective operation of county government. 

this in mind, the main emphasis in this section is on the relationships specified by law.

Elected department heads administer many significant county activities. In most counties, the sheriff’s department oversees law enforcement, the auditor and treasurer operate the tax system, and the treasurer manages the investment of the county’s financial resources. Officials who are either elected or appointed by another authority run the judicial system. The county council and chief administrative officer have complete authority over the departments and personnel carrying out the various activities assigned to county government through the express or general powers granted under the Home Rule Act. However, when it comes to the county government’s authority over other elected county officials (and their employees) created by the constitution or general law, the picture is less clear. Since the inception of home rule in the mid-1970s, the S.C. Supreme Court, the S.C. Attorney General and revisions in the law have decided a number of issues, but new questions continue to arise. This is not surprising, given the fact that counties are still very much in their infancy.

The actions of county council impact the other elected county officials in five areas. The county council has the power and responsibility to do the following:

- Make appropriations to support county activities, including those of the departments headed by other elected officials;²⁵
- Develop personnel policies and procedures for county employees, including those working for elected officials;²⁶

²⁴ S.C. Code Ann. §§ 30-5-10 and 30-5-12.

²⁵ S.C. Code Ann. § 4-9-30(5)(a).

²⁶ S.C. Code Ann. § 4-9-30(7).

- Establish accounting and reporting systems;²⁷
- Require audits of agencies or departments receiving all funds from the county and to call for audits of those receiving any money from the county;²⁸ and
- Establish a centralized purchasing system for the county.²⁹

Conflict has arisen relative to these powers, particularly in the areas of appropriations and personnel. Therefore, a closer examination of council's powers related to the appropriation of funds and the handling of employees is warranted.

The council has responsibility for raising and appropriating funds for a wide range of county activities. There is rarely enough money to go around, particularly in this era of tight resources and taxpayer reluctance to accept additional taxes or fees. Therefore, the demand for county funds from the various units of county government far exceeds the supply. This inequity between supply and demand often leads to conflict between the requesting department and the council. When the gap between funds requested and funds available arises from a department under the authority of the supervisor, administrator or manager, the conflict is usually resolved prior to the issue making it to council. However, due to the very limited authority of a chief administrative officer over an elected department head, conflicts between the two generally must be resolved by the council.

For example, the sheriff is dependent upon appropriations from council to operate the sheriff's department. The sheriff's allegiance is first and foremost to the department. The council, on the other hand, must balance the sheriff's needs against those of many other agencies; and there is rarely, if ever, enough money to allocate to all of the budget requests. The law requires council to provide appropriations sufficient for the sheriff's department to perform its essential functions. The definition of "essential functions," and what constitutes the necessary resources to provide these functions, is somewhat open for debate. Similarly, attempts to transfer functions from an elected official's department to another unit of county government under the control of the chief administrative officer—or in the council form, the council—have been an issue for debate and conflict. **The courts and the Attorney General have generally found that the powers of elected officials cannot be altered by the council's control of the purse strings.** Questions still arise and are, from time to time, addressed in the courts.

The other major area of conflict growing out of the exercise of the council's power vis-à-vis other elected officials is that of personnel policies and employment decisions. The council is responsible, either directly or through the chief administrative officer, for the employment and discharge of county personnel. This authority does not extend to personnel employed in agencies or departments directed by an elected official.³⁰ For example, dismissed employees working for non-elected department managers might use a grievance procedure, if one has been established. However, employees working for a department or an agency headed by an elected official do not have this course of redress. Elected officials retain ultimate control over employment and dismissal of their employees. The Attorney General has interpreted this to mean that the council cannot use its power of appropriation to, in a sense, terminate an employee of an elected official by removing funding for the position.

The council in all four forms of county government has the authority to establish personnel policies and procedures that apply to all employees of the county except those who are elected.

²⁷ S.C. Code Ann. § 4-9-30(8).

²⁸ S.C. Code Ann. § 4-9-150.

²⁹ S.C. Code Ann. § 4-9-160.

³⁰ S.C. Code Ann. § 4-9-30(7).



Conflicts have arisen over the application of personnel policies to employees of elected officials—particularly sheriff’s deputies. The S.C. Supreme Court ruled that countywide personnel policies and procedures do not apply to sheriff’s deputies. However, they do apply to “non-sworn” employees in the sheriff’s office.

This means that personnel policies and procedures apply to employees working under the direction of elected officials. This authority includes the development of classification and compensation systems. While the law may appear clear on this issue, many conflicts have arisen over the application of personnel policies to employees of elected officials—particularly related to the status of sheriff’s deputies. In *Heath v. Aiken County*, the S.C. Supreme Court ruled that countywide personnel policies and procedures do not apply to sheriff’s deputies.³¹ However, they do apply to other “non-sworn” employees in the sheriff’s department.

and other elected county officials. After all, the elected officials have powers and responsibilities given to them by the S.C. General Assembly, not county council. Further, these elected officials often are of the opinion that their ultimate “bosses” are the people, not the council. They must be able to operate and fulfill their responsibilities, although council might prefer a different system. Moreover, these officials sometimes may feel that in order to fulfill their responsibilities, they need more personnel and specialized equipment than the county council, which must set priorities for the whole county government, is prepared to fit into its limited budget. While conflict is to be expected and may, in fact, be natural, the manner in which this conflict is handled significantly impacts the effectiveness of county government. Further, it impacts the way county government is perceived and the level of trust citizens have in county government. For the benefit of the community, council and other elected officials must deal with each other in good faith. To do less is to diminish the ability of the county government to effectively and efficiently serve the needs of its people.

It is inevitable that from time to time there will be conflict between council

Conclusion

To effectively ensure that the needs of the people it represents are met, county council is very dependent upon other county officials. In some cases, the council has direct authority over these officials, but in other cases it does not. The statutory provisions that govern these relationships provide a guide; but these provisions are not sufficient. After all, these relationships are not played out between sterile institutions, but are the result of continual interactions between human beings. Like all relationships, therefore, they must be cultivated and constantly nurtured. Some conflict appears inevitable, but effective relationships between county council and the other county officials are not a luxury; they are an absolute necessity.

³¹ *Heath v. Aiken County*, 295 S.C. 416, 368 S.E.2d 904 (1988).

Additional Resources

- For information about qualifications for the office of coroner and contact information for county coroners, visit the S.C. Coroner’s Association at www.sc-coroners.org.
- For a directory of county sheriffs and information about the S.C. Sheriffs’ Association, visit <http://sheriffsc.org>.
- Visit www.scattonline.org to learn more about the S.C. Association of County Auditors, Treasurers and Tax Collectors and the duties of these county officials.
- For information about the roles and responsibilities of judicial officials, visit the S.C. Judicial Department’s website via www.judicial.state.sc.us.

County Boards and Commissions

Dennis N. Lambries, PH.D., University of South Carolina

Introduction


County governments in South Carolina are no longer limited to providing traditional state-level services, such as the judicial system and roads and bridges. Increasingly, they provide a wide range of services traditionally provided by municipal governments. Among these services are solid waste disposal, animal control, water and sewer, and recreation. To provide these services in a cost-effective manner when and where they are needed, county council is tasked with making policy decisions in each of these areas. These policy decisions impact every citizen of the county either directly or indirectly. As a result, it is important that citizens have the opportunity to provide input to their elected officials about the quantity, quality and availability of services.

Faced with the increasing responsibility to develop sound policies that help provide equitable service delivery, **county governments use advisory boards and commissions to gather citizen input.** The input provided by citizens through the process of public hearings, work sessions and scheduled meetings conducted by the boards or commissions becomes recommendations that are made and presented to council for consideration and any necessary formal action. For citizens, input into the process of adopting policies begins with participating in electing the members of county council as well as a number of constitutional and statutory officers. This is done by running for office, helping get a candidate elected, and voting (see Chapter 3 for an overview of these other elected officials). Through participation in the work of boards and commissions, either by volunteering to serve or attending the board's meetings and public hearings, citizens have the opportunity to provide input into county government policies that guide county council.

County government in South Carolina has considerable flexibility in defining the duties and responsibilities of any board or commission it creates. Broadly defined, county council has the authority to:

...establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title.¹

With few exceptions, the terms “board” and “commission” can be and often are used interchangeably. The only limitation is that the name given to any board or

Boards and commissions are able to best serve their community and county council when there is a clearly defined set of expectations. 

commission must be consistent with any external authority (such as action taken by the S.C. General Assembly) that governs its creation. Two examples of the need for consistency with the requirements of the governing authority are the planning commission and the board of zoning appeals.

¹ S.C. Code Ann. § 4-9-30(6).

Boards and commissions are able to best serve their community and county council when there is a clearly defined set of expectations. Additionally, board and commission members must understand their roles, responsibilities and limitations.

In deciding to establish any particular board or commission, council is not delegating either its decision-making or legislative responsibility. County council, as the elected representative of the citizens, retains for itself ultimate policy-making authority. With the exception of boards and commissions which exercise quasi-judicial responsibilities and for which there is a statutory procedure for appealing decisions (e.g., board of zoning appeals, architectural review boards, etc.), council is not bound by the recommendations made by any board or commission. There should be ongoing communication between the council and boards. The legitimacy and sustainability of any board whose recommendations are routinely dismissed should be questioned.

Establishing the Board/Commission

The appointing authority creates the roles, responsibilities and environment in which the board operates through the ordinance that creates the board. The ordinance should encourage geographic representation. This can be accomplished by identifying communities of interest or designating the number of board members from each council district. To help ensure that the input of all citizens is promoted, the ordinance should encourage racial, gender and ethnic representation on every board or commission. Business or technical interests (such as finance, legal and development) should be represented on boards whose responsibilities have direct bearing on those interests. Planning, zoning, airport, fire and emergency boards are some examples where the technical expertise of individual board members adds value to the board's decision-making process.

The ordinance can also specify staggered terms, so that a portion of the board membership is either reappointed or replaced at two-year intervals. The ordinance should also specify the beginning and ending date for each member. For example, terms could begin on July 1 and end on June 30. For new boards, specifying that the initial appointment serve one, two, three or four years as appropriate can create staggered terms. The expiration of terms is of critical importance to allow an orderly procedure to reappoint and replace board members.

The board's bylaws must further define—within the bounds of the ordinance—length of term. If a member is unable to complete

Vacancies that remain unfilled may have a negative impact on the ability of the board to do its work. ☹

the entire length of their appointment, at what point is the remainder of the term considered a full term for the purposes of reappointment? As a general rule, if there is more than one-half of the original term remaining, the new appointee is considered to have completed a full term. If there is less than one-half of the original term remaining, the new appointee is not considered to have completed a full term. Terms should be tied to the position, not to the person filling the position. The advantage of using this method for terms is the control and consistency it provides the appointing authority—and the staff who must track membership terms and ensure appointments and reappointments are made in a timely manner. Vacancies that remain unfilled may have a negative impact on the ability of the board to do its work.

Recruitment and Appointment

Effective boards do not just happen—they must be developed. This begins with recruitment and appointment of citizens to a board or commission. The appointing authority plays a major role in helping to ensure that the citizens who volunteer and serve as members of the various boards and commissions have the background and knowledge needed to perform their responsibilities.

To meet statutory requirements for boards and commissions and to take advantage of the citizen input that can be provided through them, great care must be given to the manner in which board members are recruited and selected. In addition, the ability of the board or commission to fulfill its duties is directly related to the quality of the members being appointed. Training can be provided to ensure that members have the technical skills they need. However, there is no substitute for individual interest, commitment and concern for the role of the board. The appointing authority must take its responsibility for selecting quality individuals seriously. Failure to do this will result in boards and commissions that are not capable of fulfilling their responsibilities. Flawed decision-making practices can subject the jurisdiction to risk—both to the health and safety of citizens and the costs of any legal challenges. Inept boards make it more difficult to recruit and retain the quality membership needed to be successful. Today's citizens have any number of demands upon their time. It is difficult, if not impossible, to retain volunteers to serve on a board that accomplishes little or nothing.

There are two other major concerns that must be addressed when recruiting new board members. First, failure to fill vacant positions with qualified individuals decreases the value of the board to both the citizens and to the council that appointed them. Boards play an important role in keeping councils informed of issues and concerns throughout the community. Filling vacancies with members who are not representative of the community denies all the citizens of their right to access the functions of their government. To the degree to which the membership is not representative of the community as a whole, the issues being discussed and the solutions being recommended will tend to favor the interests of those who are represented on the board. Second, potential board members may have a personal interest in the functions of the board. To the degree to which this interest goes beyond their role as a board member and interferes with the operations of the organization, confusion, mistrust and poor management can result. The appointing authority must make sure that it knows the background, interests, past participation and commitment of potential board members. A board member with a hidden agenda or an overly zealous interest can disrupt the daily operations of the staff who support the board.

One final consideration must be mentioned concerning the length of the term of board members. In some instances, state law places some restrictions on terms and reappointment. Often this is limited to a requirement that the terms overlap. However, for the most part, state law is silent on the number of terms any member can serve. Additionally, many local ordinances allow board members to continue to serve on the board until replaced. While a few ordinances specify term limits, this is the exception rather than the rule. Turnover on any board should be balanced between retaining the experience that can only be gained through serving on the board with the need to ensure that the composition of the board represents the entire community.

Recruitment must be a continual process. The appointing authority should maintain a current list of citizens who have expressed interest in being a member of local boards and commissions. This is of critical importance, because the appointing authority has a responsibility to fill vacancies in a timely manner. As has been suggested, failure to do this can have long-term negative impacts for both the board and the appointing authority to respond to issues of concern to the community.

There are several strategies available to the appointing authority, generally county council, to help ensure the quality of board members appointed.

- The appointing authority can rely on its members to recruit from individuals they know and who have expressed an interest in serving on a board or commission.
- The appointing authority can advertise via newspapers, radio, public access television and other media. The advertisement should contain the name of the board or commission, the general responsibilities of the board or commission, the frequency of meetings and the term of the appointment. The advertisement can be designed to recruit for a specific board, or it can be general and list any number of boards and commissions.

- The appointing authority can publish a booklet listing the boards and commissions they appoint. The booklet should contain the same general information as that contained in the advertisement. The booklet can be made available at county and municipal offices. It can also be published on the jurisdiction’s website.
- The appointing authority can publicize the role of boards and commissions at its scheduled meeting. This can serve to emphasize the importance of the various boards and commissions that they appoint. In addition, it reemphasizes the importance of citizen participation in local government.
- The appointing authority can request that each board provide assistance. The board can be asked for input into the selection and appointment process by recommending or referring the names of individuals who have expressed interest in serving on the board. At a minimum, the board should forward a letter to the appointing authority indicating whether a board member whose term is about to expire is eligible and/or recommended for reappointment and whether the board member agrees to serve another term.

Routine appointments/reappointments should be brought to the attention of the appointing authority at least three months prior to expiration of the term. Whatever method or methods are used, having an ongoing recruitment process in place will help to ensure that vacancies on boards and commissions are filled in a timely manner. The following table provides a recommended format for tracking board membership, terms and appointment/reappointment dates:

Table 1 Recommended Format for Tracking Board Membership	
Name of Board	Airport Commission
Name of Board Member	Ima Boardmember
Date of Appointment	July 1, 2012
Expiration of Term	June 30, 2016
District Represented	(If Applicable)
Profession Represented	(If Applicable)
Eligible for Reappointment	Yes/No
Recommended for Reappointment	Yes/No
Date Recommendation Forwarded to Appointing Authority	March 30, 2016

Each jurisdiction should add other information as needed to enhance the utility of the format. Based on the frequency of scheduled meetings, it might be necessary to notify the appointing authority more than three months in advance of an anticipated vacancy. Whatever process is used for notifying the appointing authority of vacancies on a board or commission, the goals are the same—nominating interested citizens who have a desire to serve and having an orderly procedure to ensure that no board or commission has a vacant position.

Orientation of New Members

Council should ensure that there is a comprehensive orientation for new members on any board or commission it appoints. This orientation process begins by not leaving positions vacant. Where possible, members should be notified of their appointment prior to the effective date of their appointment. This will allow the new board member to prepare for the first meeting.

At a minimum, the orientation should include a notebook containing:

- A copy of the letter appointing them to the board or commission;
- Appropriate federal and/or state statutes;
- County/municipal ordinance or resolution that created the board;
- Bylaws of the board or commission;
- Minutes for at least the previous six months;
- A copy of the latest budget documents;
- A list of board members with contact information;
- A schedule of meeting dates for the next six months; and
- A list of support staff.

Other possible components of the new board member orientation include:

- Pairing the new member with a more experienced member. This would provide the new member a “mentor” to help them understand the board history and procedures.
- Preparing a tour or slide presentation highlighting areas of importance to the board. This could include staff, facilities and/or geographic areas within the jurisdiction that are within the scope of responsibility of the board.
- Conducting a “transition” meeting or work session that provides a briefing on the major issues being addressed by the board.
- Providing the opportunity for ongoing training (both professional and technical) and leadership development.

There is a requirement that board members appointed to both the planning commission and the board of zoning appeals complete a six-hour orientation within the first year of appointment and annually receive three hours of continuing education. Members of these two boards, as well as the professional staff who support their activities, are required to annually file a certification of compliance with the clerk to council. Failure to comply with these educational requirements may result in the member not being able to serve on the planning commission or zoning board of appeals until they are met.²

What Should Council Expect from the Boards and Commissions It Appoints?

Council should have, and clearly state, at least three expectations of each board or commission it appoints. First, the board or commission must make informed recommendations and decisions. Second, the board or commission must be a source of communication and information for both the community and elected officials. Third, the board or commission must provide leadership in its area of responsibility.

Council should have, and clearly state, at least three expectations of each board or commission it appoints. ☹

Perhaps the most important responsibility of the board members is to know their roles, responsibilities and limitations. These can be found in a variety of documents. If the board or commission is created as the result of state law (e.g., library board of trustees), the duties of the board or

² S.C. Code Ann. § 6-29-1380.

commission will be defined in detail. Local ordinances may also emphasize or elaborate. Knowing what is provided in state law may not be sufficient. The home rule authority of local government and the form of government may impact the board's local autonomy. For example, if the local government is an administrator or manager form, the board's role in staff issues may be different. If a county creates the board or commission, the ordinance or resolution authorizing the board will define its duties in detail.

In general, local appointed boards and commissions are advisory in nature. They are created to assist the appointing authority in meeting the needs of the community. Council may not delegate legislative authority to a board or commission. Boards and commissions may not exceed the authority given to them. If there is ambiguity, it must be addressed and resolved by the appointing authority. Uncertainty over roles and responsibilities is the greatest source of conflict within most organizations.

The job of the board or commission is to provide the appointing authority with guidance, advice, recommendations and support to meet the needs of the community. Board members are expected to perform their duties in an ethical and prudent manner. The board's primary responsibility is to make informed decisions and recommendations. It is also important that they be a source of communication and information and provide policy leadership.

Make Informed Recommendations/Decisions

Most county appointed boards and commissions are advisory in nature. Their primary responsibility is to make informed recommendations and decisions. These actions are forwarded to the appointing authority for final action. It is critical that the board and the appointing authority have ongoing communication to keep each other informed of changes in the environment that may impact the actions of the board.

In performing this responsibility, it is critical that board members have a working knowledge of the:

- S.C. Code of Laws;
- County code of ordinances;
- Board bylaws;
- Parliamentary procedures;
- Ethics, Government Accountability, and Campaign Reform Act³; and the
- Freedom of Information Act⁴.

Be a Source of Communication and Information

Board members play an important role in providing information to both the community and elected officials. They are appointed to assist council in both identifying and meeting the needs of the citizens. In performing their responsibilities, board members must make every effort to communicate to the citizens the board's purpose. They must ensure that citizens have an opportunity to express their perspectives on issues of concern to the community or on issues being addressed by the board. In order to maintain the public's confidence, the board must conduct its meetings in a professional manner. It must ensure that citizens have the opportunity to attend the meetings and to make presentations to the board on issues or concerns.

³ S.C. Code Ann. §§ 8-13-100 *et seq.*

⁴ S.C. Code Ann. §§ 30-4-10 *et seq.*



Georgetown County recently opened the Thomas W. Edwards, Jr. Terminal at Georgetown County Airport. The Georgetown County Airport Commission plays an integral role in making improvements to the airport, which receives about 24,000 aircraft per year.

Boards and commissions appointed by local governments do not have the autonomy to act independently of the appointing authority. However, within their scope of authority, boards do have the opportunity to provide leadership. An aviation or airport commission can provide council with information about future needs, improvements and the benefits of safe, adequate air service. Library boards can help determine community needs and recommend actions that improve the quality and quantity of service provided to the community. Although council may have other considerations that prevent them from acting on any board's recommendations, those recommendations—based on the needs of the community—will help chart the future direction of the county.

Elected officials and the members of boards and commissions that they appoint are a team that works together to address both the short- and long-term needs of the county. The degree to which they all understand the nature of the relationship between and among them will determine the effectiveness of the boards and commissions appointed by council.

Provide Leadership

There is no substitute for being aware of the challenges and opportunities facing county government. Membership on a board or commission reflects a responsibility that has been accepted by each board member to continually educate and inform themselves about key issues impacting their area of responsibility. For members of an airport commission, are there pending changes to Federal Aviation Administration regulations and guidelines that may impact the continued operation of the airport? For example, length of runway, automated systems, regulation of base operations or development adjacent to the airport property are areas which may require an investment of resources or finances on the part of the county to maintain the viability of its airport. It is critically important that members of the planning commission work with any other entity within the county that operates with a long-term vision or strategic direction to ensure that there are common elements among the plans. Long-term plans for expansion of a recreation program may be dependent upon land use plans and current zoning ordinances. The same situation can exist with developers and identifying appropriate areas within the county that can support anticipated development. The water and sewer commission should make sure that the long-term plan for expansion of its system is consistent with the long-term development plan of an economic development commission and the comprehensive plan.

Every board and commission should attempt to prepare an annual report to the appointing authority on the issues and challenges that they see facing the county. Where appropriate and as needed, background information and alternatives may be included in any presentation that is made. This report can be either a written report or an audio-visual report presented at a

council meeting or work session. This provides not only an opportunity for the board or commission to update the appointing authority on its work, it also provides the appointing authority the opportunity to ask questions and provide additional guidance. Any actions that can be taken to strengthen communication between the appointing authority and individual boards and commissions can only enhance their value to both the appointing authority and the community as a whole.

While ongoing communication between the appointing authority and the various boards and commissions has great merit, it is always important to remember that boards and commissions are advisory in nature. The appointing authority retains legislative authority. With the noted exception of boards and commissions whose statutory authority is quasi-judicial, the majority of local government boards and commissions are advisory in nature. While they do play a valuable role within the community, they are not the elected decision-makers.

County Appointed Boards and Commissions

Listed below are some boards and commissions that have been created by county governments in South Carolina. They represent the wide range of policy and/or service areas that can be addressed through the creation of boards and commissions.

- *Accommodations Tax Board.* Members of this board advise council in matters concerning the expenditure of revenues received by the county by means of a two percent state tax on tourist lodging facilities.⁵
- *Airport Commission.* It is the duty and responsibility of the airport commission to provide for, recommend, administer and supervise the functioning of the county airport and any other airport or aeronautical needs of the county.
- *Appearance Commission.* This commission seeks to improve and enhance the overall appearance of the county.
- *Board of Assessment Appeals (Tax Equalization Board).* The board of assessment appeals meets whenever necessary to act on appeals from assessments of the tax assessor or to refund claims as determined by the assessor, auditor or treasurer. The board may change assessments of the assessor for the current year.⁶
- *Board of Zoning Appeals.* If council has adopted the land use element of the comprehensive plan and has decided to implement zoning, it must appoint a zoning administrator to administer the zoning ordinance and a board of zoning appeals to hear appeals to the rulings of the zoning administrator. The board of zoning appeals has the power to hear and decide appeals where it is alleged there is an error in an order, requirement, decision or determination made by an administrative official in the enforcement of the zoning ordinance.⁷
- *Building Codes Board of Adjustments and Appeals.* This board provides citizens with a means to appeal decisions made by building officials.
- *Clean Community Commission.* It is the duty and responsibility of the clean community commission to study litter control problems in the county and to recommend to the county council and other governmental bodies within the county means to efficiently provide for proper methods of litter control.

⁵ S.C. Code Ann. §§ 6-4-5 *et seq.*

⁶ S.C. Code Ann. §§ 12-60-2530 *et seq.*

⁷ S.C. Code Ann. §§ 6-29-790 *et seq.*

- *Commission on Alcohol and Drug Abuse.* The commission advises county council, staff and departments in matters concerning the provisions of ongoing programs in prevention, intervention, treatment and aftercare for alcohol and drug abuse programs.
- *Commission on Homelessness.* This commission acts as an advocate for the needs of the homeless. It also identifies resources necessary to address the needs of the homeless and encourages coordination and planning for delivery of services.
- *Community Relations Commission.* The commission advocates community harmony, provides an objective forum for fairness and equity, seeks to eliminate discrimination, and promotes accessibility to public services and facilities irrespective of race, age, sex, national origin or disability.
- *Construction Adjustments and Appeals Board.* The board's purpose is to establish rules and regulations for its own procedures not inconsistent with the Standard Codes; to hear appeals relative to the Standard Code, National Electrical Code, development standards ordinance and other county ordinances.
- *Disabilities and Special Needs Board.* The purpose of the board is to plan, coordinate and provide in-home and community services for people with intellectual disability and related disabilities, autism, traumatic brain injury, and spinal cord injury and related disabilities.
- *Economic Development Commission.* The purpose of the commission is to promote and encourage industrial and commercial development of the county.
- *Emergency Medical Board.* The purpose of the emergency medical board is to ensure that all persons who attend patients, either in an emergency or regularly scheduled ambulance transport, meet the medical standards set forth by the board.
- *Farmer's Market Board.* This board develops, implements and enforces rules and regulations that may be amended from time to time for the orderly and equitable operation of the county farmer's market for the benefit of county farmers and citizens.
- *Fire Commission.* The purpose of a fire commission is to organize, establish and assign areas of fire control responsibility throughout the county and to obtain maximum fire coverage of the entire county, commensurate with the personnel and equipment available.
- *Fire Rescue Commission.* This commission coordinates the presently existing fire rescue departments throughout the county in an effort to obtain maximum fire rescue coverage. It establishes policy priorities to ensure the best use of dollars available.
- *Health Board.* The board is empowered to make reasonable rules and regulations for the promotion of health and the prevention of disease within the county.
- *Health and Wellness Commission.* The duties of the health and wellness commission are to identify health issues in the county, to coordinate existing services and/or the establishment of additional services or programs to meet those needs. The commission will seek the advice of the citizens by appropriate means (i.e., hearings, surveys) in identifying concerns and solutions. The commission also serves county council as an advisory body in dealing with health-related matters.
- *Health Scholarship Board.* The board administers a scholarship program for county residents who are students pursuing courses of study leading to careers in the medical profession.

- *Historic Preservation Review Board.* The board’s purpose is to provide the planning board with records, an ongoing survey, evaluations and recommendations concerning the preservation and protection of historically significant structures and sites. In addition, the board can issue or deny Certificates of Appropriateness and issue stop orders.
- *Hospital Board.* This board monitors the delivery of healthcare and related services provided to county citizens.
- *Library Board of Trustees.* The library board of trustees is the only board or commission that county governments in South Carolina are required to appoint. Counties are required to provide library services to their citizens. This can be accomplished either by creating a library or by joining with other counties to provide these services. The purpose of the board of trustees is to oversee the operation of the county library—including employing a chief librarian and acquiring real and personal property in the name of the county for the exclusive use of the county public library system.⁸
- *Mechanical Board of Adjustments and Appeals.* The board may revoke the license of any mechanical contractor who is found guilty of fraud or deceit in obtaining a license or of gross negligence, incompetence or gross misconduct in conducting business as a contractor.
- *Parks and Recreation Commission.* The purpose of the commission is to provide recreational activities throughout the county—including active sports, cultural activities and park development.
- *Planning Commission.* If a county government decides to implement countywide land use planning, the county council must appoint a planning commission to help meet the county’s planning needs. It is the function and duty of the planning commission to undertake a continuing planning program for the physical, social and economic growth, development and redevelopment of the area within its jurisdiction. In general, the planning commission will prepare and present for council’s adoption a comprehensive plan that identifies local resources, assets, needs and goals. The comprehensive plan will include a timeline for meeting the goals identified in the plan. Each element of the comprehensive plan must be updated every five years, and the entire plan must be updated every 10 years. Part of the comprehensive plan is a land use element that provides the foundation for zoning.⁹
- *Solid Waste Advisory Council.* This group advises council in determining appropriate levels of public solid waste management services for residential, commercial and industrial taxpayers and governmental entities within the county.¹⁰
- *Volunteer Fire Commission.* The purpose of the volunteer fire commission is to coordinate the activities of volunteer fire departments in the county. All matters related to fire protection must first be submitted to the commission for consideration and may then be presented to council by the commission.

⁸ S.C. Code Ann. §§ 4-9-35 *et seq.*

⁹ S.C. Code Ann. §§ 6-29-310 *et seq.*

¹⁰ S.C. Code Ann. §§ 44-96-80 *et seq.*

Ethics and Public Service

Edwin C. Thomas, Formerly with the University of South Carolina

Introduction

Ethics is often defined as:

- The discipline dealing with what is good and bad and with moral duty and obligation;
- A set of moral principles or values;
- A theory or system of moral values;
- The principles of conduct governing an individual or group.

Michael Josephson provides a more practical definition:

Ethics refers to standards of conduct, standards that indicate how one should behave based on moral duties and virtues, which themselves are derived from principles of right and wrong. As a practical matter, ethics is about how we meet the challenge of doing the right thing when that will cost more than we want to pay.

There are two aspects of ethics...the ability to discern right from wrong, good from evil and propriety from impropriety...[and]...the commitment to do what is right, good and proper. Ethics entails action.¹

For a variety of reasons—scandals, media attention, the complex policy issues facing government, the impact of continued fiscal stress and increasing partisan rancor—the credibility of government and government officials continues to erode. The public does not trust its government. As a public official, one of the most important responsibilities is to safeguard the public trust. Because of this, individual public officials, and the county government as a whole, are held to a very high standard of conduct. Everything you do must not only be right, it must also look right.

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Because of this, individual public officials, and the county government as a whole, are held to a very high standard of conduct. Everything you do must not only be right, it must also look right.

But what is the right thing to do? What are the standards that we are held to? What does the public expect of public servants? Let us start with the law. Obedience to the law is the most basic level of ethics.

The Ethics, Government Accountability, and Campaign Reform Act of 1991

In the wake of Operation Lost Trust, the legislature passed the State Ethics, Government Accountability, and Campaign Reform Act² in 1991 in an effort to restore public trust in governmental institutions and the political process. This act overhauled the existing ethics, campaign finance and lobbying laws.

The act is heavily based on disclosure requirements, which are designed to ensure that all individuals have a fair and equal opportunity to participate in the governmental process, to control fundraising and contributions by special interest groups, and to avoid conflicts of interest.

¹ Michael Josephson, *Making Ethical Decisions* (Josephson Institute of Ethics, 2000).

² S.C. Code Ann. §§ 8-13-100 *et seq.*

The preamble of the act states:

The trust of the public is essential for government to function effectively. Public policy developed by elected officials affects every citizen of the state, and it must be based on honest and fair deliberations and decisions. This process must be free from all threats, favoritism, undue influence and all forms of impropriety so that the confidence of the public is not eroded.

The Ethics Reform Act applies to all public officials, public employees and public members of the state and political subdivisions, with the exception of members of the judiciary. The law also covers probate judges, candidates for public office, and committees or groups working on behalf of candidates. The major provisions of the act that affect county officials are discussed below.

Article 7, Rules of Conduct

This section of the Ethics Reform Act regulates the actions of elected officials and public employees at all levels of government and includes a number of prohibitions that are designed to avoid conflicts of interest.³ **The major prohibitions include:**

- Using one's office or position for personal gain. The rules of conduct define personal financial gain and conflict of interest to include a situation where a member of the official's or employee's immediate family or a business associate is involved, as well as the individual official or employee. When facing a matter in which an official has a conflict of interest, the act requires the official to prepare a written statement describing the matter requiring action or decisions and the nature of the potential conflict of interest with respect to the action or decisions.

If the official is a **public employee**, he must furnish a copy of the statement to his superior, if any, who must assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he must take the action prescribed by the State Ethics Commission.

If a **public official**, other than a member of the S.C. General Assembly, he must furnish a copy of the statement to the chair of the governing body on which he serves. The statement must be printed in the minutes. The member must be excused from any votes, deliberations or other actions on the matter on which the potential conflict of interest exists. The reasons for the disqualification must be noted in the minutes.

- Using or disclosing confidential information which was obtained during the course of one's duties as a public official or employee.
- Consulting for a fee for services which are a part of the public official's or employee's official duties. In a parallel prohibition, employees and officials are not to represent others before the county or an agency or subunit of the county with which they are associated.
- Causing the employment, appointment, promotion, transfer or advancement of a family member to an office or position in which the public official or employee supervises or manages. Additionally, the official or employee may not participate in an action relating to the discipline of the family member.
- Lobbying one's former government or, in some cases, accepting employment by a business which had dealings with one's governmental unit for a period of one year after terminating public service or employment.

³ S.C. Code Ann. §§ 8-13-700 *et seq.*

- Directly or indirectly giving, offering or promising anything of value to public officials and/or employees with an intent to influence the discharge of their official responsibilities. Anything of value includes meals, beverages, travel, entertainment and lodging, although officials and employees may accept reimbursement for actual expenses incurred in connection with speaking engagements. It does not include such things as plaques and mementos of an occasion, promotional items made available to the public, and printed or educational material. A person who violates these provisions is guilty of a felony and, upon conviction, must be punished by imprisonment for not more than 10 years and a fine of not more than \$10,000 and is permanently disqualified from being a public official or public member.

Article 11, Disclosure of Economic Interests

Individuals who must file a statement of economic interests with the State Ethics Commission include all public officials; all candidates for public office; the chief administrative official of each county, municipality and political subdivision (such as libraries, airport commissions and hospitals) and the chief finance official and chief purchasing official of each county, municipality and political subdivision.⁴

In a statement of economic interests, an official is required to disclose information such as:

- Associations with regulated businesses;
- Business relationships with lobbyists;
- Interests in government contracts;
- Gifts of \$25 or more per day or \$200 per calendar year by persons with regulated business or contractual interest;
- Income of \$500 or more from governmental entities;
- Real estate interests if such interests can reasonably be expected to be the subject of a conflict of interest, or if there have been any public improvements of more than \$200 on or adjacent to the real property;
- Sale, lease or rental of real or personal property to a governmental entity;
- Loans of more than \$500 other than from credit cards or financial institutions; and
- Identity of every business or entity in which the filer or a member of the filer's immediate family held or controlled, in the aggregate, securities or interests constituting five percent or more of the total issued and outstanding securities and interests which constitute a value of \$100,000 or more.

The statement of economic interests **must be filed electronically** at the time of filing as a candidate, upon assuming the duties of the office, and prior to March 30 of each subsequent year as long as the position is held. The statements of economic interests are maintained by the State Ethics Commission and the clerks of court offices. These statements are matters of public record and open for public inspection upon request.

Article 13, Campaign Practices

The campaign practices section of the Ethics Reform Act contains the biggest departures from the former law, particularly in the area of campaign finance.⁵

⁴ S.C. Code Ann. §§ 8-13-1110 *et seq.*

⁵ S.C. Code Ann. §§ 8-13-1300 *et seq.*

The act outlines a number of restrictions, including:

- Contributions from individuals to candidates are limited to \$1,000 for a local race.
- Cash contributions are limited to \$25 and must be accompanied by a record of the amount of the contribution and the name and address of the contributor.
- Contributions from committees are limited to \$3,500 per year.
- There can be no use of public funds or property in an election campaign.
- A candidate for local office may not accept more than \$5,000 from a political party.
- Anonymous contributions are prohibited, except at a ticketed event where food and beverage are served or where political merchandise is distributed and where the price of the ticket is \$25 or less and goes to defray the cost of food, beverages, or the political merchandise—either in part or in whole. Anonymous contributions that do not comply with this provision are to be sent within seven days to the Children’s Trust Fund.

In addition, the Ethics Reform Act requires that all candidates for public office and any committee submit to the State Ethics Commission a campaign disclosure form which provides the total funds received or expended; a listing of the names, addresses, dates and amounts of all contributors of more than \$100; and an itemization of all expenditures. The campaign disclosure form must be filed electronically at the following times:

- Within 10 days after receiving or expending \$500;
- Thereafter, within 10 days following the end of each calendar quarter either before or after each election, whether or not contributions have been received or expenditures made; and
- Fifteen days prior to each election showing contribution and expenditure activity current as of 20 days prior to the election.

A committee must immediately report an independent expenditure of more than \$2,000 for a local race made within the 20-day period prior to the election. A final report is filed when the campaign account is closed.

Penalties

The information about the Ethics Reform Act in this chapter is an overview and is in no way intended as a definitive listing of all the requirements and provisions of the act. There are numerous requirements and restrictions. Every public official and employee should read the act and keep a copy for reference. All of this information and more is available at the State Ethics Commission website. Specific questions should be referred to the county attorney, the South Carolina Association of Counties and/or the State Ethics Commission.

It is important to know that there are penalties for failure to comply with the provisions of the act. For example, anyone who is found guilty or pleads guilty or nolo contendere to violating the rules of conduct may be fined up to \$5,000, imprisoned for up to one year, or both. Any criminal activity is subject to prosecution by the Attorney General’s Office.

Any person who is late in filing a report or who fails to file a report with the State Ethics Commission may be assessed a fine of \$100, if the form is not filed within five days after the established deadline and a fine of \$10 per calendar day for the next 10 days.

The fine then increases to \$100 per calendar day until the form is filed, not to exceed \$5,000.⁶ Any fine that is not paid or received by the State Ethics Commission will be referred to the S.C. Department of Revenue for setoff debt collection from any tax refund due to the filer.

Any person who does not file the statement of economic interests or campaign disclosure form may be subject to complaint action filed against them by the State Ethics Commission. In addition, the State Ethics Commission has a web page that lists the name, jurisdiction, position and debt amount of anyone who has been fined for failure to comply with the reporting requirements.

Ethics is More than the Law

While the Ethics Reform Act sets minimum legal standards for ethical conduct, it is a fallacy to assume that just because something is legal, it is also ethical. Michael Josephson makes the point that:

*One can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law. Ethical persons measure their conduct by basic ethical principles rather than by laws and rules; they do not walk the line of propriety; they do more than they have to and less than they are allowed to.*⁷

Simply stated, if the only reason a public official is or is not doing something is because it is required by law, that does not necessarily make him/her ethical. There is a difference between doing things right and doing the right thing.

There is a difference between doing things right and doing the right thing. ☹

Aside from obeying the law, the ethical public official must take affirmative action to foster trust in government. This starts by understanding and adhering to a set of ethical principles.

Principles of Public Service Ethics

Josephson has outlined five broad principles of public service ethics that set a higher standard for public officials. The principles which “specify moral obligations which exist independently and transcend obligations imposed by laws and formal codes of conduct”⁸ are described below.

1. *Public office as a public trust.* Public servants should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.
2. *Principle of independent objective judgment.* Public servants should employ independent, objective judgment in performing their duties, deciding all matters on the merits, free from conflicts of interest and both real and apparent improper influences.
3. *Principle of accountability.* Public servants should assure that government is conducted openly, effectively, equitably and honorably in a manner that permits the citizenry to make informed judgments and hold government officials accountable.

⁶ S.C. Code Ann. § 8-13-1510(A)(2).

⁷ Michael Josephson, *Power, Politics and Ethics: Ethical Obligations and Opportunities of Government Service* (Josephson Institute of Ethics, 1989).


⁸ Michael Josephson, *Preserving the Public Trust: Principles of Public Service Ethics* (Josephson Institute of Ethics, 1990).

4. *Principle of democratic leadership.* Public servants should honor and respect the principles and spirit of representative democracy and set a positive example of good citizenship by scrupulously observing the letter and spirit of laws and rules.
5. *Principle of respectability and fitness for public office.* Public servants should conduct their professional and personal lives so as to reveal character traits, attitudes and judgments that are worthy of honor and respect and demonstrate fitness for public office.

In order to regain and preserve the public trust, it is essential that public officials live up to these principles.

Creating an Ethical Organizational Culture

In addition to adhering to a high standard of personal ethics, public officials have a responsibility to work proactively to foster an ethical organizational culture in county government. If the

The ethical tone of any organization is set at the top—by the council, the chief administrative officer and the management team. 

ethical principles identified in this chapter are to have any meaning, they must be put into action by the public official in the course of carrying out his duties. The ethical tone of any organization is set at the top—by the council, the chief administrative

officer and the management team. The members of the organization take their cues as to what is acceptable from the behaviors of those above them. It is not enough to say that we value these things; we must institutionalize these principles by creating an ethical culture within our organizations:

1. The council must set the tone for a high standard of conduct by clearly articulating the organization's values. Josephson has proposed the following values as essential to ethical practices.⁹
 - *Honesty.* This is the most basic level of ethics. Everyone has the responsibility to be truthful, straightforward and sincere in their dealings with others.
 - *Integrity.* Integrity requires the courage to act on one's values, beliefs and convictions, and to do what is right rather than what is expedient.
 - *Keeping Promises.* The ethical public official must live up to the spirit as well as the letter of agreements and commitments that have been made.
 - *Fidelity.* The trustworthy public official is loyal to the organization and the principles of public service.
 - *Fairness.* Because the public official is in a position to exercise discretion, it is imperative that the decision-making process be fair. There must be a commitment to justice, equal treatment and tolerance. The public official must be open-minded and willing to consider diverse opinions.
 - *Caring.* The ethical public official manifests an attitude of concern for the well being of others and conducts the affairs of the organization with compassion and kindness.

⁹ Josephson, 1989.

- *Respect.* It is imperative that public officials demonstrate respect for human dignity and privacy.
- *Citizenship.* Public officials have the responsibility to serve as role models for others to encourage participation in and respect for the democratic process of decision-making.
- *Excellence.* Public officials must be well-informed and prepared to carry out their responsibilities. They must be diligent, reliable and committed. They must insist that the organization strive for excellence in carrying out its activities.
- *Accountability.* The public official has a special obligation to be accountable for his or her actions and the actions of the organization.
- *Avoidance of the appearance of impropriety.* Because the public official is responsible to safeguard the public trust, what they do must not only be right, it must also look right. In the words of Michael Josephson:

*The concept of trust is as much a creature of perceptions and beliefs as it is of reality. Therefore, public servants have a special responsibility to avoid conduct which is likely to generate cynical attitudes and suspicions about government and the people who administer it. Conduct which creates in the minds of reasonable observers the perception that government office has been used improperly may violate the public servant's obligation to safeguard public trust even if the conduct does not actually misuse public office.*¹⁰

2. Council and management should understand how supervisors and peers can influence behavior.
3. Council members and management should understand that their actions must be consistent with their expectations for employee conduct.
4. An ethics training program should be developed and implemented.
5. A discussion of ethics should be included in orientation programs for new members of the council and the staff.
6. Performance against ethical standards should be monitored and made a part of the performance appraisal process.
7. Ethical dilemmas that the organization faces or could face should be discussed regularly at all levels of the organization.
8. The organization's code of ethics should be communicated and enforced.
9. An ethics committee should be formed to focus on ethics policy and issues.
10. The organization should conduct ethics audits. In addition to the annual financial audit and the occasional performance audit, an ethics audit can be an effective strategy to foster an ethical organizational culture. Such audits can involve the use of culture assessment questionnaires; interviews with staff and stakeholders; and a review of policies, training, operations and internal controls.¹¹

¹⁰ Josephson, 1990.

¹¹ Carol W. Lewis, *The Ethics Challenge in Public Service: A Problem Solving Guide* (Jossey-Bass, 1991).

Making Ethical Choices and Decisions

The most difficult and challenging issues facing public officials often come in the form of ethical dilemmas. An ethical dilemma is a situation in which there may be two or more competing right things to do, or in which there may be conflicts in values. For example, what if doing what is in the best, long-term interest of the county requires making a decision that is unpopular with voters? What if a decision council is faced with conflicts with a council member's personal values? In these cases, the public official's ethical reasoning and decision-making abilities are critical.

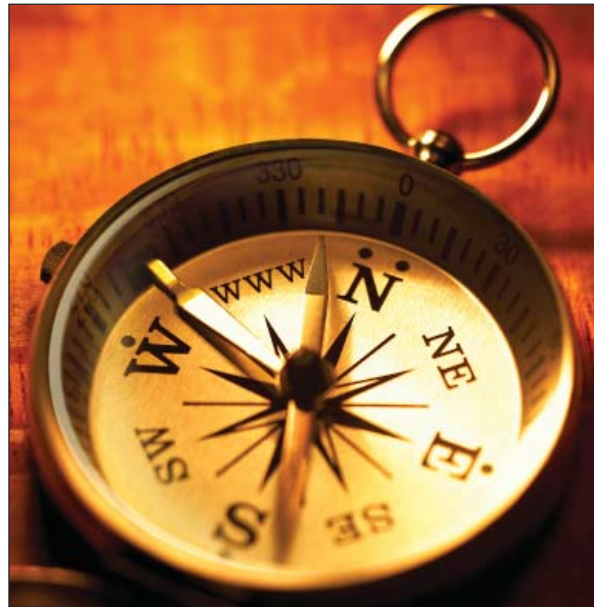
Terry L. Cooper suggests that "ethics involves thinking more systematically about the values that are imbedded in the choices we otherwise would make on practical or political grounds alone."¹²

Public officials, in their decision-making processes, generally address practical concerns (e.g., are there sufficient funds to provide a particular service?) and political concerns (e.g., which individuals or groups will be alienated, if a service is or is not provided?). Unfortunately, all too often the political ramifications of a decision override other considerations. This leads to an ethical trap, perhaps best stated by Hendrick Herzberg:

From the best of motives he begins to make compromises. He wishes to build his effectiveness. He seeks to accumulate credits that will be used at some future date in some unspecified way on some issue he doesn't know about yet. And then he begins to put his soul in danger. He begins to imagine that his ... advancement is so important to the cause of good and right that the cause of good and right is served by his advancement in and of itself.¹³

One approach that can be used to ensure that ethical decisions are made is to ask the following questions:

1. Is the action legal? If you take this action, will it violate civil law or organizational policies?
2. Is the action balanced? Is it fair to all concerned? Does it violate the principles of caring and respect? Does it promote win-win relationships?
3. How will this action make you feel about yourself? Would you feel good about the action if it were published in the newspaper? Would you feel good about it if your family knew of the action?



The most difficult issues facing public officials often come in the form of ethical dilemmas—situations in which there may be two or more competing right things to do, or in which there may be conflicts in values.

¹² Terry L. Cooper, *The Responsible Administrator: An Approach to Ethics for the Administrative Role* (3rd Ed. Jossey-Bass, 1990).

¹³ Hendrick Hertzberg, "The Education of Mr. Smith," *Esquire* (February, 1986).

A more detailed set of questions that may help identify the practical, political and value dimensions of a decision has been suggested by Laura Nash:¹⁴

1. Have you defined the problem accurately?
2. How would you define the problem, if you stood on the other side of the fence?
3. How did this situation occur in the first place?
4. To whom and to what do you give your loyalty as a person and as a member of the organization?
5. What is your intention in making this decision?
6. How does this intention compare with the probable results?
7. Whom could your decision or action injure?
8. Can you discuss the problem with the affected parties before making your decision?
9. Are you confident that your position will be as valid over a long period of time as it seems now?
10. Could you disclose without qualm your decision or action to your boss, the council, your family, society as a whole?
11. What is the symbolic potential of your action if understood? If misunderstood?
12. Under what conditions would you allow exceptions to your position?

The Ethics Resource Center suggests a set of four “ethics filters” that can be applied at key points in a decision-making process and that serve as a good ethics test. The filters are:

1. *Policies*. Is this action consistent with your organization’s policies and procedures?
2. *Legal*. Is this action acceptable under applicable laws and regulations?
3. *Universal*. Does this action conform to the universal values and principles your organization has adopted?
4. *Self*. Does this action satisfy your personal definition of right, good and fair?

These decision guides can help public officials identify and consider any ethical components of the decisions they are making, but they do not guarantee that decisions or actions are ethical. As stated at the beginning of this chapter, ethics involves both the ability to discern right from wrong and the commitment to do the right thing even when the cost is more than one wants to pay.

In the end, an ethical government requires public officials with extraordinary moral courage. The preservation of the public trust demands nothing less.

¹⁴ Laura L. Nash, “Ethics without the Sermon,” *Harvard Business Review* (November-December, 1981).

Additional Resources


- For more information about ethics and public service in South Carolina, visit the S.C. State Ethics Commission website at <http://ethics.sc.gov>.
- View the National Conference of State Legislatures' Center for Ethics in Government page at www.ncsl.org for more information about ethics and state legislatures.
- For more information pertaining to ethical leadership, visit the Ethics Resource Center website at www.ethics.org.
- To learn more about the projects and services of the Josephson Institute of Ethics, visit the institute's website at <http://josephsoninstitute.org>.
- To review the programs and resources offered by The Markula Center for Applied Ethics, visit www.scu.edu/ethics.

County Government Budgeting and Financial Management

*Edited by William E. Tomes, Formerly with the University of South Carolina
Kevin V. Yokim, CPA, CGFO, Florence County Finance Director*

Introduction

Adoption of the annual operating budget is perhaps the single most important responsibility of county council. It is the one document that allows council to reinforce the priorities that it has established for the county. It reflects the spending priorities of the council. Finally, it determines the level of funding that the citizens must contribute through local revenue sources to support the ongoing activities of the county.

Adoption of the county budget is perhaps the single most important responsibility of county council. 

This chapter provides an overview of the budget process and an introduction to the financial management functions of county government. Staff members play an important role in developing a proposed budget. The form of

government will have an impact on the degree to which council is involved in developing the budget proposal; however, regardless of form of government, county council makes the final decision about the budget. County council is also responsible for determining the financing methods for the services and activities that it has identified. While most other financial management functions are delegated to staff, the council must ensure that the systems put in place are consistent with law and good management practices.

Key Terms and Major Functions

Key Terms

This chapter uses a number of key terms related to county government budgeting and financial management. The following terms and definitions provide a useful starting point for discussion.

Capital expenditures. Expenditures for one-time, major purchases for items that have an extended life (at least one to two years) and a minimum cost as defined by the government.

Operating expenditures. Recurring, ongoing expenditures of a governmental entity for salaries, materials and supplies, and other cost categories.

Financial management. All aspects of a government's oversight of its assets (the items and buildings that it owns); this includes budget preparation and all aspects of carrying out the budget plan.

Fiscal year. The time period established by state law—July 1 through June 30—to be used by counties to prepare their budgets and keep their accounting records; “fiscal year 2011–12” or “fiscal year 2012” refers to the fiscal year ending June 30, 2012.

Major Functions

For all governmental entities, there are a number of consistent functions that fall under the umbrella of financial management. Below is a list of the major financial management functions of county government along with brief definitions.

Accounting. The process that discovers, records and summarizes financial information.

Budgeting. Preparation and approval of the plan for financing operations of the governmental entity, including estimates of expenditures for a fiscal year and the means for financing the expenditures.

Capital programming and budgeting. Development and approval of a long-range plan for major capital expenditures and the budget for the upcoming year.

Cash or treasury management. Receipt, custody and disbursement of county funds and other funds for which the county is custodian—including banking, paying the bills and collecting funds owed to the county by taxpayers and others (accounts receivable).

Central stock and supply. The process of purchasing, storing and distributing expendable supply items—such as office maintenance supplies—along with the accounting for those items.

Debt administration. All aspects of administering the county’s bonded indebtedness, or borrowing used to finance expenditure requirements of the government.

Financial reporting and audit. Production of financial statements for the governmental unit and the accompanying review of those statements by an outside, independent auditor.

Internal audit. Internal review of financial and programmatic operations of the government conducted by an individual or department reporting to a high level within the organization, either the chief administrative officer or an audit committee that includes the chief administrative officer and council members.

Payroll administration. All aspects of administering employee salaries and fringe benefits.

Property management and control. The system of keeping up with capital assets, which are the equipment, facility and other major non-expendable property items owned by the government.

Purchasing or procurement. The process of obtaining goods and services to operate the government.

Revenue management. The process of projecting and monitoring revenues received by the county, closely tied to cash management.

Risk management. The planned, comprehensive approach to protecting the entity from accidental loss and minimizing risk.

The Budget Process

The budget can be looked at as a contract between the county council and the citizens. The council agrees to provide a certain level of services to citizens and businesses in return for the taxes and fees that they pay. The budget is the county government’s financial plan. It incorporates service goals, the costs of providing those services and the means for financing those costs. In addition to the budget being a plan, a summarized version of the budget establishes county appropriations by ordinance. The budget ordinance adopted by county council lasts for one fiscal year, places a legal limit on spending and establishes special conditions for county spending.

State Constitutional and Legal Requirements for County Budgets

The basic financial and borrowing requirements for local governments are found in Article X of the S.C. Constitution. Section 7 of Article X requires balanced budgets and the levy of a tax in any year following a deficit incurred by a local government. The partial text of this section addressing possible deficits reads:

*Each political subdivision...shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year.*¹

Annual operational and capital budgets must be approved by ordinance, preceded by public hearings.² Additional budget requirements include:

- The fiscal year must be July 1 through June 30 (although municipalities may choose any dates).
- Council must approve the budget prior to the beginning of the fiscal year.
- The budget must include all revenue sources, and council must provide for the levy of taxes.
- Supplemental appropriations must be approved in the same manner as the initial budget; these are appropriations from unanticipated revenue sources approved following adoption of the initial budget.³

The council may require reports, estimates and statistics from any county agency receiving county funds.

In addition to these general budget requirements, the S.C. Code of Laws covers budgets under the four forms of county government:

- Council form – § 4-9-310;
- Council-supervisor form – § 4-9-420;
- Council-administrator form – § 4-9-640;
- Council-manager form – § 4-9-840.

Reference in this chapter to the chief executive means the supervisor, administrator, manager or other staff member who has the primary responsibility for budget preparation for the council.

The Local Government Fiscal Authority Act

In 1997, the S.C. General Assembly passed the Local Government Fiscal Authority Act (Act 138 of 1997). This act authorized some new taxes and fees—which will be discussed in the following chapter, “Alternate Sources of Revenue for Counties”—allowing local governments to diversify their revenue sources. But central to this discussion of county budgeting is a provision in the legislation that limits millage rate increases.

¹ S.C. Const. art. X, § 7(b).

² S.C. Code Ann. §§ 4-9-130 and 6-1-80.

³ S.C. Code Ann. § 4-9-140.

Millage Cap

Section 6-1-320(A) of the S.C. Code of Laws provides that:

...a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board [now the S.C. Revenue and Fiscal Affairs Office]....There may be added to the operating millage increase... any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.⁴

In the year in which a reassessment program is implemented, the rollback millage must be used in lieu of the previous year's millage rate. The millage rate limitation may only be suspended and the millage rate increased upon a two-thirds vote of the county governing body and only for the following purposes:

1. The deficiency of the preceding year;
2. Any catastrophic event outside the control of the governing body, such as a natural disaster;
3. Compliance with a court order or decree;
4. Taxpayer closure due to circumstances outside the control of the governing body that decreases by 10 percent or more the amount of revenue payable to the taxing jurisdiction in the preceding year;
5. Compliance with a regulation or statute enacted by the federal or state government after June 7, 2006, for which a method of funding is not provided;
6. Purchase by the local governing body of undeveloped real property or of the residential development rights in undeveloped real property near an operating U.S. military base; or
7. To purchase capital equipment and make expenditures related to the installation, operation and purchase of capital equipment in a county having a population of less than 100,000 and having at least 40,000 acres of state forest land.⁵

The millage rate limitation does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account. It also does not affect millage imposed to pay bonded indebtedness or operating expenses of a special tax district.

⁴ S.C. Code Ann. § 6-1-320(A).

⁵ S.C. Code Ann. § 6-1-320(B).

The Budget Cycle

There are four major steps in the budget process:

1. *Budget preparation.* This step involves staff development of estimates of needs and revenues for presentation to the county council.
2. *Legislative review and approval of budget.* This step involves the county council's review of the budget recommended by the chief executive and its eventual adoption of the budget via the budget ordinance. This ordinance contains not only spending limits but also special conditions for spending.
3. *Budget execution.* This step in the process involves carrying out—or executing—the budget. The chief executive and his/her department heads are tasked by the council to follow the council's instructions included in the budget ordinance and to follow all laws and policies of the county related to the spending plan.
4. *Financial audit and performance review.* Following completion of the fiscal year, the county is required to provide for an independent annual audit of all financial records and transactions of the county and any agency funded in whole by county funds.⁶ This audit should include the staff's compliance with laws, policies and procedures related to budget execution. Council should consider conducting or having an outside organization conduct an annual performance audit or review to determine whether the work objectives defined by the council and staff were attained.

A typical budget calendar begins at least six months prior to the beginning of a fiscal year. Some of the early steps include preparation of budget forms and instructions for departments

A typical budget calendar begins six months or more prior to the beginning of a fiscal year. 

and outside agencies, and the development of preliminary revenue estimates. Councils often have planning sessions in late winter or early spring to set financial and service goals for the upcoming fiscal year and to provide the

chief executive and department heads preliminary guidance on preparation of the budget. In order to meet the June 30 deadline for completion of the budget, the council should receive a proposed budget by early May. This will permit adequate time for required readings and public hearings on the budget in addition to any work sessions to allow council members time to understand the proposed budget.

Linkage of Budgets and Service Plans

Although not specifically required in state law, the ideal budget process involves the parallel development of service plans to be provided along with the budget to fund those services. Through such a planning process, the council and the citizens develop a clear understanding of what the budget will “buy” in terms of services. This will require the use of performance measures for each department and for outside agencies funded by the county budget (but not directly controlled by the council). Requiring such measures is fully within the council's purview.⁷

⁶ S.C. Code Ann. § 4-9-150.

⁷ S.C. Code Ann. § 4-9-140.

LIBRARY		DEPARTMENT NUMBER: 480		
BUDGET SUMMARY:	ACTUAL FY 2009	BUDGET FY 2010	BUDGET FY 2011	
Personal Services	\$ 2,542,720	\$ 2,720,096	\$ 2,659,250	
Contractual Services	398,685	440,129	435,356	
Supplies & Materials	698,646	504,393	465,977	
Business & Transportation	47,646	58,843	50,788	
Capital Outlay	-	-	-	
Other	21,726	10,000	10,000	
TOTAL	\$ 3,709,423	\$ 3,773,461	\$ 3,621,371	
WORKLOAD INDICATORS:	ACTUAL FY 2009	BUDGET FY 2010	BUDGET FY 2011	
Patron Traffic count	772,354	780,000	787,000	
Patrons Attending Programs	80,164	88,000	89,000	
New Patrons Registered	26,572	28,000	28,500	
Items Circulated	1,141,871	1,153,000	1,164,500	
People Using Internet Computers	290,195	293,000	296,000	
Number of Reference Questions	49,111	55,000	50,000	

The process for linking budgets with service plans begins with department proposals for the next year. In addition to specific objectives, proposals may also include mission statements or broad goals that provide overall direction.

Of course, the development of service plans is easier for county offices under the council's immediate control. Such a process would involve the following five steps:

1. *Budget and plan preparation.* Under uniform guidelines issued by the council and the chief executive, departmental staffs develop budget proposals and service plans for the next year. The service plans should include measurable objectives related to what departments intend to accomplish during the year. In addition to specific objectives, such plans could also include mission statements or broad goals to provide for the overall direction of the departments.
2. *Recommendations to council.* The chief executive reviews department head budgets and service plan proposals and develops recommendations for the legislative body. He/she should already have a good understanding of the council's financial and programmatic objectives for the coming year, so that the council will be receptive to the recommendations presented. The departmental budgets and service plans should be in different formats and provide much more detail than the proposals presented by the chief executive to the council.
3. *Legislative review and approval of budget and plan.* The council reviews and approves the overall county budget and service plan for the year. This review is conducted with the input of citizens and other beneficiaries of county government services.
4. *Budget and plan execution.* The chief executive and staff execute budgets and service plans, including monitoring of budget and program performance during the fiscal year. Where there are variances from the overall plan approved by the council, the chief executive should report back to the council on changes required.
5. *a. Financial audit.* External auditors review financial performance for a year through the annual audit. The audit determines whether the financial statements fairly reflect the financial position of the county, whether proper internal controls were in place, and whether staff and the council complied with laws and regulations.
b. Performance audit/review. Staff assigned to the chief executive review performance for the year to answer, "What was accomplished with the dollars and were dollars spent efficiently?" This would be better accomplished by an external performance auditor instead of in-house county staff, but few local governments can afford such an effort on an ongoing basis.

Format of the Budget Document

The council needs to receive a proposed budget that provides certain key information to assist in their informed review of issues, problems and opportunities. The document should not be evaluated on the basis of length or form, but rather on its content.

A good budget document should:

- Include comprehensive information on all funds from all revenue sources.
- Focus on means and ends, including descriptions of what the dollars will “buy” along with the presentation of proposed expenditures.
- Provide a concise, non-technical overview of the entire budget through a budget message from the chief executive and through effective summaries.
- Include an adequate multi-year comparison of expenditures and revenues for the following periods, at a minimum:
 - Last year’s actual expenditures;
 - Current year’s budget;
 - Chief executive’s proposed budget for the coming year; and
 - Coming year’s adopted budget (to be added after council action).
- Highlight options available to the council and provide an agenda for consideration of budget policy issues.
- Include actual expenditures and revenues that match the previous year’s audited financial statements (or are reconciled to the statements).
- Make good use of graphics to show financial and programmatic data.

A simplified version of the budget should be provided to the public.

The Government Finance Officers Association (GFOA) has an awards program that establishes criteria for excellence in government budgets. The GFOA establishes its rating scheme on the basis of how well the budget document serves as a policy document, a financial plan and an operations guide.

The budget format required by GFOA for its awards program is very extensive and would require staff devoted entirely to budget preparation. However, county government officials can learn much from the criteria established for the program, even if they do not seek an award.

County Council Review of the Budget

One of the most difficult challenges for council members and their staff is determining which matters are administrative in nature and which are related to policy. In the area of budget review and approval, the council can easily become so enmeshed in the details that it fails to step back and ask one of the key budget questions: “Does the budget meet the needs of county residents and businesses in an economical manner?”

It is the chief executive’s job to provide an effective budget document that communicates the budget policy decisions facing the council. These decisions relate to the level and mix of county services and the tax burden on county residents and businesses. However, it is the council that retains overall responsibility for the budget.

Some questions that can help focus the council on policy-related budget matters include:

- Does the proposed budget meet community needs to the extent that financial resources permit?
- With inadequate funds to meet all critical county needs, what should be the council's priorities? Does the administration's proposed budget meet the council's priorities?
- Should some existing services be reduced or eliminated to provide funding to expand existing higher priority programs or to add new programs?
- What does the budget indicate that the county will "buy" during the fiscal year in terms of services? How does the proposed service level compare to current and previous fiscal years?
- What have been the expenditure trends in county departments and programs? At what rates have major programs grown over recent years?
- Should the council budget a contingency or reserve and, if so, at what level? Is there an adequate cushion in the budget to avoid unforeseen revenue shortfalls or expenditure increases during the year?
- Is the proposed budget economical? Does the budget attempt to obtain the greatest value for the dollar? Has the chief executive considered alternate, possibly more economical means of providing current services such as mechanization, cross-utilization of personnel or equipment, buying versus renting equipment, or contracting out certain services now provided by government employees?
- Are fees being utilized to their fullest as permitted by law and limited by the council's policies on fees?
- What new positions are proposed in the budget? What alternatives are there to adding positions? Are there future, hidden costs associated with the proposed positions?
- Can any locally funded costs be shifted to federal or state funded programs?
- If programs or departments had to absorb a 10 percent (for example) reduction, where could the cuts reasonably be taken? How could such funds be redistributed in the budget to meet the council's priorities more fully?

County councils face difficult choices in their budget deliberations between competing demands to improve services and also to avoid increasing property taxes. While it sounds reasonable to attempt to fund increases in one area by reducing another program, in

reality a large portion of the county budget is devoted to personnel. For any department, this percentage may range from 75 to 90 percent. The council must be willing to address personnel reductions, if it is to generate substantial savings. Reducing other operating expenditures in areas such as equipment and travel may only produce a minimal budget savings.

Fixed costs are another factor in examining the county budget and determining which expenditure areas are controllable. Fixed costs are those basic costs of doing business that the council will find difficult to reduce. These include utilities, insurance and bonding, and certain employee compensation expenditures for essential positions.

County councils face difficult choices in budget deliberations between competing demands to improve services and also to avoid increasing property taxes. ☺

Capital Budgeting

Capital expenditures are for items that have a long-term life; these items are referred to as capital assets. In classifying items as capital expenditures, entities set a minimum cost as well as a minimum life—generally one or two years. The GFOA recommendation for minimum cost of capital expenditures is \$5,000.⁸ The principal categories of capital expenditures are land, structures, machinery, furnishings and equipment.

State law requires counties to approve operating and capital budgets each year. A capital budget is an annual plan for major capital expenditures. For a capital budget to be effective, it must be accompanied by a plan that considers needs over a longer time period. This plan is known as a capital program or a capital improvement program. It can be defined as a schedule or plan of major capital expenditures to be made over an extended period of time—generally three to five years—that includes an identification of funding sources for projects.

The capital budget and program are intended for major capital items, not for purchases routinely funded through the annual operating budget. What is considered to be major for one county may be a routine purchase for another. A rule of thumb is to place in the capital budget and program those purchases that would distort the operating budget and would cause a substantial strain on the operating budget if funded there. For example, a truck or sedan may be a major capital expenditure for a county with a fleet of 10, while this may be a routine annual purchase for a county with a fleet of 100.

Accounting Process

Governmental accounting is a specialized discipline within the field of non-profit accounting that also includes non-governmental organizations such as community-based health and social organizations, higher education institutions and certain health care organizations. One major element that distinguishes non-profit from for-profit accounting is the lack of a profit and loss statement.

The authoritative body that establishes generally accepted accounting principles (GAAP) for state and local governments is the Governmental Accounting Standards Board (GASB). Additional guidance is available from GFOA publications, especially *Governmental Accounting, Auditing, and Financial Reporting* (2012). GFOA operates an awards program for government financial statements and provides numerous publications about local government finance.

Fund Accounting

Governmental accounting structure is based on fund accounting. Fund accounting is intended to accommodate legal requirements and segregate certain resources from others by accounting for the resources in funds. A fund is a fiscal and accounting entity with its own set of self-balancing accounts, established to segregate certain resources used to carry out specific governmental functions. The heart of the accounting system is the general ledger that pulls all transactions together and provides information required for preparation of financial statements. **The major expenditure categories include the following:**

- Personal services (salaries and wages);
- Employer's share of fringe benefits;
- Contractual services;
- Materials and supplies;
- Travel;
- Equipment; and
- Debt service (principal and interest paid on outstanding debt of the jurisdiction).

⁸ www.gfoa.org/establishing-capitalization-thresholds-capital-assets.

Within each major object of expenditure category listed, there may be numerous specific codes (e.g., contractual services could include telephone service, consultants and auditors). The major revenue categories are as follows:

- Taxes (includes property tax and local option sales tax revenues);
- Licenses and permits (charges for the privilege of conducting business within a jurisdiction—includes business licenses, inspection permits and construction permits);
- Fees for service (payments for services provided by the government where a citizen or organization receives specific benefits in exchange for payment of the fee);
- Fines, forfeitures and assessments (includes court and administrative penalties);
- Use of property and contributions (includes interest earnings from investment of temporarily idle cash in allowable instruments and revenue from rental of county property to outside organizations);
- Intergovernmental sources (state and federal grants, shared revenues and other cash transfers); and
- Transfers and other sources (internal transfers from one fund to another and miscellaneous revenue).

As with expenditure codes, revenue object codes are designed in a level of detail required for effective budget preparation and accountability by the county.

Management of Internal Controls

A major concern of the governing body and staff of any organization is accountability. Internal controls are one method of maintaining accountability. Internal controls consist of policies and procedures intended to safeguard the assets of an organization and to ensure that assets are used as directed by the governing body and management. The council must ensure that controls are in place without having to become heavily involved in reviewing those controls.

Two important principles in designing internal controls are related to the cost-effectiveness of those controls:

1. The greater the risk, the greater the degree of controls should be.
2. The controls should not cost more than the benefits of reduced risk they provide to the county.

Internal control systems include administrative controls, the county's basic operational policies and internal accounting controls. There are four principal objectives of internal accounting controls as outlined below:

- *Authorizations.* Programs are operated in accordance with council's and management's specific authorizations.
- *Access to assets.* Employees and others have access to county assets only with the authorization of the council and management; two areas of special concern are use of county vehicles and buildings.
- *Recording.* Transactions are recorded as required by policies and procedures, both to maintain accountability of assets and to permit preparation of financial statements for the jurisdiction.
- *Asset accountability.* It is important to compare the records of assets to the actual assets at reasonable intervals, generally no less than once a year.

Financial Reports and Audits

Audit Standards and Guidelines

The U.S. Government Accountability Office (GAO—formerly known as the General Accounting Office) establishes the basic audit standards for governments in *Government Auditing Standards* (known as the “Yellow Book”). In this publication, the GAO defines three major types of audits: financial audits, economy and efficiency audits, and program results audits.

The three principal questions addressed in the financial audit are:

1. *Do the financial statements present fairly the financial position of the entity?*

Clean, unqualified opinion. The statements fairly represent the financial position of the governmental unit and are in conformance with GAAP.

Qualified opinion. The statements are at variance with GAAP, but not sufficiently to disclaim.

Disclaimer. The auditor is not satisfied with the financial statements; there are material (substantial) limitations to the financial statements.

Adverse. The statements do not represent the financial position of the entity.

2. *Are internal controls adequate to prevent loss of assets that may affect statements?*

Material problems with internal controls can mean a disclaimer by the auditor.

3. *Has the entity complied with laws/regulations that may affect financial statements?*

The compliance review by the auditor applies not only to federal laws and regulations, but also to state and local laws and regulations. Again, substantial lack of compliance can mean a disclaimer. Also, a citing of noncompliance with federal regulations could mean repayment of federal grant funds.

Performance audits for economy and efficiency and for program results are not required as part of the annual audit process. Rather, these audits are optional, yet very desirable. The questions addressed relate to the government’s efficient and effective program operations and its meeting service objectives established by the governing body.

The federal government has established requirements for local governments receiving federal funding in the Single Audit Act of 1984 and the accompanying Office of Management and Budget Circular A-133, “*Audits of States, Local Governments, and Non-Profit Organizations.*” The single audit approach is discussed subsequently. Many useful resources for auditors who conduct governmental audits are provided on the website of the American Institute of Certified Public Accountants (AICPA).

Understanding the Financial Statements and Audit

The financial statements “belong to” the county government and ideally should be prepared by county staff for presentation to the auditors, instead of being prepared by the auditors. At a minimum, county staff needs to demonstrate the ability to prepare and understand the financial statements. The core statements are known as the general purpose financial statements (GPFS). These statements include several key schedules, including the county’s balance sheets presented on a fund-by-fund basis and statements of revenue, expenditures and changes in fund balances, also presented by fund. Intrinsic to the GPFS are the notes to the financial statements that explain accounting policies, the reporting entity (agencies included in the financial statements), and other information to help explain the financial position of the county.

The entire report that includes the GPFS and the reports prepared by the auditors is known as the comprehensive annual financial report (CAFR). In addition to the statements and reports of the auditors, the CAFR includes various supplemental schedules to provide more detailed information about county finances. As stated previously, the GFOA awards a special certificate to jurisdictions whose CAFRs meet specified standards. The State of South Carolina has received this award for a number of years; a number of county governments have also received it.

The auditor issues a number of reports as required by AICPA and federal government standards. These are addressed to the council in the form of letters. Some of the key auditor reports include information on:

- Fair presentation of financial statements (the opinion letter);
- Compliance and internal controls based on audit of financial statements;
- Schedule of federal financial assistance; and
- Compliance and internal control structure used to administer federal financial assistance programs.

Also, the auditor will provide a summary of findings of noncompliance with federal awards and an identification of any amounts questioned for each federal award. These matters will need to be resolved with the respective grantor federal agencies.

The Management Letter

A management letter will likely accompany the auditor's reports. This will indicate to staff and the council improvements required by the county in the area of internal controls and in compliance with laws and rules governing the county. Common findings include:

- Expenditures not always documented and approved;
- Problems with separation of duties;
- Payroll forms not completed properly and in a timely manner or not approved;
- Bank accounts not reconciled monthly;
- Lack of current capital assets listing;
- Purchase order system not followed;
- Deposits not timely and description of deposits sometimes missing; and
- Budget amendments not approved properly by governing body.

The proper response to the audit is to commit to making corrections in a timely manner and to provide the necessary resources to make the improvements. 🌱

Follow-Up on Audit

Frequently, governmental finance staff will hear from the auditor that he/she is there to help, not find fault. This should be the case, although no one wants to face mistakes identified by an outside source. The proper response to the audit is to commit to making corrections in a timely manner and to provide the necessary resources to make the improvements. For some situations, this may mean improved computer systems or additional staff. But, in many cases, corrections only require improved management for financial functions—including accounting, purchasing, capital assets management, payroll processing—and also special attention to each audit finding throughout the fiscal year. The council should be aware that some corrections could take longer than one year to complete.

An important step in anticipating audit problems is for finance staff to conduct an internal pre-audit, using the types of checklists that the auditor uses. In addition, the finance staff should anticipate in advance the documents that auditors will be requesting. Finally, preparation and maintenance of effective procedural manuals for all financial management functions will be of great assistance to auditors, in addition to county staff. The goal of any finance operation is to get the auditors in and out quickly and to eliminate entirely the management letter, which means that all substantial problems have been corrected.

Procuring Audit Services

The first step in the annual audit process is development of audit requirements and specifications, which should be completed three to 12 months prior to fiscal year end. These specifications form the core of a request for proposals (RFP) used to procure audit services. Audits must be made by a certified public accountant or accounting firm that has no personal interest, direct or indirect, in the fiscal affairs of the county or any of its officers.⁹ Following receipt of proposals, the county should evaluate each firm to determine which one to hire on the basis of criteria established for the procurement.

Price should be one of these criteria, but other important criteria include:

- Relevant experience of the firm with counties and other local governments and experience in conducting single audits, if required, for the county;
- Reputation of the firm based on references;
- Qualifications of personnel to be assigned to the audit engagement; and
- Agreement by the firm to meet or exceed performance specifications.

The council may, without requiring competitive bids, designate the accountant or firm annually or for a period not exceeding three years. The designation for any particular fiscal year must be made no later than July 31.

A copy of the audit must be submitted to the State Comptroller General no later than January 1 each year. Failure to file the county audit can result in the Comptroller General withholding funds.¹⁰ Counties are also required to submit their audits to the State Treasurer within 30 days of completion. The State Treasurer can withhold certain funding until the audit is submitted.¹¹

County Financial Policies

Within the framework of state law and generally accepted accounting principles, county governments should set financial policies that suit local conditions. **There are four principal mechanisms used to establish financial policies:**

1. Permanent ordinances, which have the force of law and do not need to be renewed each year;
2. Special provisions in the annual budget ordinance, which will remain in effect for the budget year;
3. Resolutions that express the opinion of the council; and
4. Staff-approved finance and operating manuals.

⁹ S.C. Code Ann. § 4-9-150.

¹⁰ S.C. Code Ann. § 4-9-150.

¹¹ Act 288 of 2012, Part IB §76.9.

Council should consider policies such as the following:

- Clarification of authority of the chief executive to make budget transfers and situations when he/she must come back to the council for approval of budget actions;
- Outline of duties of department heads and program staff in budget preparation;
- Designation of funds to be used and definition of which functions the funds should contain;
- Requirement for the chief executive to submit a budget message to the legislative body that highlights the budget policies, explains important features of the proposed budget and explains policy decisions available to the council;
- Establishment of policy for making proposed and adopted budgets available to the press and the public;
- Requirement that operating budget appropriations lapse at the end of the fiscal year and the establishment of policy for handling carry-over surplus and outstanding encumbrances (commitments in terms of contracts and purchase orders at year end);
- Policies and procedures for adoption and execution of a capital budget and program; and
- Policies and procedures for adoption and execution of budgets for proprietary (businesslike) funds.

The principal organization providing assistance with governmental finance to state and local governments is the GFOA. The organization has numerous publications designed for government finance officers and for elected officials who do not require the same level of detail as staff. An important body of information developed by the GFOA since 1993 is the association's best practices which "identify enhanced techniques and provide information about effective strategies for state and local government practitioners." The best practices cover accounting, auditing and financial reporting; budgeting and fiscal policy; cash management; debt management; and retirement and benefits administration.

Training and government finance officer certification programs are available from the Government Finance Officers Association of South Carolina (GFOASC), whose members come from counties, municipalities, state government and other local governments. GFOASC, although not an affiliate of the national organization, is closely aligned to the GFOA in its mission.

Additional Resources

- For links to county budgets and CAFRs, visit the South Carolina Association of Counties website— www.sccounties.org/budgets-and-cafrs.
- To view recent South Carolina budget bills, visit the South Carolina Legislature online via www.scstatehouse.gov/budget.php.
- For information about governmental budgeting at the state level, visit the National Association of State Budget Officers website at www.nasbo.org.
- Visit the Government Finance Officers Association via www.gfoa.org. To learn more about GFOA best practices, visit www.gfoa.org/best-practices; and to learn more about the Government Finance Officers Association of South Carolina, visit www.gfoasc.org.

- For information about property taxes—the largest source of revenue for counties—review *South Carolina Property Tax Rates* via www.sctax.org/publications.
- To view *Government Auditing Standards* (known as the “Yellow Book”) published by the U.S. Government Accountability Office, visit www.gao.gov/yellowbook.
- To learn about useful resources for auditors who conduct governmental audits, visit the American Institute of Certified Public Accountants—Governmental Audit Quality Center via www.aicpa.org/interestareas/governmentalauditquality/pages/gaqc.aspx.
- To learn more about the audit requirements for local governments receiving federal funding, review Budget Circular A-133, “*Audits of States, Local Governments, and Non-Profit Organizations*” at www.whitehouse.gov/omb/circulars_index-slg.

Alternate Sources of Revenue for Counties

Kathleen K. Williams, Formerly with the South Carolina Association of Counties
Edited by Timothy C. Winslow, South Carolina Association of Counties

Introduction

Passage of the Home Rule Act in 1975 brought county government into a new era, making it more than a mere extension of state government at the local level. By vesting authority in a representative policy-making body, counties had become true local government service providers, catering to a growing population with increased demands for more and better services. However, the General Assembly failed to give county government true *fiscal* home rule. For decades, counties relied almost solely on property taxes as their lone local revenue source for funding county government services and programs.

Alternate revenue sources for county government are fairly recent phenomena. With the exception of traditional user fees, business license taxes and franchise fees, almost all alternate revenue sources have come into being within the past 15 to 20 years. In fact, it took 15 years after the passage of the Home Rule Act for the General Assembly to pass the first major alternative revenue source: the local option sales tax. Even it was not a true “alternative revenue source,” since it required that a minimum of 71 percent of the revenue be used to roll back property taxes. No more than 29 percent of the revenue could be used to support local government operations. Still, it was a starting point.

In 1997, the General Assembly passed an act commonly referred to as the “Local Government Fiscal Authority Act.”¹ The act addressed unfunded mandates, placed limitations on local fees and taxes and imposed limitations on millage rate increases to fund the county budget. It also authorized three new local taxes: the capital project sales tax, the local accommodations tax and the local hospitality tax. By the end of the 1990s, the General Assembly had passed more measures to provide alternate funding sources for local government. **Like the local option sales tax, the vast majority of these sources require a referendum, leaving the ultimate decision of how to pay for county government services to county citizens.**

This chapter will provide information about the major alternate sources of revenue available to county governments to include:

- Business license taxes and registration fees;
- Franchise fees;
- Local accommodations and hospitality taxes;
- Sales and use taxes;
- Development fees;
- Tax districts; and
- User fees.

¹ Act No. 138 of 1997.

Business License Taxes and Registration Fees

Business License Taxes

The Home Rule Act gave counties the authority to levy a business license tax on persons or businesses engaged in a business, occupation or profession within the unincorporated area of the county.² This tax must be graduated according to the gross income of the business. The adoption of a business license ordinance—or the increase in the rate of an existing business license tax—must be by a positive majority vote of the governing body.³ Because business licenses are excise taxes, no prohibition on the use of the revenue exists.⁴

Specifically exempt from business license taxes are teachers; ministers and rabbis; telephone, telegraph, gas and electric utilities or suppliers (or any other utility regulated by the Public Service Commission); any entity that is exempt under another law; and insurance companies. A business that makes loans secured by real estate is subject to the tax only if its premises are located in the unincorporated area. Further, if a business pays a business license tax to another county or municipality, the gross income used for computing the tax must be reduced by the amount of the gross income taxed in the other jurisdiction(s).

Although approximately 85 percent of municipalities impose a business license tax, only eight of the 46 counties in South Carolina levy a business license tax.

Counties Imposing a Business License Tax:⁵

Beaufort County	Horry County	Richland County
Charleston County	Jasper County	Sumter County
Dorchester County	Marion County	

Also exempt from the business license tax are real estate licensees, except for the broker-in-charge at the principal or branch office of a real estate company located in the unincorporated area.⁶ This tax is not required of the affiliated associate brokers, salespersons or property managers of that same office. Brokered transactions of real property, other than those where there is a broker-in-charge in a principal or branch office, are also subject to the tax. Another exemption is granted to auctioneers on their first three auctions in the county area (unless the auctioneer maintains a principal or branch office within the county area, in which case they are subject to the business license tax).

Business Registration Fee

In 2005, the General Assembly passed legislation to authorize a countywide business registration fee.⁷ This is an administrative fee that cannot exceed \$15 and cannot be based on business income. It is administered and enforced in the same manner as the business license tax. It may be billed on any property tax bill and is considered a property tax for the purpose of collection.⁸

If adopted, a countywide business registration fee is in lieu of a business license tax. At this writing, one county (Williamsburg) has adopted a business registration fee.

² S.C. Code Ann. § 4-9-30(12).

³ S.C. Code Ann. § 6-1-315(A).

⁴ *Carter v. Linder* (S.C. 1990) 303 S.C. 119, 399 S.E.2d 423.

⁵ As of July 2012.

⁶ S.C. Code Ann. § 6-1-315(B).

⁷ Act No. 145, § 45 of 2005.

⁸ S.C. Code Ann. § 12-37-135.

Franchise Fees

The Home Rule Act empowered county governments to grant franchises in the unincorporated area “to provide for the orderly control of services and utilities affected with the public interest.”⁹ Specifically exempt from franchise fees are telephone, telegraph, gas and electric utilities or suppliers as well as municipal utilities. Franchise powers are authorized for the use of public beaches.

Up until 2006, the most common franchises granted by counties were for cable television, followed by ambulance services. That changed with the passage of the S.C. Competitive Cable Services Act.¹⁰ The act specifically preempted local ordinances from regulation of cable television services and vested the state with the authority to grant cable franchises. Effective May 23, 2006, a county could no longer issue a cable television franchise, but may continue to enforce existing franchises until they expire or are terminated.¹¹

Local Accommodations and Hospitality Taxes

Local Accommodations Tax

The Local Accommodations Tax Act, enacted in 1997, authorizes a county or municipality to impose, by ordinance, a local accommodations tax not to exceed three percent.¹² This ordinance must be adopted by a positive majority vote of the governing body. The tax is imposed on the gross proceeds from the rental of accommodations to transients within the county area. The total tax rate of county and municipal local accommodations taxes for any portion of the county cannot exceed three percent. The county is precluded from imposing a tax in excess of 1.5 percent within municipal boundaries without the consent, by resolution, of the municipality. In *City of Hardeeville v. Jasper County*, the S.C. Supreme Court ruled that a county cannot divest a municipality of its portion of the tax if the municipality previously imposed the full three percent tax.¹³



Photo courtesy of S.C. Department of Parks, Recreation and Tourism

If adopted by ordinance, a local accommodations tax is imposed on the gross proceeds from the rental of accommodations to tourists and other transients within the county.

This tax must be remitted to the local governing body on a monthly basis when the estimated average tax is over \$50/month; on a quarterly basis if \$25 to \$50/month; and on an annual basis when under \$25/month. Real estate agents and brokers who are required to remit accommodations taxes must notify the local government when rental property is dropped from their listings.

⁹ S.C. Code Ann. § 4-9-30(11).

¹⁰ Act No. 288 of 2006.

¹¹ S.C. Code Ann. § 58-12-5.

¹² S.C. Code Ann. § 6-1-520(A).

¹³ *City of Hardeeville v. Jasper County* (S.C. 2000), 340 S.C. 39, 530 S.E.2d 374.

All proceeds from a local accommodations tax must be kept in a separate fund and used exclusively for:

1. Tourism-related buildings (civic centers, coliseums, aquariums);
2. Tourism-related cultural, recreation or historic facilities;
3. Beach access, renourishment or other tourism-related lands and water access;
4. Highways, roads, streets and bridges providing access to tourist destinations;
5. Advertisements and promotions related to tourism development; or
6. Water and sewer infrastructure to serve tourism-related demands.

A county that generates at least \$900,000 in accommodations tax collections annually may also use the revenues for the operation and maintenance of items (1) through (6), including police, fire protection, emergency medical services and emergency preparedness operations directly related to these facilities. A county that generates less than \$900,000 may use no more than 50 percent of the revenue in the preceding year for the operation and maintenance of items (1) through (6).¹⁴

Local Hospitality Tax

The Local Hospitality Tax Act, also enacted in 1997, authorizes a county or municipality to impose, by ordinance, a local hospitality tax not to exceed two percent.¹⁵ This ordinance must be adopted by a positive majority vote of the governing body. The tax is imposed on the sale of prepared meals and beverages sold in establishments or in places that are licensed for on-premises consumption of alcohol. The total tax rate of county and municipal local hospitality taxes for any portion of the county cannot exceed two percent. The county is precluded from imposing a tax in excess of one percent within municipal boundaries without consent, by resolution, of the municipality. As with the local accommodations tax, a county cannot divest a municipality of its portion of the tax, if the municipality previously imposed the full two percent tax.

The tax is remitted to the local governing body in the same manner as the local accommodations tax. The proceeds from a local hospitality tax must be kept in a separate fund and must be used exclusively for the same items (1) through (6) as listed for the local accommodations tax. Similarly, a county that generates at least \$900,000 in accommodations tax collections annually may also use the revenues for the operation and maintenance of items (1) through (6), including police, fire protection, emergency medical services and emergency preparedness operations directly related to these facilities. A county that generates less than \$900,000 may use no more than 50 percent of the revenue in the preceding year for the operation and maintenance of items (1) through (6).¹⁶

Local Option Sales and Use Taxes

State law authorizes seven local option sales taxes. In addition, the General Assembly has authorized certain school districts to impose a sales tax to pay for capital improvements and/or debt service on bonds. The local option tourism development fee,¹⁷ enacted in 2009, is authorized for municipalities in counties generating at least \$14 million annually. Regardless, all local sales and use taxes require referendum approval. All are administered and collected by the S.C. Department of Revenue (SCDOR). The chart on page 69 shows the local option sales and use taxes imposed by South Carolina counties.

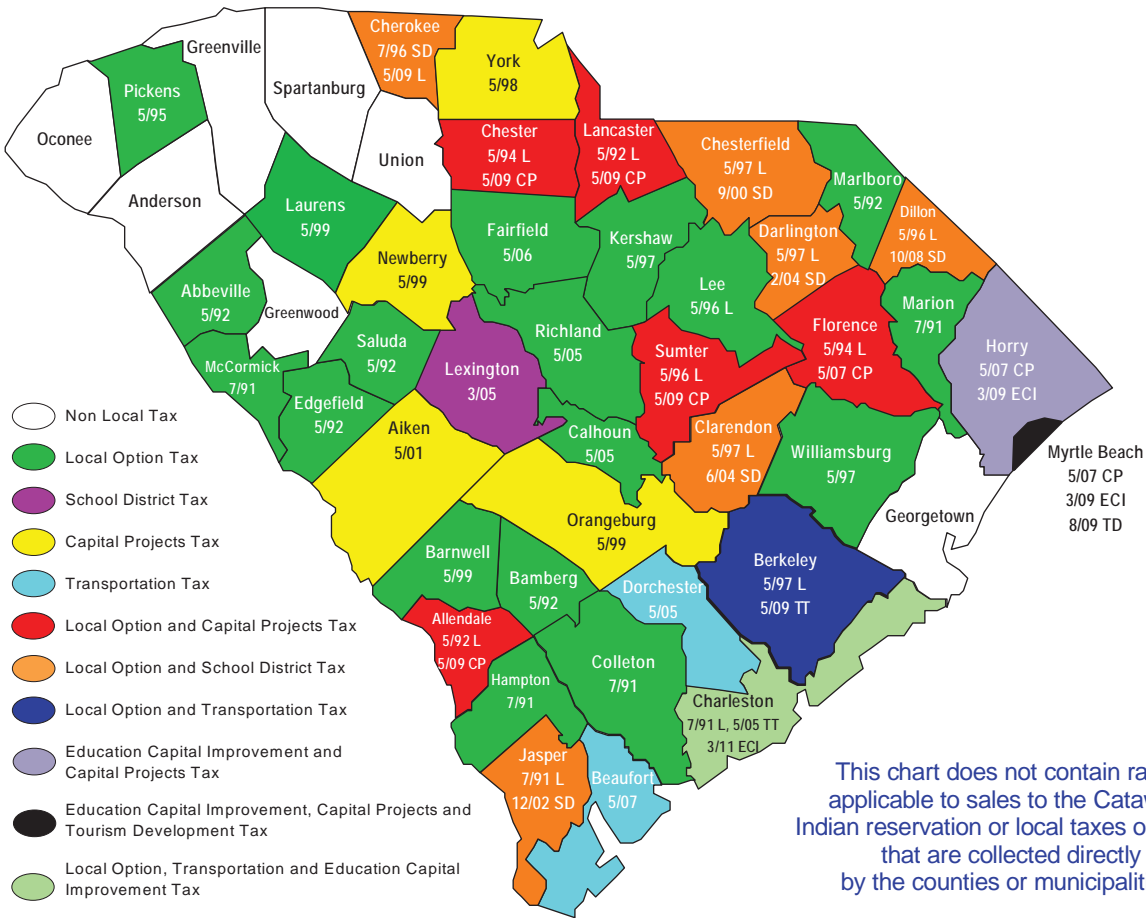
¹⁴ S.C. Code Ann. § 6-1-530.

¹⁵ S.C. Code Ann. § 6-1-720.

¹⁶ S.C. Code Ann. § 6-1-730.

¹⁷ S.C. Code Ann. §§ 4-10-910 *et seq.*

**State of South Carolina
Local Tax Designation
by County Effective July 1, 2012
Collected by the SC Department of Revenue**



This chart does not contain rates applicable to sales to the Catawba Indian reservation or local taxes on sales that are collected directly by the counties or municipalities.

Abbeville	7%	Chesterfield	8%	Hampton	7%	Newberry	7%
Aiken	7%	Clarendon	8%	Horry	8%	Oconee	6%
Allendale	8%	Colleton	7%	Horry (Myrtle Beach)	9%	Orangeburg	7%
Anderson	6%	Darlington	8%	Jasper	8%	Pickens	7%
Bamberg	7%	Dillon	8%	Kershaw	7%	Richland	7%
Barnwell	7%	Dorchester	7%	Lancaster	8%	Saluda	7%
Beaufort	7%	Edgefield	7%	Laurens	7%	Spartanburg	6%
Berkeley	8%	Fairfield	7%	Lee	7%	Sumter	8%
Calhoun	7%	Florence	8%	Lexington	7%	Union	6%
Charleston	8.5%	Georgetown	6%	Marion	7%	Williamsburg	7%
Cherokee	8%	Greenville	6%	Marlboro	7%	York	7%
Chester	8%	Greenwood	6%	McCormick	7%		

Special Notice

- Effective July 1, 2012, Greenwood County 1% Capital Projects Tax is repealed.

ST-500 5182 (Revised 5/9/12)

Source: SCDOR
www.sctax.org/NR/rdonlyres/7382279C-AB99-44A9-A6F8-07ACFCC19F3A/0/ST500GreenwoodJuly2012_05092012.pdf

Local Option Sales Tax

In 1990, the General Assembly enacted the Local Option Sales Tax Act, the first major alternate revenue source for local governments since the passage of the Home Rule Act. It authorizes a county, upon referendum approval, to impose a one cent sales tax on the gross proceeds of sales within the county area that are subject to the sales tax. At least 71 percent of the revenue collected must go to the Property Tax Credit Fund¹⁸ (67 percent to the county; 33 percent to municipalities based on population) to be used as a credit against the property tax liability of taxpayers in the municipality and/or county. No more than 29 percent may go to the County/Municipal Revenue Fund (50 percent based on population; 50 percent based on point of sale). These funds can be used as an additional property tax credit or to support local government operations.¹⁹

The referendum to impose the tax must be held on the Tuesday following the first Monday in November and cannot be held more often than once per year. Two weeks prior to the referendum, a notice must be published that shows the anticipated credit against property taxes in the first year of implementation on the following classes of property: a primary residence, personal property, a commercial facility and an industrial facility. Once passed, a county must adopt a resolution by December 31 following the referendum for the tax to be imposed on May 1 and must notify the SCDOR and the State Treasurer's Office.

A "Robin Hood" provision in the law provides that counties receiving less than a prescribed minimum distribution must receive supplemental funding (not to exceed five percent of collections) from counties generating more than \$5 million in revenue.²⁰ At this writing, 31 counties impose this tax: 19 are "receiving" counties, six are "neutral," and six are "giving."²¹

A petition of 15 percent of the qualified electors in the county is required to trigger a referendum to rescind the tax, but a referendum cannot be held earlier than two years after the tax has been levied.

Capital Project Sales Tax

The Capital Project Sales Tax Act, enacted in 1997, authorizes a county to impose a one cent sales tax within the county area for a specific purpose(s) and for a limited time.

This tax has become increasingly popular as a means to fund large capital projects, particularly road improvements.²² A county cannot impose more than one of the following at a given time: capital project sales tax, transportation sales tax, or a sales tax enacted by special act of the General Assembly. This limitation does not apply to a local school tax penny imposed by special act as of July 1, 2012.²³

A county cannot impose more than one of the following at a given time: capital project sales tax, transportation sales tax, or a sales tax enacted by special act of the General Assembly.

This limitation does not apply to a local school tax penny imposed by special act as of July 1, 2012. ☞

¹⁸ S.C. Code Ann. § 4-10-40.

¹⁹ S.C. Code Ann. § 4-10-50.

²⁰ S.C. Code Ann. § 4-10-60.

²¹ Counties imposing a local option sales tax as of July 2012 (31): Abbeville, Allendale, Bamberg, Barnwell, Berkeley, Calhoun, Charleston, Cherokee, Chester, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Edgefield, Fairfield, Florence, Hampton, Jasper, Kershaw, Lancaster, Laurens, Lee, Marion, Marlboro, McCormick, Pickens, Richland, Saluda, Sumter and Williamsburg.

²² Counties imposing a capital projects sales tax as of July 2012 (10): Aiken, Allendale, Chester, Florence, Horry, Lancaster, Newberry, Orangeburg, Sumter and York.

²³ S.C. Code Ann. § 4-10-310.

The process is initiated by adoption of a resolution to create a six-member commission, three of whom are appointed by the county.²⁴ The other three members are appointed by municipalities within the county according to the following formula:

1. Total population of all incorporated municipalities (most recent U.S. Census) is divided by three = apportionate average.
2. Population of each municipality is divided by the apportionate average = appointive index.
3. Each municipality appoints member(s) equal to the whole number indicated by their appointive index, but no municipality may appoint more than two members.
4. If less than three members are appointed, the remaining member(s) must be selected in a joint meeting of the commission appointees of the municipalities.
5. If one or more of the municipalities fails to appoint a member(s), the county must appoint the member(s).

The six-member commission is charged with considering proposals for funding and for formulating the referendum question. Upon completion, the county must enact an ordinance that contains:

1. The ballot question;
2. The purpose for which the funds are to be used;
3. The maximum time the tax will be imposed (in two-year increments, not to exceed eight years from the date of imposition²⁵);
4. If bonds are issued, the maximum amount of the bonds, including whether the tax proceeds are pledged to the repayment of the bonds;
5. The maximum cost of the project(s) to be funded and the maximum amount of net proceeds that will be used to pay the cost or debt service; and
6. Any other condition or restriction that the commission has set.

If the tax is imposed for more than one purpose, the ordinance must provide a prioritized list or a formula by which multiple projects are funded simultaneously. Funds may be used for the following types of projects:

- Highways, roads, streets, bridges, public parking garages;
- Courthouses, administration buildings, civic centers, hospitals, emergency medical facilities, police and fire stations, detention and correctional facilities, libraries, coliseums, educational facilities under the direction of an area commission for technical education;
- Cultural, recreational or historic facilities;
- Water and sewer projects;
- Flood control projects and stormwater management facilities;

²⁴ S.C. Code Ann. § 4-10-320.

²⁵ In the case of a reimposed tax, the maximum time cannot exceed seven years and must end on April 30 of an odd-numbered year. See S.C. Code Ann. § 4-10-330(A)(2).

- Beach access and renourishment;
- Dredging and other matters related to dredging;
- Jointly operated projects by local entities for the above purposes; or
- Any combination of the above projects.

Upon receipt of the ordinance, the county board of voter registration and elections must conduct a referendum at the time of the general election. Two weeks prior to the referendum, the board must publish a notice that contains the ballot question, a list of projects and their costs, and the amount of bonds to be issued, if applicable. The board of voter registration and elections must certify the results of the referendum to the county governing body and SCDOR no later than November 30. Failure to do so postpones the imposition of the tax for 12 months. If approved, the council must declare the results by resolution, and the tax is imposed on May 1 following the referendum, unless it is for the reimposition of the tax, in which case it is imposed immediately following the termination of the previously imposed tax.

Education Capital Improvements Sales Tax

Although the Education Capital Improvements Sales Tax is an alternative source of revenue for local governments, it may not be levied by county government. This tax may be imposed upon the adoption of an approving resolution by a school district board of trustees and subsequent approval by referendum.²⁶

Act No. 290 of 2014 significantly expanded the number of school districts that could utilize the Education Capital Improvements Sales Tax. As originally enacted in 2008, the tax could only be imposed in a county area that collected at least \$7 million in state accommodations taxes in the most recent fiscal year. In addition to these counties, the ability to utilize the Education Capital Improvements Sales Tax has been expanded to school districts that meet the following criteria:

1. If at the time of the enacting referendum, no portion of the county in which the tax is to be imposed is subject to more than two percent total local sales tax and the county is encompassed completely by one school district, which also extends into one adjacent county. If this authorization is utilized, the following parameters are placed on the tax:
 - The tax may not be imposed for more than 10 years;
 - At least 10 percent of the proceeds must be used to provide a credit against existing debt service millage on general obligation bonds;
 - The total debt service for bonds issued by the school district resulting from the imposition, net of any premium or accrued interest, shall not exceed 90 percent of the estimated Education Capital Improvements Sales and Use Tax proceeds to be allocated to the school district during the imposition; and
 - No other local sales tax may be imposed in the county if the total local sales tax would exceed two percent in any portion of the county.
2. The county or school district imposed a local sales and use tax to fund education capital improvements on Jan. 1, 2014.
3. The county has one school district that encompasses the entire county area in which the tax is to be imposed and collected at least \$1 million in state accommodations taxes.

²⁶ S.C. Code Ann. § 4-10-470.

4. The county is comprised of more than one school district, has a county board of education, and has no other local sales tax at the time of referendum. If the Education Capital Improvements Sales and Use Tax is imposed pursuant to this subsection, then at least 10 percent of the proceeds must be used to provide property tax relief by offsetting the existing debt service millage levy on general obligation bonds.
5. The county has been imposing the original local option sales tax for less than 20 years, is not imposing any other local option sales tax, and collected at least \$100,000 in state accommodations taxes.

Once a school district meets a threshold, they remain eligible to impose the tax.

The statute authorizes a school district to impose a one cent sales tax within the county area for specific education capital improvements for the school district(s) listed in the referendum. A memorandum of agreement must be executed by the school district board of trustees and the area commission or higher education board of trustees to provide for the school district's sharing of the revenue. This agreement must include the revenue distribution formula and the specific capital improvements for which the revenue must be used. The agreement is not effective unless it has been approved by a recorded vote of two-thirds of the boards. It then becomes binding on all parties.²⁷

The school district board(s) must adopt a resolution that provides for the specific capital improvements and, if an area commission or higher education board of trustees shares in the revenue, the resolution must incorporate the memorandum of agreement. The resolution must specify the period of time for which the tax must be imposed and the referendum question. The referendum can only be conducted in even-numbered years at the time of the general election. The election authority must certify the results of the referendum by resolution and file it within 10 days with the clerk of court and SCDOR. If approved, the tax must be imposed on the first day of the fourth full month following the filing of the resolution. The tax terminates on the earlier of the final day of the maximum time specified or 60 days following the filing of a resolution by the school district board(s) requesting termination of the tax. However, it can be renewed in the same manner as the initial imposition of the tax, including holding a referendum within two years of the date the tax is scheduled to terminate.

Sales and Use Taxes or Tolls for Transportation Facilities

In 1995, the General Assembly approved the use of a local sales and use tax or toll to fund transportation facilities. Counties must establish a transportation authority by ordinance and, upon referendum approval, may impose a sales and use tax, not to exceed one percent, or a toll to construct transportation facilities.²⁸ However, a county cannot impose more than one of the following at a given time: capital project sales tax, transportation sales tax or a sales tax enacted by a special act of the General Assembly.²⁹

The transportation authority has all the rights and powers of a public body except the powers of eminent domain; however, it may recommend to the governing body that property be acquired through eminent domain. The authority must use the same procurement methods and apply the same requirements used by the S.C. Department of Transportation (SCDOT).

²⁷ S.C. Code Ann. §§ 4-10-410 to 4-10-470.

²⁸ Act No. 52, § 2 of 1995.

²⁹ S.C. Code Ann. § 4-10-310.

The revenue must be used to finance specific projects, for a specific time period (not to exceed 25 years or the length of payment for each project, whichever is shorter) and for a limited amount of revenue. Eligible projects can include highways, roads, streets, bridges, mass transit systems, greenbelts and drainage facilities related to these projects.³⁰

The referendum for a transportation sales tax must be held at the time of the general election. If the tax is approved, the results must be certified by November 30 to the county and SCDOR for the tax to be imposed on May 1 following the referendum. The referendum for a toll must be held on the first Tuesday 60 days after the county board of voter registration and elections receives the ordinance calling for the referendum. If the toll is approved, the results must be certified no later than 60 days after the referendum to the county and to SCDOT.

The tax or toll terminates on the earlier of the final day of the maximum time specified for the imposition or the end of the calendar month in which sufficient revenues have been raised. If disapproved, another referendum cannot be held for two years. The transportation authority terminates not later than 12 months after the tax or toll terminates.

SCDOT is prohibited from withdrawing funds previously dedicated to a project or designated area under its allocation formula, if a county has passed a referendum to impose a transportation sales tax or toll. At this writing, three counties impose a transportation tax.³¹

Personal Property Tax Relief

In 2000, the Personal Property Tax Exemption Sales Tax was enacted.³² This act provides the only method for a county to exempt private passenger motor vehicles, motorcycles, general aviation aircraft, boats and boat motors from personal property taxes levied in the county.³³ Upon referendum approval, a county may by ordinance exempt cars, motorcycles, general aviation aircraft, boats and boat motors from personal property taxes by imposing a sales tax on the gross proceeds of sales within the county that are subject to the sales tax.

The sales tax may be imposed in increments of one-tenth of one percent sufficient to replace personal property tax revenues in the most recently completed fiscal year, but cannot exceed two percent. If a two percent rate does not bring in sufficient revenue to cover the loss in the first year, the shortfall must be made up in the first year by a distribution to the county from the Trust Fund for Tax Relief. Thereafter, this distribution must be adjusted by the increase in the consumer price index in the most recently completed calendar year, but cannot exceed the personal property tax revenue not collected. Since FY 2002-03, the General Assembly has enacted a temporary proviso in the General Appropriations Act each year to reimburse any county that imposes the tax at the rate of two percent where the proceeds are insufficient to offset the property tax not collected.³⁴ **As of this writing, no county has imposed this tax.**

If the property tax assessment ratio is reduced in a county where the tax is imposed, a new tax rate is certified by applying the reduced assessment ratio to the assessed value of vehicles in the county, using the applicable millage, and calculating a tax rate sufficient to produce that revenue plus the revenue not collected because of the exemption from the original calculation. The new rate is effective at the beginning of the month the assessment ratio changes and continues to apply while that assessment ratio applies or until the tax is rescinded.³⁵

³⁰ S.C. Code Ann. §§ 4-37-10 *et seq.*

³¹ Counties imposing a transportation tax as of July 2012: Beaufort, Berkeley and Dorchester.

³² Act. No. 387 of 2000, Part II, § 99A.

³³ S.C. Code Ann. § 4-10-540.

³⁴ Act. No. 73 of 2011, Part IB, § 89.45.

³⁵ Because the assessment ratio for motor vehicles was phased down from 10.5 percent to 6 percent beginning in 2002, this provision was intended to preclude any county from imposing the tax to avoid the loss in revenue resulting from the assessment drop.

A referendum must be held at the time of the general election, and the county council must declare the results by resolution. If approved, beginning for motor vehicle tax years on and after that date and all other property tax years beginning after the year in which the referendum is held, the personal property enumerated is exempt from personal property taxes. The sales tax is imposed on July 1 following the referendum. The tax may be rescinded by a petition of 15 percent of the qualified electors of a county presented to the county council, which triggers a referendum on the Tuesday following the first Monday in November. Such referendum may not be held earlier than two years after the tax has been imposed in the county.

Local Property Tax Credits

This local option tax became effective on Jan. 1, 2007, and is in addition to all other local option sales taxes.³⁶ It permits a county to impose a sales and use tax in increments of one-tenth of one percent, not to exceed one percent, to provide a credit against property taxes for the county and/or the school district(s) for all classes of property. The rate of the tax must be sufficient to produce revenues that do not exceed those necessary to replace property tax revenues in the most recently completed fiscal year, and must take into account any reimbursements received for property tax exemptions. Property subject to a fee in lieu agreement is not eligible for credits.³⁷

The process is initiated by either an ordinance of the county governing body or by a petition signed by at least seven percent of the qualified electors calling for a referendum on the question. Any qualified elector desiring to circulate a petition must file a written request with the governing body who then forwards the request to the S.C. Revenue and Fiscal Affairs Office (RFA). RFA will design the petition form in consultation with the State Election Commission and forward it, along with a certification of the tax rate, to the county governing body. The ordinance or the petition must be presented at least 120 days before the referendum is voted upon (the Tuesday following the first Monday of November of that year).

The county must obtain from RFA, information necessary to provide an estimate of the sales tax rate necessary to equal the property tax not collected as well as for the amount of funding needed to replace any tax increment financing plan in effect. A notice must be published two weeks prior to the referendum.

The county board of voter registration and elections must certify the results to the county governing body and to RFA no later than December 31, and the council must declare the results by resolution. If approved, the tax is imposed by ordinance on July 1 following the referendum. SCDOR is charged with collecting the tax. Revenues are provided quarterly to the county treasurer, who must distribute them according to the ordinance imposing the tax.

If not approved, a subsequent referendum may be initiated by ordinance or petition in the same manner, as outlined above, in any year. The tax may be rescinded by a petition signed by at least seven percent of the qualified electors, but cannot be held earlier than two years after the tax has been imposed. **As of this writing, no county has imposed this tax.**

Development Fees

County Public Works Improvement Act

Enacted in 1993, the County Public Works Improvement Act authorizes a county to acquire, construct, improve, operate, maintain, and sell or lease an improvement, and to finance it by imposing assessments and through the issuance of special district bonds, general obligation bonds, revenue bonds or any combination.

³⁶ Act. No. 388 of 2006, Part III, § 1.

³⁷ S.C. Code Ann. §§ 4-10-720 *et seq.*

Improvements can include recreational or pedestrian facilities, sidewalks, storm drains, water course facilities, road construction and paving, or any facility intended for public use.³⁸

The county governing body must pass a resolution describing the improvement district and the improvement plan, the projected time schedule, estimated cost and the amount to be derived from assessments, bonds or other funds; the basis and rates of assessments to be imposed; and the time and place of a public hearing (within 30 to 45 days after adoption of the resolution). The resolution must be published once a week for three consecutive weeks, with the final notice at least 10 days before the public hearing. Written consent must be obtained from a majority of the property owners owning at least 66 percent of the assessed value of property in the district.

Between 10 and 120 days after the hearing, the governing body may by ordinance provide for the creation of the improvement district and its financing. The financing of improvements is in the discretion of the county governing body and need not be uniform. Assessments can be based on assessed value, front footage, area, per-parcel basis, the value of improvements to be constructed within the district, or any combination. Assessments constitute a lien on the real property against which it is assessed superior to all other liens and encumbrances, except for property taxes, and must be annually assessed and collected with the property taxes on it. Any improvements must be owned by a public entity for the benefit of the citizens, residents or public entity itself.

Front-Foot Assessment for Sewer Improvements

In 1992, the General Assembly authorized counties, by resolution or ordinance, to provide for the expenditure of funds collected by front-foot assessments or per-parcel assessments for sewer improvements.³⁹ The resolution or ordinance must provide a general description of the properties on which the assessments are to be imposed and the use to which the funds will be applied.

If a county collects funds by front-foot assessments to defray construction of sewer lines, these funds also may be applied to the maintenance, repair or replacement of these lines as long as the county passes a resolution or ordinance to certify that construction of all sewer collection lines for which assessments were imposed has been completed and that all financial obligations have been discharged.

Impact Fees

The Development Impact Fee Act⁴⁰ authorizes the imposition of impact fees by a governmental entity that has adopted a comprehensive plan or a capital improvements plan.⁴¹ An impact fee cannot be imposed for any public facility that has been paid for entirely by the developer.

The process to impose impact fees is quite cumbersome and, in many cases, dissuades counties from embarking on the process, even when it might be the best method of financing improvements caused by growth. The first step is the enactment of a resolution by the governing body directing the local planning commission to conduct studies and recommend an ordinance. The planning commission develops recommendations for a capital improvements plan and impact fees in the same way it would develop recommendations for a comprehensive plan. The impact fee must be based on actual improvement costs or estimates supported by engineering studies. The local governing body may alter or amend the planning commission's plan.

³⁸ S.C. Code Ann. §§ 4-35-10 to 4-35-160.

³⁹ S.C. Code Ann. §§ 5-31-2310 *et seq.*

⁴⁰ S.C. Code Ann. §§ 6-1-910 *et seq.*

⁴¹ See S.C. Code Ann. § 6-29-510 for details about the comprehensive planning process; See S.C. Code Ann. § 6-1-960(B) for capital improvement plan requirements.

The capital improvements plan and impact fee ordinance must be adopted by positive majority vote. A public hearing must be held prior to final adoption of the ordinance. The ordinance must accomplish the following objectives:

1. Establish a procedure for processing of applications and for individual assessment of fees, credits or reimbursements;
2. Describe acceptable levels of service for system improvements;
3. Provide for the fee's termination;
4. Explain how the fee was calculated;
5. Describe the system improvements for which the fee is to be used;
6. Inform the developer/fee payor of payment options and rights of appeal; and
7. Provide the amount of the fee for each unit of development for which an individual permit or certificate of occupancy is issued.

The ordinance may include the method of collection, including late fees and imposing liens. The fee cannot be increased, unless the number of units increases or the scope of the development changes. No impact fee that results in greater than incidental benefits to property owners or developers is permitted.

There are exemptions from impact fees specifically outlined in state law.⁴² The impact fee for each service unit cannot exceed the amount of the costs of the capital improvements divided by the number of units, nor can it exceed a proportionate share of the costs incurred by the entity in providing system improvements.

An impact fee must be refunded, if the fees have not been expended within three years of the date they were scheduled to be expended, or if a building permit for installation of a manufactured home is denied. An administrative appeals procedure is provided in the law for the developer or fee payor. There are also provisions for shared funding among units of government.

Tax Increment Financing

Pursuant to Section 14(10) of Article X of the State Constitution, the Tax Increment Financing Act for Counties authorizes counties to incur debt for redevelopment purposes and to pay the debt service from the added increments of tax revenues that result from the project.⁴³

The county must hold a public hearing before approving any redevelopment plan. At least 45 days prior to the hearing, the county must provide notice to all taxing districts included in the redevelopment project area. If a taxing district does not file an objection by the time of the public hearing, it is deemed to have consented. If it does not consent, its tax increment must not be included in the special tax allocation fund. Within five years after adoption of the ordinance providing for the redevelopment plan, a county may adopt an ordinance to issue obligations to finance the plan.

In the ordinance authorizing the financing, the county may pledge all or part of the funds for the payment of redevelopment project costs. The pledge must provide for distribution to the taxing districts of funds not required for payment and securing of the obligation. A certified copy of the ordinance must be filed with the county treasurer in which any portion of a redevelopment project is situated. This becomes the authority for the extension and collection of the taxes in a special tax allocation fund.

⁴² S.C. Code Ann. § 6-1-970.

⁴³ S.C. Code Ann. §§ 31-7-10 *et seq.*

Any excess funds must be distributed annually by the county treasurer to the taxing districts in the same manner and proportion as real property taxes. The debt incurred by a county is exclusive of any statutory limitation upon the indebtedness a taxing district may incur.

Once payment of all redevelopment project costs, retirement of all obligations, and the distribution of any surplus funds has been made, the county must adopt an ordinance to dissolve the tax allocation fund. Thereafter, the rates of the taxing districts must be extended and taxes levied, collected and distributed in the same manner as if there had been no redevelopment plan.

Residential Improvement Districts

The Residential Improvement District Act, passed by the General Assembly in 2008, can be used to facilitate new development by providing a means of financing the needed infrastructure or improvements.⁴⁴ The owners of the real property may petition a county or municipality to create the district and to impose assessments to defray the costs of the infrastructure or improvements. A local government that has not adopted a comprehensive plan is not eligible to impose assessments.⁴⁵

The county governing body, by resolution, must describe the proposed district and the improvement plan as presented by the property owners, the time schedule for completion, the estimated cost, and the amount to be derived from assessments or from bonds secured by assessments, along with the proposed basis and rates of assessments to be imposed within the district.

The resolution must also provide for a public hearing between 30 to 45 days following the adoption of the resolution.⁴⁶ A notice of the public hearing must be published once a week for two successive weeks in a newspaper of general circulation within the county, with the final notice published at least 10 days before the hearing.

The county or municipality may create the district by ordinance if the proposed improvements encourage development and maintain or improve property values and the tax base.⁴⁷ If a proposed improvement pertains to a school, the improvement must be approved by the governing body of the school district.⁴⁸ The district can be composed of any combination of land uses. The governing body may impose assessments to fund the infrastructure or improvements, as long as the full faith and credit of the local government is not pledged as security. Assessments must be based on actual costs of the improvements or reasonable estimates.

Tourism Infrastructure Admissions Tax Act

The Tourism Infrastructure Admissions Tax Act,⁴⁹ enacted in 1997, provides a local entity with funds from the admissions tax to make tourism infrastructure improvements. In order to receive these funds, the local entity where a major tourism or recreation area/facility is located must file a certification application with the S.C. Department of Parks, Recreation and Tourism (SCPRT) within one year of the end of the investment period.

Once SCPRT has finished its review of the application, it is forwarded to SCDOR for approval. The Advisory Coordinating Council for Economic Development must classify the facility as a new facility or as an expansion to an existing one.

⁴⁴ S.C. Code Ann. §§ 6-35-10 *et seq.*

⁴⁵ S.C. Code Ann. § 6-35-50(B).

⁴⁶ S.C. Code Ann. § 6-35-120.

⁴⁷ S.C. Code Ann. § 6-35-170.

⁴⁸ S.C. Code Ann. § 6-35-115.

⁴⁹ S.C. Code Ann. §§ 12-21-6510 *et seq.*

If classified as an expansion (additional \$20 million aggregate investment in land and capital assets made within the investment period), the amount of admissions tax revenues for the benefit period is the amount in excess of the annual admissions tax revenues previously generated by the facility. This is determined by using the average of the admissions tax revenues generated during the 24 months preceding the filing of the certification application.

During the benefit period, an amount equal to one-fourth of the license tax paid on admissions to an establishment must be paid by SCDOR to the county or municipality where the establishment is located. This portion is to be used for additional infrastructure improvements. An additional amount equal to one-fourth of the license tax must be paid to the State Treasurer to be distributed upon approval of the Advisory Coordinating Council for Economic Development. Counties or municipalities within five miles of the tourism or recreation facility may apply to the council for grants. The council determines the amount to be received by each of the eligible entities. All monies must be used for additional infrastructure improvements.

A designated development area is determined by ordinance of the appropriate governing bodies. One or more areas may be located within a municipality or county area. The total aggregate amount of a single designated development area within any municipality or county cannot exceed five percent of the total acreage of the municipality or county. If there is more than one within a county or municipality, the acreage cannot exceed 10 percent of the total.

User Fees

State law defines a service or user fee as “a charge required to be paid in return for a particular government service or program made available to the payor that benefits the payor in some manner different from the members of the general public not paying the fee.” This definition also includes “uniform service charges.”⁵⁰

State law prohibits a local government from imposing a *new* tax after Dec. 31, 1996, unless it is specifically authorized by the General Assembly.⁵¹

A county may, by ordinance approved by a positive majority (a majority of the members of the entire governing body, whether present or not), charge and collect a service or user fee. Public notice and a public hearing must be held on any new fee prior to final adoption. Any fee imposed by a county prior to Dec. 31, 1996, remains in full force until repealed.⁵²

State law prohibits a local government from imposing a new tax after Dec. 31, 1996, unless it is specifically authorized by the General Assembly. ☞

Revenue derived from user fees must be applied to pay costs related to the provision of the service for which the fee was imposed.

If the revenue generated is five percent or more of the county’s prior fiscal year’s total budget, the proceeds of the fee must be kept in a separate and segregated fund from the general fund. If a county proposes to adopt a user fee to fund a service previously funded by property tax revenue, the notice required prior to budget adoption must include that fact.

The county may not impose a fee on agricultural lands, forestlands or undeveloped lands for a stormwater, sediment or erosion control program unless authorized under the Stormwater Management and Sediment Reduction Act;⁵³ however, any county imposing such a fee prior to June 16, 2009, may continue to do so under the same terms, conditions and amounts.

⁵⁰ S.C. Code Ann. § 6-1-300(6).

⁵¹ S.C. Code Ann. § 6-1-310.

⁵² S.C. Code Ann. § 6-1-330(A).

⁵³ See Title 48, Chapter 14 of the S.C. Code of Laws.

User Fees/Service Charges Imposed by County Governments in South Carolina

User fees/service charges generally fall into two categories: 1) charges for goods and services consumed and 2) regulatory charges. The following tables (one for each category) provide examples of those charges reported most frequently by counties. The lists are not meant to be all-inclusive.

Table 1 Examples of User Fees/Service Charges for Goods and Services Consumed	
Admissions Fees (museums, auditoriums, performing arts centers, zoos, beaches, skating rinks, botanical gardens, historic sites, games)	Land Records Fees (property reports, maps, plots, GIS products, aerial photos)
Advertising Fees (zoning, probate)	Landfill Tipping Fees
Airplane Fuel/Landing Fees/Hangar Fees	Library Fees
Alcohol/Drug Abuse Treatment	Marriage License Fees
Ambulance Transportation/Convalescent Transport	Mosquito Abatement
Animal Pick-up/Boarding Fees (pound/shelter fees/adoption charges)	Moving Fees (mobile homes)
Boat Dockage/Access to Boat Ramps/Marina Fees	Parking Fees (parking garages/lots)
Civil Assistance (subpoenas)	Police Officer Support
Community Center/Conference Room Rentals	Police Reports
Coroner Fees (coroner's report, toxicology report, autopsy report)	Pretrial Intervention Fees
Criminal Records Check	Public Health Fees (clinical, environmental)
E-911 Service Charges	Public Park Fees (camping in parks/campgrounds)
Emergency Medical Service Fees (medical services/drugs)	Public Transportation Fees (bus transit fares)
Emergency Preparedness Service Fees (haz-mat, explosives)	Recreation Charges/Fees (arts/crafts classes in recreation centers; athletic facilities such as tennis, basketball; concessions; equipment rentals; golf greens fees; summer youth camps/programs/clinics; tournament fees for soccer, softball, tennis, etc.)
Engineering Services	Road Maintenance Fees
Fingerprinting	Solid Waste Collection/Disposal Household Fees
Fire Service Fees	Towing Fees
FOIA Charges (copying costs, research, data processing fees)	Water/Sewer Taps/Fees
Funeral Escort Service Fees	Watershed Fees
Inmate Deductions/Medical Fees	

Alarm Permits/False Burglar Alarms	Fire Sprinkler Fees
Animal Impoundment/Quarantine Fees	Fireworks Permits
Animal Registration/License Tags	Floodplain Permits
Bad Check Fees	Garage Sale Permits
Bingo Licenses	Grading Permits
Building Inspections/Reinspections/Permits	Heating/Air Conditioning Permits
Code Enforcement Fees	Landfill Permits
Construction Permits	Library Fines
Contractor Licenses	Mechanical Inspection Permits
Demolition Permits	Mobile Home Licenses/Permits
Driveway Permits/Drainage Tiles	Noise Exemption Permits
Easement Abandonments	Planning (concept plans, development fees, planned unit development fees, plats, site plans, subdivision permits/fees)
Electrical Inspection Fees	Plumbing/Tap Inspection Fees
Encroachment Permits	Road Cut Permits
Erosion Control Permits	Roofing Permits
Excavation Permits	Swimming Pool Permits
Festival Permits	Zoning/Rezoning/Appeals/Variance Fees

Additional Resource

- The S.C. Department of Revenue's Local Government Services Division publishes property tax data and offers instruction and assistance to property tax officials across the state. For more information, visit www.sctax.org/lgs/default.htm.

Understanding School Funding

Holley H. Ulbrich, PH.D., Clemson University
 Edited by Ellen W. Saltzman, Clemson University

Introduction

South Carolina has 81 school districts. In 31 counties, the boundaries of a single school district correspond completely or very closely to the boundaries of the county. Some of the state’s largest counties, including Horry and Greenville, have only one school district. In other counties there may be two, three, or as many as seven school districts, some of them spilling over county lines. Some of the state’s smaller counties have multiple districts, including Barnwell and Clarendon counties with three school districts each. Spartanburg County has the most school districts with seven. Orangeburg County had eight school districts until the late 1990s, when consolidation reduced the number to three.

In counties with multiple school districts, there is usually some kind of coordination—sometimes in services (such as a shared vocational school), but more often in finances. In Spartanburg County, there is tax sharing among the seven districts. In two counties with multiple school districts (Anderson and Orangeburg), districts are subject to a county board of education that is elected or appointed separately from the district school boards and has some degree of control over budgets and tax rates. Only in 14 counties does the county council have the full responsibility of approving school budgets and millage rates. Table 1 shows the classification of school districts in terms of fiscal autonomy, or power to approve their own budgets and set their own millage rates.

No Autonomy	Limited Autonomy		Complete Autonomy
<i>County Council Approves Budget:</i> Beaufort Calhoun Clarendon 1,2,3 Colleton Dorchester 2,4 Greenwood 50,51,52 Hampton 1,2 Jasper Lee McCormick Oconee Richland 1,2 Saluda Sumter	Abbeville Allendale Anderson 1,2,3,4,5 Bamberg 1,2 Barnwell 19,29,45 Chesterfield Fairfield Florence 1,4	Kershaw Lancaster Laurens 55,56 Newberry Orangeburg 3,4,5 Pickens Williamsburg York 1,2,3,4	Aiken Berkeley Charleston Cherokee Chester Darlington Edgefield Florence 3 Georgetown Greenville Horry Lexington 1,2,3,4,5 Marion Marlboro Spartanburg 1,2,3,4,5,6,7 Union
<i>Legis. Del. Approves Budget:</i> Dillon 3,4			
<i>Town Approves Budget:</i> Florence 2,5			

School Districts as Local Governments

School districts are unique among local governments in South Carolina. Like counties and municipalities, school districts are governed by elected boards.¹ **Counties, municipalities and school districts all tap the same property tax base for revenue**, even though it falls to counties to assess property and, in most cases, send out the tax bills and collect and distribute the revenue. Like counties and municipalities, school districts depend on state aid for a significant part of their income—but they depend on it much more than counties and municipalities, since their sources of revenue are more limited.

The differences between school districts and general purpose local governments, however, may be greater than the similarities. Unlike counties and municipalities, school districts have only one function: K-12 education. The state has a substantial say in many aspects of how that function is carried out, from the content of the curriculum to the salaries and qualifications of teachers to the number of children in a classroom.

Another important difference between school districts and both counties and municipalities is in the degree of fiscal autonomy that school boards possess, as indicated in Table 1. County councils and city or town councils develop and approve their own budgets and set their own millage rates, although all local governments, including school districts, are subject to state-imposed limits on increases in mill rates. Some school districts have the same kinds of authority over budgets and millage rates as counties and municipalities, which would be considered complete fiscal autonomy. But other school districts have no such powers, and still others have only limited autonomy.

It should be noted that South Carolina is unusual in comparison to other states in having different rules that apply to different school districts. In many states, schools are the responsibility of the county or the city or township. In states with independent school districts, like South Carolina, these districts have no fiscal autonomy in some states and complete fiscal autonomy in others. But whichever system is in place, it is almost always uniform across the state's districts.

Adequacy and Equity

Financing K-12 education is a public responsibility because society as a whole benefits from having educated consumers, workers and citizens. People with more and better education are more likely to vote, to earn a higher income, and to resist the temptation to commit crimes. It is also an issue of fairness. Every child needs an adequate education to increase their potential earnings, which should eventually help to reduce poverty and inequality. A good education gives children a fair chance at life. But “public” could mean federal, state and/or local in various combinations.

In 1993, 34 school districts filed a court case that charged the state with failing to adequately or equitably fund its poorer school districts. In November 2014, the S.C. Supreme Court held that the state funding formula, combined with the legislative creation of inefficient local districts, unconstitutionally deprived students in rural districts of a minimally adequate education. The court ordered the S.C. General Assembly and local school districts to enact formal plans to remedy these educational deficiencies. County officials with budget oversight of local districts should be aware of negotiations with local school districts and legislation affecting school funding.

The legal challenges in South Carolina and elsewhere are based on the argument that funding K-12 education cannot be primarily a local responsibility. The state must take a substantial role as well. The first reason is a legal one. Several court decisions in other states have held that, since children are residents of the state, equal treatment under the law implies that the quality of a child's education must not depend solely or even primarily on how much taxable property there is in that child's school district. While some differences in spending per pupil are allowed, generally states in which such cases have been heard have been required to make more of an effort to equalize levels of funding.

¹ A few school districts still have appointed boards.

A second reason for the state to take a large share of the responsibility is that citizens move around, particularly in their teens and 20s after finishing high school or college. A student educated in Laurens or Williamsburg County may migrate to Greenville or Horry County after graduation. The people who reside in a county are not just the ones who were educated there, so everyone has an interest in quality education throughout the state.

Local funding also has a role to play. There are important connections between education, quality of life and property values. A community is more attractive to commercial developers and industry if it has quality schools to provide workers and customers. And of course, the first thing that newcomers ask about is the quality of the schools. Local school boards provide parents with a way to have some input into their children’s education. So, the cost and the management of K-12 education are shared between state and local governments with some federal aid for particular programs. Right now, after adjusting for property tax relief, the cost is shared only slightly more by the state than by local school districts, as Table 2 shows. In earlier decades, the state assumed a larger share.

Source	Total (in millions)	Per Pupil	Percentage Share	
			With Property Tax Relief	Without Property Tax Relief*
Federal Aid	\$715	\$1,009	9.4%	8.3%
State Aid	\$3,775	\$5,331	49.6%	38.3%
Local Sources	\$3,119	\$4,405	41.0%	53.4%
Total	\$7,609	\$10,747		

*If property tax relief (that is, the state making property tax payments on behalf of homeowners and elderly citizens) is counted as local rather than state revenue, then state aid drops to \$2,918 and local sources increase to \$3,976.

Source: *Local Government Finance Report 2008*, S.C. Budget and Control Board, Office of Research and Statistics. Pupil count is from the S.C. Department of Education.

Federal Aid to School Districts

Until recently, the federal government’s role in funding education has been directed primarily at special needs and at schools with a high incidence of poverty. Table 3 shows the dollar amount per pupil in federal aid in the median, highest and lowest receiving districts in 2006–07. Revenues reported in Table 2 and Table 3 were for the years preceding the federal stimulus funds, which increased federal aid temporarily for most districts even as state aid was reduced.

Amount Per Pupil		
Median District	Highest District	Lowest District
\$981	\$2,297 Marion 7	\$381 York 4

Source: *Rankings*, S.C. Department of Education

State Aid to School Districts

State aid to schools comes in four forms: the Education Finance Act (EFA), the Education Improvement Act (EIA), state grants and property tax reimbursement. The first three provide additional resources to school districts. Property tax relief is more of a pass-through to shift some of the tax burden from local property owners to the state as a whole.

Property tax relief as a form of state aid to public education was vastly expanded as a result of Act 388, which passed in 2006. Act 388 increased the general sales tax from 5 to 6 percent, with all of the revenue directed to a trust fund to fund relief from all school operating taxes for homeowners only. Since the state had already committed to funding property tax relief for homeowners for school operations on the first \$100,000 of assessed value, this legislation greatly increased the amount of relief and directed it to higher income households for the most part. Funds are distributed to districts based on their 2006 revenue from owner-occupied property with an annual increase for population plus inflation. If the funds generated by the additional penny are not sufficient, the state general fund must make up the shortfall.

Including the reimbursements for property tax relief, state aid provided 49.6 percent of school district revenue in 2007-08, compared to 41 percent from all local sources. Within state aid, the mix has changed in the last decade as the legislature has shifted some of its aid from providing resources directly to school districts to providing resources in the form of property tax relief. Property tax relief has doubled its share of state aid since the turn of the century. The largest component of state aid, however, is still the Education Finance Act, although it is less than half the total.

	Total (in millions)	Percent
EFA	\$1,526	40.4%
EIA	\$580	15.4%
State Grants, Lottery, Other	\$982	26.0%
Property Tax Relief	\$857	22.7%
Total	\$3,945	100%

Education Finance Act

The EFA, passed in 1977, determines the distribution of close to half of all state aid to school districts. EFA’s share of total state aid declined considerably from 58 percent in 1990–91 to 40.4 percent in 2007–08. The purpose of this legislation was to define a foundation education program and share the responsibility for funding it between the state (70 percent) and local school districts (an average of 30 percent). In order to receive the funds, a district must maintain its own tax effort—that is, come up with its required share of the foundation program cost. Poorer districts receive a larger amount per pupil and richer districts a smaller amount per pupil, but the average district receives 30 percent of the cost of that foundation program from the state through EFA.

The EFA formula comprises three important elements: the number of pupils, the amount to be funded per pupil (base student cost) and the index of taxpaying ability in the district. Each of these elements is described in detail below.

- *Number of pupils.* For each district, the S.C. Department of Education computes a number of weighted pupil units. Weighted pupil units reflect the differences in the cost of serving different student populations based on grade level, learning disabilities, various physical and emotional handicaps, homebound students and vocational students. About 21 percent of the funding goes to students with various handicaps or learning disabilities—including speech, hearing, visual, orthopedic, emotional and educability handicaps. In 2006–07, there were 857,199 weighted pupil units. The largest district, Greenville, had 83,774 weighted pupil units; while the smallest district, Marion 7,² had only 1,044 weighted pupil units.

² Marion County School Districts 1, 2 and 7 consolidated in 2012-13.

- *Base student cost.* For each weighted pupil unit, the state is committed to funding a foundation program. The per pupil cost of that foundation program, or the base student cost, was determined in 1977 to be \$718. This number reflected the cost of inputs providing classrooms, teachers, supplies and so on that could provide the expected level of educational quality desired in 1977. Each year it is adjusted; but only for inflation, not for any changes in quality or higher expectations or demands. In 2008–09, the state funded EFA a base student cost of \$2,578, which is less than the inflation-adjusted equivalent of the 1977 figure. Furthermore, increases in quality—including higher teacher credentials and salaries, smaller classroom size, federal requirements and more accountability—have meant that the actual per pupil cost of K-12 education has risen by considerably more than the rate of inflation.
- *Index of taxpaying ability.* The required local share and the state aid for a particular district are determined by its index of taxpaying ability, or the percentage of total taxable property in the state that is in that district. Large districts and wealthy districts have very high indices, while small districts and less wealthy districts have lower indices. For example, in 2006–07, the index for Greenville County’s one district was .100050, which means that this district had more than 10 percent of the state’s taxable wealth. In Marion 7, the index was only .000590.

In order to receive its full allocation of EFA aid, each school district must meet its requirement for local support or effort. The state calculates how much EFA money each district should have by multiplying its weighted pupil units by the base student cost. Then, the state subtracts local required effort from that amount and pays the rest. For example, if the base student cost were \$2,000 and a district had 3,000 weighted pupil units, its funding under EFA should be \$2,000 x 3,000 (\$6 million). The average district would have to come up with 30 percent of that (\$1.8 million), and the state would provide the other \$4.2 million. If it were wealthier than the average district, it would receive less from the state, and if it were poorer than average, it would receive more.

Returning to the example above, in 2006–07, Greenville County had 83,174 weighted pupils, and Marion 7 had only 1,044 weighted pupils. The base student cost for the year was \$2,367. State EFA aid plus the required local match for these two districts should amount to the total EFA calculations shown below.

District	Weighted Pupils		Base Student Cost		Total EFA
Greenville	83,174	x	\$2,367	=	\$196,872,858
Marion 7	1,044	x	\$2,367	=	\$2,471,858

How is the required local match computed? For this formula, we also need the number of state weighted pupil units, which was 857,199 in 2006–07. The required local shares for Greenville and Marion 7 are computed as follows.

District	State Weighted Pupils		Base Student Cost		Index of Taxpaying Ability				Local Share
Greenville	857,199	x	\$2,367	x	.100050	x	.30	=	\$60,900,136
Marion 7	857,199	x	\$2,367	x	.000590	x	.30	=	\$359,131

Greenville’s much larger required local contribution reflects an index of taxpaying ability that is 200 times that of Marion 7.

The final step is to calculate the state’s EFA contribution, which is the total amount based on weighted pupils and base student cost minus the required local match.

District	Total EFA		Local Share	=	State Share
Greenville	\$196,872,858	-	\$60,900,136	=	\$135,972,722
Marion 7	\$2,344,625	-	\$359,131	=	\$1,985,494

EFA is the principal way in which the state tries to equalize funding among school districts by giving more per pupil to poorer districts and less to wealthier districts. Funds for district employee fringe benefits are also distributed on this basis. However, the low level of the base student cost means that only about 20 percent of total operating expenses and 40 percent of state aid comes through an equalizing process. As a result, operating revenue per pupil is still highly unequal.

The usefulness of the index of taxing ability (ITA) was compromised by Act 388.

At this writing, owner-occupied housing is included in the ITA, but no longer represents an ability to raise additional operations revenue through higher local millage because this property is exempt from paying taxes for school operations. The General Assembly is exploring ways to modify the index to take that issue into account. The ITA already includes an adjustment for fee-in-lieu property, which is included in the index, but does not represent any potential for raising additional revenue.

Proviso 1.62 of the state budget (Act No. 286 of 2014) requires the S.C. Department of Revenue (SCDOR) to impute a value for owner-occupied property qualifying for the special four percent assessment ratio by adding the second preceding taxable year total school district reimbursements from the Homestead Exemption Fund to the calculation of the index of taxing ability. The additional disbursement from the Homestead Exemption Fund to bring the total reimbursements to the districts in that county to at least \$2.5 million is not included when SCDOR imputes this value.

Education Improvement Act

In 1984, the S.C. General Assembly increased the state sales tax rate from 4 to 5 percent with the additional “penny” dedicated to improvements in the schools. Performance objectives are the focus of the EIA. The legislation raised course requirements for graduation, provided for remediation and exit exams, expanded vocational education, reduced pupil-teacher ratios, mandated improvements in teacher quality and made better provisions for learning disabled students. EIA funds are earmarked for specific needs and programs and are distributed on a per pupil basis, so they are not part of the equalization program. Some of the funds go to entities other than public schools. In 2007–08, EIA provided \$580 million, or 15.4 percent, of all state aid to schools. Because EIA funds come from the sales tax, funding varies from year to year with the state of retail sales, but it is a relatively stable source of revenue for school districts.

Like EFA, EIA has a local maintenance-of-effort requirement. The EIA required local revenue amount is based on prior spending in seven categories of local school district operating expenditures. That figure is adjusted for inflation based on an index that is determined by the S.C. Revenue and Fiscal Affairs Office. School districts must maintain this level of effort per pupil in the following year, unless they obtain a waiver.

State Grants

The General Assembly appropriates funds each year for grants to school districts. In 2007–08, these grants amounted to \$710 million. The largest item was to compensate school districts for the cost of employer contributions to school employees’ fringe benefits, including health insurance, pension plan, and the employer portion of Social Security and Medicare taxes.

These funds are distributed on the same basis as EFA funds, taking into consideration the weighted number of pupils and the district's index of taxpaying ability. A second major item is the cost of school bus drivers. When EFA was passed in 1977, it was the practice for the state to fund 100 percent of the cost of both fringe benefits and transportation, but currently the share is less than 70 percent.

Property Tax Relief from the State

Like many states, South Carolina has made substantial efforts to reduce property tax burdens on residents and businesses in the last 10 years. Among the significant changes that have taken place are expanded business tax incentives; changes in depreciation of business personal property; homeowners' property tax relief as described earlier; an increase in the homestead exemption from \$20,000 to \$50,000 for homeowners who are age 65 or older, totally disabled or legally blind; and a reduction of the assessment rate for personal vehicles. All of these changes have impacted the revenue available for school districts. The state reimburses school districts for revenue lost because of the homeowners' property tax relief and the homestead exemption. Although these revenues are listed as state aid to education, they do not increase the resources available to school districts.

Counties have a variety of tools to use that encourage economic development, including fee-in-lieu agreements and multi-county business or industrial parks. These tools involve property tax relief, which impacts the school districts as well as the county. While schools may also benefit from economic development, often it is accompanied by growth of residential housing and school pupils without a comparable increase in property tax revenue. The impact of property tax incentives on school districts is one of many factors that county governments must consider in negotiating tax relief agreements.

Local Funding for School Districts

Property Taxes

The property tax is the most important local revenue source for school districts. The school property tax is also the most important one for taxpayers, accounting for 61 percent of the total property tax bill in the average county. Counties normally administer the property tax on behalf of the school district or districts within their borders.

The assessed value of taxable property for a school district, as well as for other local governments, is determined by applying the assessment ratios for the various classes of property to the taxable wealth of the district. Each school district has a measure of its assessed value per pupil, which serves as an indicator of ability to pay for education. In order to determine the amount of taxes that could be raised, the proposed millage rate is applied to the district's assessed value. Act 402, passed in 2006, limits the growth in assessment of existing properties to no more than 15 percent over a five-year period unless there is a taxable transfer of interest. This assessment cap has affected revenue growth for all local governments, not just school districts.

Table 5 provides some indicator of tax resources and local tax effort for the median, highest and lowest districts in each category. As Table 5 shows, the wealthiest district had more than 13 times the assessed value per pupil of the lowest district. The highest millage rate was almost triple the lowest. An additional mill will raise more than \$150,000 in Beaufort County, but only a little over \$8,000 in Clarendon 3. Clearly, there are vast differences in the ability to collect revenue from property taxes for school purposes between districts in South Carolina.

	Median District	Highest District	Lowest District
Assessed Value Per Pupil	\$16,313	\$82,286 Beaufort	\$6,191 Clarendon 3
Millage Rate	185.4	312 Hampton 2	105.4 Charleston
Source: <i>Rankings</i> , S.C. Department of Education			

Other Local Funds

Like counties and municipalities, school districts have other revenue sources, but they are generally more limited than those available to other local governments. School districts do not benefit from the local option sales tax or have access to other revenue sources such as hospitality taxes, accommodations taxes, business license taxes and so on. They have fewer opportunities to use fees compared to counties and municipalities, although recent funding cutbacks have led to increased fees for extracurricular activities, field trips and other items in most school districts. About 17 percent of local school district operating revenue comes from sources other than the property tax.

Capital Funding, Borrowing and Debt

School districts are allowed to join with counties in issuing debt under the special projects sales tax, with a listing of projects and a limitation on the time period before the tax expires. While school districts are not allowed to issue revenue bonds, they can issue general obligation bonds for school construction and other capital projects subject to the same limitations as counties and municipalities. In addition, the state issues bonds or makes special appropriations from time to time to help with the cost of school construction and school buses.

Conclusion

School financing in South Carolina is a complex mixture of federal, state and local funding. There is a close relationship between school finances and county finances. They both tap the same property tax base and serve the same citizens. County decisions about tax incentives for industrial location impact schools. In addition, quality education is an important factor in industrial recruitment; thus, county governments have a strong interest in good schools.

Difficult economic times in the last few years have resulted in a diminished state commitment to education funding—which has forced many school districts to increase classroom sizes, raise millage rates, add more fees, and postpone improvements and other projects as they struggle to maintain educational quality. The problem has been exacerbated by the passage of Acts 388 and 402, which reduce the role of owner-occupied property and increased assessments as sources of revenue growth to school districts. As both counties and municipalities struggle to adjust to this financial reality, they need to partner with school districts in their common enterprise of serving their citizens and students to the best of their ability.

Additional Resources

- S.C. Department of Education: <http://ed.sc.gov>.
- S.C. School Boards Association: www.scsba.org.
- For more information about individual school district property tax millages, view *S.C. Property Tax Rates by County* via www.sccounties.org/publications.
- To review recent indexes of taxpaying ability for specific school districts, visit the S.C. Department of Revenue’s web page at www.sctax.org/lgs/default.htm.
- For information about school district revenue sources and expenditures by county, view the Local Government Finance Report via www.rfa.sc.gov/econ/localgovt.

Human Resource Management

William E. Tomes, Formerly with the University of South Carolina

Human resources costs represent a significant portion of most county budgets. For each dollar paid in direct wages and salaries, a county may pay over 30 cents for a standard employee benefits package. A certain amount of these benefit costs, such as workers' compensation and unemployment taxes, is controllable through sound human resource management. With the increasing scarcity of revenues, counties must be sure that human resource policies and practices are sound and balance the need for maximum results, in terms of cost control and employee productivity, with the ability to attract and retain qualified employees.

Legal Issues: County Employment

The following discussion encompasses an area of the law that is beyond the legal expertise of the Association of Counties' legal staff and most county attorneys. It may be prudent for county council to retain outside counsel specializing in labor law for advice in these matters. The discussion below is intended only as an overview of personnel legal matters for county officials.

Due to the litigious business environment of recent years, county government officials have been required to stay abreast of changes fostered by the federal government in the area of employment law more so than by any state actions. This section covers several of the major federal labor laws and regulations that affect the relationship between a county's administration and its labor force.

These statutes and regulations seek to address all stages of employer-employee relations from hiring, through employee treatment in the workplace, to termination of employment. A cause of action under these federal acts can be brought against any person or entity that violates a right protected by federal law.¹ A summary of these significant pieces of legislation and related issues follow, as well as a discussion of the topics of employee discipline and grievance procedures.

The Civil Rights Act of 1964

Under Title VII of the Civil Rights Act of 1964, it is unlawful to discriminate against any employee or applicant for employment in regards to hiring, termination, promotion, compensation, job training or any other term, condition or privilege of employment on the basis of race, color, national origin, sex or religion.² Discrimination cases based on pregnancy and sexual orientation also are becoming prevalent. Title VII applies to employers with 15 or more employees, including state and local governments, and prohibits employment decisions based on stereotypes and assumptions about abilities, traits or the performance of individuals and certain racial groups.

Sexual harassment is a form of sex discrimination that can occur between an employer and employee or between employees; it can also occur between members of the same or opposite sexes. Traditionally, there are two types of sexual harassment: 1) "direct," which encompasses unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when the conduct explicitly or implicitly affects an individual's employment and unreasonably interferes with an individual's work performance; 2) "hostile environment," which indirectly creates an intimidating, hostile or offensive work environment.

¹ A governmental entity may be considered a person for purposes of prosecution under 42 U.S.C. § 1983, if an official policy of the entity violates a federally protected right of the individual.

² 42 U.S.C. Chapter 21.

County officials must be aware that discussions of a sexual nature and off-color jokes told among employees within earshot of others have created a hostile work environment for those employees made uncomfortable and have given rise to claims of sexual harassment. It would be prudent for management to develop a written zero tolerance policy jointly acknowledged by employees and management. A structured complaint or grievance mechanism should also be outlined and acknowledged.

Protections Against Discrimination Outside the Civil Rights Act

The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work in the same establishment.³ The Age Discrimination in Employment Act (ADEA) of 1967 protects individuals who are 40 years of age or older against employment discrimination based on age.⁴ The ADEA's protections apply to both employees and job applicants.

The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) of 1938 established minimum wage, overtime pay, record-keeping, and child labor standards affecting full-time and part-time workers in the private sector and federal, state and local governments.⁵ A major provision of the legislation was the establishment of the minimum hourly wage paid to workers, which is currently \$7.25 per hour with a 40-hour work week. The FLSA has been amended repeatedly in subsequent decades expanding the classes of workers covered, raising minimum wage, redefining regular-time work, and raising overtime payments to encourage the hiring of new workers and to equalize the pay scales of men and women. Covered, non-exempt workers are entitled to the current minimum wage with overtime pay at a rate of not less than 1.5 times their regular rate of pay after 40 hours in a work week. Under the FLSA regulations, executive, administrative and professional employees are exempt from the pay requirements for overtime work.

The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) of 1993 requires covered employers to grant eligible employees up to 12 weeks of unpaid leave during any 12-month period for one or more of the following reasons: birth and care of a newborn child of the employee; placement with the employee of a son or daughter for adoption or foster care; care to an immediate family member (spouse, child or parent) with a serious health condition; or for a serious health condition.⁶ FMLA affects any public or private employer with 50 or more employees.

The Americans with Disabilities Act

Title I of the Americans with Disabilities Act (ADA) of 1990 prohibits private employers, state and local governments, and other entities from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms and conditions of employment.⁷ The ADA was amended in 2008, mainly to expand the definition of disability. The act covers employers with 15 or more employees, including state and local governments.

An employer is required to make reasonable accommodations to provide an equal employment opportunity to a qualified applicant or employee with a disability, unless this would impose an "undue hardship" on the operation of the employer's business.

³ 29 U.S.C. § 206.

⁴ 29 U.S.C. §§ 621 to 634.

⁵ 29 U.S.C. § 201.

⁶ 29 U.S.C. Chapter 28.

⁷ 42 U.S.C. §12101.

This requirement includes, but is not limited to, making existing facilities readily accessible to and usable by persons with disabilities; job restructuring, modification of work schedules or reassignment to a vacant position; or acquiring or modifying equipment, examinations, training materials, or policies and providing qualified readers or interpreters.

The Genetic Information Nondiscrimination Act

The Genetic Information Nondiscrimination Act of 2008 is a federal law that protects individuals from genetic discrimination in health insurance and employment.⁸ Genetic information is defined as genetic test results of an individual, family members, or the family's medical history.

The Patient Protection and Affordable Care Act

The Patient Protection and Affordable Care Act (commonly referred to as the Affordable Care Act) contains several significant changes to health care plans offered by employers.⁹ Counties are impacted by the employer mandates, notice requirements and insurance reforms outlined in the act. Due to the evolving and complex nature of these rules and regulations, counties should consult with their labor attorneys and human resource staffs to ensure their health care plans are in compliance.

The Consolidated Omnibus Budget Reconciliation Act

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 requires employers to notify their employees regarding continued healthcare benefits for former employees and their spouses and dependents, divorced spouses of current employees, and dependent children of current employees who have become too old for the group plan.¹⁰ This notification is made twice: first when the employee becomes covered by the plan and later when a "qualifying event" (usually termination of employment) occurs.

Drug Testing and the Drug-Free Workplace Act

Drug testing of employees may be feasible if reasonable cause exists, but may infringe upon the employee's right to privacy and may be an unreasonable search and seizure without reasonable cause. Public entities must adhere to the U.S. Constitution's Fourth Amendment, which prohibits unreasonable governmental searches and seizures. Defining what is a reasonable search involves a balancing of the governmental interest sought to be protected against the employee's right to privacy. The courts that have addressed the issue of employee drug testing under the Fourth Amendment have generally held that public employers cannot conduct a search of their employees without individualized suspicion.¹¹

An exception to this principle exists for employees who occupy "safety sensitive" positions. Among these positions are police officers, federal customs agents, firefighters and certain transportation industry employees who have been found, by the courts, to occupy safety sensitive positions justifying testing without suspicion. The U.S. Department of Transportation has determined that individuals who are required to possess a commercial driver's license occupy a safety position and the federal courts have upheld this position.

It is critical that employers seek competent employment law advice in determining which positions are properly deemed safety sensitive for random selection drug testing purposes.

⁸ Genetic Information Nondiscrimination Act, Pub. L. No. 110-233, 122 Stat. 881 (2008).

⁹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act, Pub. L. No. 111-152, 124 Stat. 1029 (2010).

¹⁰ 42 U.S.C. §§ 300bb-1 to 300bb-8.

¹¹ *Carroll v. City of Westminster*, 52 F.Supp.2d 546 (D. Md. 1999).

The Drug-Free Workplace Act of 1988 requires that local governments receiving federal grants and federal contractors promote a drug-free work environment.¹² Act 593 of 1990 established the S.C. Drug-Free Workplace Act, which conditions the receipt of grant money from state agencies through certification to the agency that the recipient will promote a drug-free workplace.¹³

Protection from Exposure to Occupational Pathogens

Bloodborne Pathogens. The Occupational Safety and Health Administration (OSHA) and the state OSHA division have published regulations to protect employees by regulating exposure to human blood and other bodily fluids that have been linked to HIV or Hepatitis B infections. These provisions require personal protective equipment, training to alert workers to the risks posed by these viruses, exposure control plans, and Hepatitis B vaccines at no charge to employees who have the potential for exposure.

Airborne Pathogens. In the last few years, issues such as exposure to mold in older government buildings have forced public officials to be cognizant of providing healthy work environments for their employees. Prolonged exposure to these and other types of airborne pathogens without prompt corrective action may give rise to employee illness and accompanying workers' compensation claims. Additionally, in light of bio-terrorism concerns since the World Trade Center attacks in September 2001, employers must be increasingly aware of protecting their employees from exposure to foreign substances.

The Immigration Reform and Control Act

The Immigration Reform and Control Act (IRCA) of 1986 requires employers to assure that hired employees are legally authorized to work in the U.S.¹⁴ This legislation requires employers to confirm the employment status of any new workers hired after Nov. 6, 1986. New hires must provide evidence of identity and employment authorization and complete the Immigration and Naturalization Service Form (I-9). The form must be verified by the employer. E-Verify is available for employers to electronically verify the employment eligibility of their newly-hired employees. According to the U.S. Citizenship and Immigration Services, E-Verify virtually eliminates social security mismatch numbers, improves the accuracy of wage and tax reporting, protects jobs for authorized U.S. workers and helps U.S. employers maintain a legal workforce.

Employee Discipline and Dismissal

For many years, at-will employment was the prevailing legal principle in South Carolina employment law. The classic statement of the at-will common law principle is that employers "may dismiss their employees at will...for good cause, for no cause, or even for cause morally wrong, without being thereby guilty of legal wrong."¹⁵ The at-will doctrine is grounded in the "mutuality" assumption from contract law that both the employee and employer are free actors: the employer is free to terminate the worker at will, just as the worker is free to leave the job at any time. The existence of a formal contract or statutory limitation counters that assumption.

The doctrine of unjust dismissal or wrongful discharge counters the at-will doctrine through three major exceptions: the public policy exception; the implied employment contract exception, which also includes the concept of good faith and fair dealing; and the tortious invasion exception.¹⁶

¹² 41 U.S.C. § 702.

¹³ S.C. Code Ann. §§ 44-107-10 *et seq.*

¹⁴ 8 U.S.C. § 1324a.

¹⁵ *Payne v. Western & Atlantic RR Co.*, 81 Tenn. 507, 519-520, 1884.

¹⁶ Dunnette, M.D. and Bass, B.M. (1963). Behavioral Scientists and Personnel Management. *Industrial Relations* 2: 117.

The **public policy exception** connotes that certain governmental objectives outweigh an employer's right to terminate employees with impunity and is therefore contrary to public policy, or what society itself determines to be right or wrong. The **implied contract exception** applies when the discharge is found to be contrary to the terms of an employment agreement, either express or implied.¹⁷ Implied contracts have been found to exist in such diverse sources as employee handbooks, job application forms and written statements of procedure. Oral promises or other signs of a continued expectation of employment are accepted as evidence of contractual obligations. Statements that an employee will have a job "during good behavior" or "as long as you do a good job" have been held to be legally binding.¹⁸ A **tort**, which is a violation of a duty that is owed to another person and for which financial damages can be recovered, **is the third exception** to the at-will doctrine. An employee suffering an unjustified harm when a supervisor terminates the worker in an "outrageous" fashion producing emotional distress has been found to be a tortious invasion deserving compensation.¹⁹

Until recently, South Carolina's courts closely followed a literal version of the at-will doctrine, but significant alterations in interpretation of the doctrine began in 1985 when certain public policy exceptions were acknowledged. Responding to a S.C. Supreme Court decision²⁰ which reinstated an employee who had been terminated "for obeying the law" (for responding to a subpoena from the S.C. Employment Security Commission), the legislature passed two statutes prohibiting employers from firing workers who were absent while serving on juries or for appearing as witnesses in workers' compensation cases.

Subsequently, the S.C. Supreme Court has put employers on notice that the manner of a worker's dismissal now constitutes a potential exception to the at-will doctrine. At least one "outrageous" termination case has been litigated, giving the court an opportunity to identify the four elements that guide its review of such cases. To be deemed "outrageous," a dismissal must 1) be so extreme that it is regarded as "utterly intolerable in a civilized community," 2) cause emotional stress, 3) cause stress which is so severe that no reasonable person could be expected to endure it, and 4) have inflicted the stress intentionally and recklessly.²¹

The S.C. Supreme Court has put employers on notice that the manner of a worker's dismissal constitutes a potential exception to the at-will doctrine. ☺

al stress, 3) cause stress which is so severe that no reasonable person could be expected to endure it, and 4) have inflicted the stress intentionally and recklessly.²¹

The court has also recognized the implied contract exception by requiring employers to abide by the representations made in personnel manuals and handbooks. In this case, the employer was required to utilize a multi-step disciplinary process that was delineated in the handbook, yet ignored during the worker's termination.²² Notably, the court's action in *Small v. Springs Industries* had been anticipated several years earlier when the S.C. Attorney General's Office advised public employers that "any applicable employee handbook or like publication" may provide employees with "an enforceable expectation of continued employment."²³

¹⁷ Bakaly, Charles and Grossman, Joel (1984). How to Avoid Wrongful Discharge Suits. *Management Review* 73: 43.

¹⁸ Williams, Thomas (1985). Fire at Will. *Personnel Journal*.

¹⁹ Daniel Koys, Steven Briggs and Jay Grenig, "State Court Disparity on Employment-At-Will," *Personnel Psychology* 1987: Vol. 40, 566.

²⁰ *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 337 S.E.2d 213 (1985).

²¹ *McSwain v. Shei*, 304 S.C. 25, 402 S.E.2d 890 (1991); overruled on other grounds by *Sabb v. South Carolina State University*, 350 S.C. 416, 567 S.E.2d 231 (2002).

²² *Small v. Springs Industries*, 292 S.C. 481, 357 S.E.2d 452 (1987).

²³ 1982 WL 189118 (S.C.A.G.).

In 2002, the S.C. Supreme Court handed down its landmark decision in *Conner v. City of Forest Acres*.²⁴ Despite numerous statements that nothing in the city's handbook was to be construed as a contract, and despite that the worker signed an acknowledgment of her at-will status, the court determined that the question of whether the handbook created a contract remained a question for the jury. This decision continues to have a significant impact on the success of at-will employees' claims that an employee handbook constitutes a contract of employment. As a result, conspicuous disclaimers and signed at-will acknowledgments are not enough to preclude a court from finding that an employer's handbook is a binding contract with its workers.

Progressive discipline procedures constitute the prevalent approach to dealing with marginal performers in most public personnel systems. The term "progressive" connotes an ascending hierarchy of penalties correlating to the seriousness of the offense and/or the number of occurrences. Consistency and impartiality are the intended goals to be met by specifying the punishment appropriate for each offense. These procedures usually encompass an extensive list of punishable consequences for tardiness, absenteeism, insubordination, rule violations, substandard quality and quantity of work, drug or alcohol impairment, misuse of equipment, sleeping on duty and the like. Written warnings, suspensions with or without pay of varying durations, reduction of pay within the same job classification, demotion and termination are typically included.

The *Conner* case also impacted discipline procedure language within employee handbooks. In *Conner*, a city employee was terminated after several reprimands for tardiness, leave without permission and poor job performance. She brought the wrongful discharge suit claiming breach of contract, despite the city's employee handbook stating conspicuously that the policies within did not create a contract of employment. The S.C. Supreme Court ruled that despite the handbook's contract disclaimer and Conner's signed acknowledgment of her at-will status, the language within the handbook created a question of whether a contract was created—a question which should be determined by a jury.

Following the Conner case, most employment attorneys recommend that discipline policies not contain discipline procedures and that progressive discipline language not be included in handbooks. They advise to avoid any language, in discipline policies or elsewhere, that appears to establish a specific procedure for discipline. This could be interpreted as creating or implying a contractual relationship between an employee and employer and may weaken an employer's at-will employment argument.

The policy should put workers on notice that they may be subject to discipline or discharge for engaging in conduct disapproved by the employer. The policy should not attempt to match worker conduct with the type of discipline to be administered by the employer. Similarly, the policy should avoid statements that discipline depends upon the circumstances of the conduct, as this implies that the employer will not terminate an employee for a minor offense. The handbook should also avoid classifying offenses such as "minor," "major" or "serious," since these words are subject to interpretation—most likely by a jury.²⁵ The above approach applies to policies other than disciplinary policies. A handbook should not contain language that appears to establish a procedure that will be followed before some action is taken by the employer against the employee.

Many handbooks contain lists of actions or conduct that may lead to discipline. If your county's handbook has such a list, the introductory language should clearly state that the list "includes, but is not limited to..." the listed offenses. The final offense in the list should be "any other reason which the [employer] feels, in its sole discretion, warrants disciplinary action."²⁶

²⁴ *Conner v. City of Forest Acres*, 348 S.C. 454, 560 S.E.2d 606 (2002).

²⁵ Client newsletter from Gignilliat, Savitz, & Bettis, LLP (June 26, 2002).

²⁶ Client newsletter from Gignilliat, Savitz, & Bettis, LLP (June 26, 2002).

It should also be stated that the employer reserves the right to take whatever disciplinary action it deems appropriate without regard to how it has treated other employees and without regard to how it has handled similar situations.

As an alternative, consider removing such lists and replacing them with other language on work rules. For example, offenses such as theft, embezzlement and drug possession can be addressed by a general introductory portion of the handbook that states, “We expect our employees to be good citizens and comply with all local, state and federal laws.” Offenses such as damage or destruction of public property can be addressed by a section that states that employees are responsible for public property in their possession or control. No specific statement need be given as to what discipline may follow a violation of such rules.

Employers need to avoid superfluous language when making statements in handbooks and elsewhere (e.g., “workers will be treated fairly” or that the employer “will always maintain a positive relationship with its workers”). These types of statements may be viewed by a court as creating contractual rights, especially when combined with terms like “will.” The court in *Conner v. City of Forest Acres* indicated that such language could alter at-will employment. When drafting handbook language, remember that every word you include may be used against you. **Generally it is better to say as little as possible.**

County governments should also consider codifying at-will employment. An ordinance codifying at-will employment provides a defense that a contract for other than at-will employment is void as a matter of law. Exceptions can be made in the ordinance for employees hired for a definite period of time with specific approval of the governing body. All language in county ordinances should be carefully screened, as described earlier, to ensure that the ordinances cannot be construed to create contractual rights. In the past, the S.C. Supreme Court indicated that conspicuous disclaimers and at-will acknowledgments would defeat a worker’s claim that a handbook created a contract. Because of the *Conner* decision, that position can no longer be relied upon.

In 2004, the state legislature made an attempt to restore employment at-will in light of the *Conner* case. Act 185 of 2004 provides that an employee handbook, personnel manual, policy or procedure issued by an employer after June 30, 2004, is not an implied or expressed contract of employment if it contains a conspicuous disclaimer. The disclaimer must be in underlined capital letters on the first page of the document and signed by the employee. Employers must comply with the literal requirements of the statute to disclaim contractual intent. The statute states that whether the disclaimer is “conspicuous” or not is a question of law, meaning that it can be decided by a judge and does not have to go to a jury.²⁷

Grievance Procedures

The S.C. Code of Laws provides for a local government grievance procedure, subject to the discretion of the governing body.²⁸ If a county government elects to adopt a grievance procedure, however, it must follow the general format delineated in the statute.

For those counties that elect to implement a grievance procedure, the relevant requirements are uncomplicated and straightforward. The law requires that a grievance committee consisting of between three and nine employees be appointed “on a broadly representative basis.” The committee selects its chair, who is responsible for ensuring that orderly and equitable hearings are conducted. Grievance committees are expressly granted the authority to subpoena documents and witnesses and to secure the services of a recording secretary.


²⁷ S.C. Code Ann. § 41-1-110.

²⁸ S.C. Code Ann. §§ 8-17-110 *et seq.*

Grievable issues include: dismissals, suspensions, involuntary reassignments and transfers, demotions, compensation and classification issues (only insofar as discrimination or other inequity is alleged), reductions in force and denials of opportunity for promotion. Any regular employee who has completed six months of satisfactory service is permitted to use the grievance procedure.²⁹ County grievance procedures routinely require that employees follow the chain of command in appealing their cases. Complaints are filed first with the employee's immediate supervisor and then carried through successive levels in the organization.

If unable to resolve a grievance through discussion and negotiation, an employee must make a request in writing for a hearing before the grievance committee. The request is sent to the governing body or its designated administrator. A hearing is scheduled within 10 days of receipt of the request. Within 20 days of the hearing, the grievance committee's decision on the case and its findings/conclusions are reported to the governing body. If an employee of an elected official has a grievance committee hearing, the committee makes its recommendations to the elected official rather than to the governing body.³⁰ Further review may be sought in circuit court.

The statute specifically provides that a governing body may accept, reject or modify a grievance committee's recommendation. However, in the *Conner* case, the S.C. Supreme Court used the fact that the Forest Acres grievance committee decided in favor of reinstating the employee as justification for its holding that the creation of an implied contract was a question of fact for the jury. This troubling conclusion by the court to give weight to the grievance committee's decision, where none is given by the statute, calls into question whether counties are better served by not having a grievance procedure at all.

The development of a comprehensive set of human resource policies and procedures is the cornerstone of a sound human resource management program. 

Human Resource Policies and Procedures

The development of a comprehensive set of human resource policies and procedures is the cornerstone of a sound human resource management program. The policies should set out administrative responsibilities, the obligations of employment and employee benefits, and should outline the county's practices with regards to classification and pay, recruitment and selection, performance evaluation and training.

Position Classification and Pay

The position classification and pay plan is one of the most important elements of a human resource management program. **For each county position, the plan should have a job description that includes the following:**

- Complete description of the work performed;
- Level of supervision given and/or received;
- Amount of regular public contact;
- Physical environment in which the work is performed; and
- Skills, abilities, knowledge, experience and training required to perform the job effectively.

²⁹ S.C. Code Ann. § 8-17-150.

³⁰ S.C. Code Ann. § 4-9-30(7).

The plan also should include pay ranges for each job and a detailed explanation of how an employee progresses through the pay range. If the plan contains provisions for merit pay increases and/or bonuses, those provisions also should be explained. Although the Americans with Disabilities Act of 1990 (ADA) does not require job descriptions, the employer is responsible for determining the “essential functions” of the position. This may necessitate the development of job descriptions and/or the rewriting of existing job descriptions. Besides determining the “essential functions,” job descriptions should include the physical and mental requirements of the position and how they relate to the essential functions, production standards and productivity levels of the job.

Pay Schedules and Rates

Pay schedules should be based on the local economy and comparable wages paid in the area for the same type of work. Pay schedules should provide an opportunity for advancement for productive employees. The plan, especially the pay schedule, should be updated continually. **The South Carolina Association of Counties publishes an annual wage and salary report which can be used to determine what other counties are paying for specific jobs or positions.** Some counties prefer to have an objective, third party update or revise their classification and pay plans.

Overtime

Counties are subject to the provisions of the federal Fair Labor Standards Act (FLSA) and, therefore, are required to provide for premium compensatory time or overtime payments. The overtime provisions and a listing of which jobs come under the FLSA provisions should be part of the pay plan. Under the FLSA regulations, executive, administrative and professional employees are exempt from the time-and-a-half pay requirements for overtime work. To qualify for the exemption, each job must comply with a salary test and a duties test. Since 1989, federal courts have found some counties and other units of government in violation of the overtime pay provisions of the FLSA and liable for large sums in back pay.

In 1985, Congress established compensatory time provisions for public employers. Public employees may receive compensatory time in lieu of overtime pay at the rate of 1.5 hours for each hour of overtime work. The FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a “work period” basis. A “work period” may be



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from seven to 28 consecutive days in length. For example, fire protection personnel must receive overtime under such a plan after working 212 hours in a 28-day period, and law enforcement personnel are due overtime after working 171 hours in a 28-day period.

There are limitations placed on the accumulation of compensatory time (480 hours for public safety employees; 240 hours for other employees). One problem that has arisen concerning compensatory time is whether the employee is required to use the time at the employer’s discretion.

In 2000, in *Christensen v. Harris County*, the U.S. Supreme Court ruled that the FLSA guaranteed that employees are able to use compensatory time when they request it. However, the court also held that unless there is an agreement on the use of compensatory time, an employer may order an employee to take compensatory time when the employee's accrued amount of time approaches the maximum allowable amount.³¹

Organizations violate the FLSA more than any other employment law. There have been a myriad of FLSA amendments that address overtime pay calculation, maximum number of work hours and the types of jobs exempt from the legislation. The Wage and Hour Division of the U.S. Department of Labor has a number of online tools to assist employers.

Fringe Benefits

On many occasions, the fringe benefits a county offers are as important in attracting quality employees as salary levels. Most counties offer their employees benefits such as medical care, life insurance and retirement programs. With the continued rising costs in healthcare, many counties are increasing the employees' portion of premium contributions in order to maintain current levels of coverage.

Along with employee pensions, postemployment benefits—such as health insurance—can be a significant financial commitment for county governments. In 2004, the Governmental Accounting Standards Board (GASB) issued Statement No. 45 that establishes standards for accounting and financial reporting of “Other Postemployment Benefits (OPEB).”³² County governments are now expected to account for and report their OPEB liabilities when they are earned rather than when they are actually paid. GASB-45 does not require budgetary changes or the creation of special OPEB accounts. In general, counties should solicit the services of an actuary to calculate the cost of the liability incurred and the annual required contribution for OPEB payments. A common practice among counties has been to finance these benefits on a “pay-as-you-go” basis. Some counties have chosen to join the S.C. Counties OPEB Trust, a pooled OPEB Trust created by SCAC.

County officials may wish to consult their labor attorneys, finance/human resource staffs, and health insurance providers for the latest information regarding federal laws, regulations and accounting standards related to fringe benefits.

Recruitment and Selection

How organizations recruit and select employees has been the subject of intense scrutiny by federal and state civil rights enforcement agencies. It has also been the subject of court cases throughout all levels of the judicial system. Aside from the legal aspects, however, county officials should realize that recruitment and selection of applicants who can become productive workers is one of the most critical functions of their human resource management systems.

Recruitment

While the adverse impact and job-relatedness of employee selection procedures was a major cause for concern after the enactment of the Civil Rights Act of 1964, the long history of the disparate treatment effects of employers' recruitment practices was a primary reason for Title VII of the legislation. Height and weight requirements, race and gender preferences, inflated educational requirements and age limitations were the norm in recruiting announcements until the mid-1960s. Not only were these practices discriminatory, they were, for the most part, ineffective. With the implementation of federal laws and guidelines and affirmative action programs, employers have had to change their recruitment methods and practices.

³¹ *Christensen v. Harris County*, 529 U.S. 576 (2000).

³² www.gasb.org/jsp/GASB/Page/GASBSectionPage&cid=1176160042391#gasbs50.

Generally, recruitment practices must be justified by business necessity or shown to be job-related. Recruitment practices that consider race, creed, color or national origin are prohibited. Except in rare situations, counties are prohibited from establishing job requirements based on sex or age.

Other requirements that appear neutral, such as educational prerequisites, height and weight rules, and minimum years of experience, may in fact have an adverse impact on minorities or women. It is important that counties establish recruitment practices that are not only absent of discriminatory intent, but also produce nondiscriminatory results.

Application

Many psychologists believe that past behavior is indicative of future behavior. Employers demonstrate this belief by relying heavily on applications in the recruitment and selection process. The typical application form gives the employer information about an applicant's past educational and work history, along with basic data about the applicant such as address and telephone number.

Some "basic data" about an applicant should not be requested on an application form. **Information such as an applicant's race, sex, age (except in cases of minimum age requirements), marital status, national origin and religious affiliation should not be requested.** To do so would establish a prima facie case that the employer used the information to discriminate against an applicant. To protect themselves, most employers have gone as far as to stop asking for attendance or graduation dates in educational information, since the dates may give a clue to an applicant's age. This information can be legally obtained from the applicant, if the employer is collecting the data for Equal Employment Opportunity Commission (EEOC) reports. The information must be collected on a document separate from the application form and must not be given to the hiring authority. If this type of information is needed for employee insurance purposes, it can be obtained once the applicant is employed.

There is nothing illegal about asking job-related information on an application form. Some employers use application forms that are specific to one particular job or family of jobs. Questions about experience performing specific duties or training in certain technical areas provide employers with information that may be difficult to obtain from general application forms.

How and when an employer accepts and maintains applications is an important human resource management decision. Some counties are very restrictive and accept applications only for vacant positions during certain time periods. That application may be good only until the particular vacancy is filled. At the other extreme, some counties accept applications continuously for any position. These applications may be good for a period of one year or more.

There are both advantages and disadvantages in these application practices. Employers with relatively few openings may find that accepting applications on a continuous basis consumes too much of the human resource management's staff time and takes up too much of the record storage area. Employers with frequent job openings may find that accepting applications on a continuous basis provides them with a ready pool of applicants without the expense of advertising each time there is a job opening. Maintaining applications for periods of one year or more increases the chances that some applicants may move away or are no longer interested in a particular job or employer. However, the size of the pool is likely to be larger, and the applicant and the personnel staff will not be burdened with reapplications, as is the case with maintaining applications for shorter time periods (three to six months).

Most organizations have expanded their recruitment and application processes by advertising jobs and/or allowing candidates to apply online. As counties continue to develop and improve their websites, additional human resource functions will be performed online.

Minimum Qualifications

Most counties establish a set of minimum qualifications or requirements for each job that an applicant must possess before the applicant can be considered for employment. These requirements are usually expressed in education levels and number of years of experience. A typical minimum qualifications statement for the job of senior accountant might read, "...a bachelor's degree in accounting and four years of professional accounting experience."

While these requirements may serve to eliminate unqualified applicants, they also may have an adverse impact on minorities or women. Counties should ensure that their minimum qualifications statements are job-related. In the landmark *Griggs v. Duke Power Co.* case, the U.S. Supreme Court ruled that a minimum requirement of a high school diploma had an adverse impact upon blacks and was not necessary for the satisfactory performance of the job in question.³³ Specific educational qualifications or degrees are difficult to justify, except in jobs requiring technical knowledge such as engineering or nursing. Specific amounts of experience also are difficult to support; is an applicant with six years of experience more qualified than an applicant with four years of experience? **The most appropriate minimum qualifications are those based on job analysis information and stated in terms of knowledge, skills and abilities necessary for successful job performance.**

Selection

The importance of the selection decision (who gets the job) is influenced by factors such as the effectiveness of the recruitment process, job qualifications and the characteristics of the labor force. One thing is certain: as the applicant-to-position ratio becomes higher, the selection decision becomes more important.

The selection process is a series of steps taken to narrow the field of candidates to the person who will be offered the job. The steps taken may include a screening of applications, testing, interviewing and background or reference checking. Whatever steps are taken to select employees, the federal government's *Uniform Guidelines on Employee Selection Procedures* require that those steps be job-related.³⁴ This can be done either by demonstrating that the content of the selection procedure (test items, interview questions, performance exercises) closely matches the content of the job, or by showing a positive relationship between performance during the selection procedure and performance on the job. Central to the demonstration of job-relatedness is job analysis.

Job analysis is a procedure for gathering, documenting and analyzing information about the content and requirements of a job and the context in which it is performed. Job analysis provides an objective description of a job—not the person performing it. For selection purposes, job analysis is the identification of important job duties or tasks and the knowledge, skills and abilities needed to perform those duties or tasks. Depending on the type of selection procedure being used and the number of positions to be filled, this may require as little as a review of the job description by the supervisor or as much as a formal survey of job incumbents. Regardless of the method used, the employer should have information about job content and job requirements before any selection procedures are developed.

Application Screening

The most common use of application information is the determination of minimum job qualifications and requirements. Applicants not having such requirements as the ability to travel, a driver's license or a bachelor's degree in engineering, can be screened out of the selection process before valuable resources are wasted in testing or interviewing.

³³ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

³⁴ 41 CFR 60-3.18.

Another use of application information is the evaluation of education and experience beyond the minimal requirements. For a job opening that has many applicants, it may not be feasible to send all qualified applicants through the next step in the selection process. Application information may be used to select individuals with the most job-related education and experience for further consideration.

Application information also identifies areas of an applicant's background that need additional investigation. Items to be covered during an interview or reference check may be based on incomplete or questionable information found on the employment application.

Testing

Employment testing has been one of the most controversial functions of human resource management since the enactment of civil rights legislation in the mid-1960s. While some testing procedures have been found to be discriminatory, there are a number of professionally validated, job-related selection devices that provide important information about an applicant's knowledge, skills and abilities.

The federal government's *Uniform Guidelines on Employee Selection Procedures* and a number of U.S. Supreme Court decisions spell out the role and use of tests. The federal guidelines define tests as any selection procedure used as the basis for an employment decision. Along with traditional paper and pencil tests, tests include performance tests (typing tests, driving tests), interviews, assessment centers and ratings of training and experience. **The guidelines delineate the requirements for validating a test using three professionally accepted strategies: content, criterion-related and construct validity.**

Content validity is a demonstration that the content of the test is a representative sample of the duties or knowledge, skills and abilities needed for successful job performance. A content validity strategy is not a statistical procedure. It relies on a thorough job analysis and the judgment of subject matter and testing experts to assure that important aspects of the job are sampled by the test.

Criterion-related validity is a statistical demonstration of a relationship between test scores and performance on the job. There are two types of criterion-related validation studies: concurrent and predictive. In a concurrent study, a proposed test is administered to current employees, and their scores are compared to job success criteria (such as production records and supervisory ratings). In a predictive study, job applicants are given a test, but the results are not used in the selection process. After considerable time on the job, the scores of the applicants who were hired are compared to some measure of their job performance.

Construct validity is a demonstration that a test measures an underlying trait or characteristic (a construct) that is necessary for successful job performance. Honesty, initiative and dependability are obvious constructs. Factors such as intelligence, verbal fluency and mechanical aptitude also may be considered constructs, but are many times subject to content validation strategies. The federal guidelines require construct validation studies to have both content and criterion-related validity evidence. Because the technical standards for construct validity are more complex and arduous, it is the least used of the three validation strategies.

Regardless of the strategy used, test validation is a time-consuming and expensive procedure that usually requires the assistance of a psychologist or other professional trained in testing and measurement.

Interviewing

The interview is among the most common techniques used for assessing individuals for employment. In some organizations, it may be the only procedure used to assess an applicant's qualifications. However, the interview generally has been ineffective as a selection tool.

Dunnette and Bass (1963) described the interview as a “costly, inefficient and usually invalid procedure.”³⁵ They go as far as to state that the interview “should be retired from its role as an assessment tool.”

Not all interviews are ineffective, and some techniques can be used to improve the quality of employment interviews.

One such technique, panel interviewing—where three to five interviewers ask a candidate questions and then rate the answers—is being used by many organizations for technical and managerial jobs. Using behavioral

(a candidate describes his/her past behavior in the answer) or situational (a candidate describes how he/she would handle a job-related situation) questions is another technique for improving interview quality. Determining the desired answers before the interview is conducted allows for a more accurate evaluation of a candidate’s strengths and weaknesses.

Panel interviewing—where three to five interviewers ask a candidate questions and then rate the answers—is used by many organizations for technical and managerial jobs. ©

Most importantly, the content of the interview should be job-related. The purpose of the interview should be to determine if the applicant has the knowledge, skills and abilities to perform the job. Because the interview is a selection procedure covered by the federal guidelines, the content of the interview should be based upon a formal job analysis.

Personality Tests

Another recent development in employee selection is the increased use of personality tests. While early personality tests were developed for the purpose of diagnosing psychological and emotional disorders, more contemporary personality tests have been shown to be valid predictors of job performance. Again, care must be taken when using personality tests in employee selection. The tests must be validated, and a trained professional should administer and interpret the results.

Performance Appraisals

Because the performance evaluation or appraisal is an important tool in employee development, determining merit-based pay increases and fostering employee and supervisory communications, it is recommended that every county establish a formal performance appraisal program. Critical aspects of a good performance appraisal program include stating the purpose of the appraisal, informing employees when and on what they are being appraised, informing employees of the consequences of good and poor performance, and training supervisors to properly appraise their employees.

Since the results of performance appraisals may be used in promotion decisions, the evaluations must be job-related. Appraisal systems based on the employee’s performance of duties and tasks and which specify performance requirements are more likely to withstand a legal challenge than systems based on general traits such as dependability, quantity of work and cooperation.

³⁵ Dunnette, M.D. and Bass, B.M. (1963). Behavioral Scientists and Personnel Management. *Industrial Relations* 2: 117.

A well-constructed and appropriately administered and implemented performance appraisal system can accomplish several objectives:

- Foster the development of county personnel as employees and individuals;
- Provide an objective and fair means for measuring and recognizing individual performance;
- Improve employee performance by measuring actual performance based on job duties and performance requirements;
- Identify employee capabilities, strengths and development needs;
- Foster communication and understanding between employees and their supervisors about job duties and performance requirements, and provide performance goals for employees to strive to meet;
- Provide a legally defensible system that can serve as one basis for personnel decisions such as promotions, transfers, pay adjustments, discipline, counseling and discharges; and
- Provide a means of evaluating job descriptions, job qualifications, recruiting and hiring practices, and training needs.

The formal appraisal system is not intended to replace the day-to-day feedback that supervisors should provide to their employees.

Human Resources Recordkeeping

Purposes

The overall purpose of human resources recordkeeping is to provide documentation of relations, agreements and actions between the county and its employees. The specific purpose of human resources records is to allow the county to make the decisions that each potential and permanent employee or the organization may require. These decisions range from recruitment through application, testing, selection, placement, performance appraisal, promotion, transfer, disciplinary actions, termination and layoff.

Human resources records include a variety of completed documents and written materials that describe every detail about an individual employee and that employee's actions at work. While these facts and descriptions have both general and specific purposes, they must relate to the types of decisions that the county makes, or may need to make, about an individual employee, a group of employees or its entire workforce.

Some of the general types of decisions and operations that a human resources record system may support include:

- Providing data for required reports to governmental agencies or departments, including information for centralized state personnel systems management and for federal agencies that need reports on wages, income, types of workers, working conditions, etc.;
- Forecasting and planning for workforce needs so that the county has a picture of the numbers and types of workers it needs in the future;
- Developing tactics for personnel recruitment and selection in order to locate and attract the specific individuals who will contribute productively to the county's goals;

- Devising training or employee development programs to keep employees at current technical proficiencies and to assist in their motivation and career development;
- Administering the pay plan, including the fringe benefits and retirement packages, on an accountable and timely basis; and
- Monitoring for employee health and safety to ensure minimal loss of time and productivity from illness or injury.

Elements of a Good Human Resources Record System

One way to describe human resources records is by their focus or emphasis. Records may focus on individuals, the organization or government reports. Some examples of each focus follow.

Records Focusing on Individuals:

- Application form with necessary personnel data;
- Interview and test record;
- Job history after joining the organization, including details of transfers, promotions and changes in occupation;
- Current pay details and change in salary or pay;
- Education and training record with details of courses attended and performance;
- Performance assessments and reports from appraisal or counseling sessions;
- Absence, tardiness, accident, medical and disciplinary records with details of formal warnings and suspensions;
- Annual and sick leave;
- Pension data; and
- Separation record, with details of exit interview and suitability for reemployment.

Records Focusing on the Organization:

- Numbers, grades and occupations of employees;
- Absenteeism, labor turnover and tardiness statistics;
- Accident rates;
- Age and length of service distributions;
- Total wage and salary costs;
- Wage rates and salary levels;
- Employee costs;
- Overtime statistics;
- Records of grievances and disputes; and
- Training records.

Records for Government Reports:

- Workforce and earnings statistics for the U.S. Department of Labor or employers' associations;
- Training statistics for the U.S. Department of Labor;
- Health and safety statistics for OSHA compliance;
- Pension and benefit information for Employee Retirement Income Security Act compliance; and
- Statistics concerning the employment of women and minority groups for EEOC compliance.

Regardless of the types of records, it is essential that they be tied to organizational needs. As much as possible, personnel recordkeeping should be planned and made a part of an organization's records system.

Additional Resources

- To review a sampling of county personnel policies as well as the latest annual wage and salary report for South Carolina counties, visit the South Carolina Association of Counties online at www.sccounties.org/human-resources.
- To learn more about legal issues that affect county employment practices and topics that play a part in shaping county personnel policies, visit the U.S. Department of Labor online. A helpful place to start is the Find It! By Audience—Government page at www.dol.gov/dol/audience/aud-government.htm.
- To review South Carolina state government human resources regulations, policies, etc., visit the Office of Human Resources at www.ohr.sc.gov/OHR/OHR-index.phtm.
- To learn more about E-Verify, the online service to determine employment eligibility and validate social security numbers for newly-hired employees, visit the U.S. Citizenship and Immigration Services website at www.uscis.gov.
- To learn about compliance with the Immigration Control and Reform Act, visit the S.C. Office of Immigration Worker Compliance at www.llr.state.sc.us/immigration.
- For information about the Fair Labor Standards Act, visit the U.S. Department of Labor website at www.dol.gov/whd/flsa.
- The S.C. Department of Labor, Licensing and Regulation provides information about labor programs and regulations via www.llronline.com/labor.
- To learn about state OSHA regulations, visit the S.C. Occupational Health and Safety Administration via www.scosha.llronline.com.

County Liability and Risk Management

M. Clifton Scott, Jr., Formerly with the South Carolina Association of Counties
John K. DeLoache, South Carolina Association of Counties

County governments face a number of legal issues, almost on a daily basis. This chapter will discuss in detail two areas of the law that are most likely to come up on a routine basis: tort liability for injuries to persons or property, and workers' compensation for work-related injuries.

Legal Issues: Tort Liability

Simply stated, common law tort is a civil wrong or injury arising independent of a contractual relationship committed by one person against the person or property of another. **There are four basic elements to a tort action:**

1. The offending party owes a duty to the injured party;
2. The offending party has failed to fulfill the duty;
3. There is a causal connection between the act or omission and the injury; and
4. Actual damages have occurred.

If all of these conditions are satisfied, then a tort has been committed, and the offending party is liable to the individual or corporation that is injured. Initially a creation of the common law, tort law has been expanded in the past century by the passage of a number of statutes, both state and federal.

For the most part, tort liability is a matter of state law and tried in state courts. Prior to 1986, the tort liability of governmental entities in South Carolina was strictly limited by the **doctrine of sovereign immunity**. The limitation on a government's liability developed out of the old common law of England which held that the king could do no wrong. There were few exceptions against a county's immunity, and these were limited to injuries arising from motor vehicle operation and road/street defects. In *McCall v. Batson*, the S.C. Supreme Court abolished the doctrine of sovereign immunity.¹ This resulted in the adoption of the S.C. Tort Claims Act,² which provides for the qualified and limited liability that now applies to all governmental entities within the state.

In providing for the relief of persons injured by the actions of employees of governmental entities, the Tort Claims Act makes liability the rule and immunity the exception, and it makes the state and its political subdivisions liable for torts, "in the same manner and to the same extent as a private individual under like circumstances."³

¹ *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

² S.C. Code Ann. §§ 15-78-10 *et seq.*

³ S.C. Code Ann. § 15-78-40.

The legislation establishes maximum loss amounts of \$300,000 per person for acts arising from a single occurrence, not to exceed \$600,000 for any single occurrence, regardless of the number of agencies or political subdivisions involved. Litigants cannot recover punitive or exemplary damages or interest prior to judgment.⁴

In recognition of the peculiar roles and obligations of government in society, however, the act explicitly exempts public entities from liability resulting from numerous types of activity and/or inactivity.⁵ The Tort Claims Act was structured as a partial waiver of the common law doctrine of sovereign immunity. In certain specific instances, the legislature did not waive the immunity; consequently, under these conditions, liability should not be imposed on governmental entities. The 40 specific exceptions to the waiver of immunity set out in the Tort Claims Act have been grouped into three broad categories:⁶

1. Legislative or judicial immunity;
2. Discretionary acts immunity; and
3. Specific acts immunity.

Despite the Tort Claims Act's complexity and apparent protections, a few distinct trends have emerged during its nearly 30-year history. More and more appellate courts have taken a narrow reading of the Tort Claims Act, despite the legislature's intent that it be liberally construed.⁷ For instance, a fair reading of § 15-78-60(5), regarding the exercise of discretion, would suggest that governmental entities are not liable for their decisions to undertake or not undertake a particular activity—particularly

More and more appellate courts have taken a narrow reading of the Tort Claims Act, despite the legislature's intent that it be liberally construed. ☹

where judgment or discretion is required. A seemingly appropriate case for discretionary immunity would be a decision by a police officer to pursue or not to pursue a person who has committed or attempted to commit a violent crime in his/her presence. In *Clark v. S.C. Department of Public Safety*, the S.C. Court of Appeals limited the application of discretionary immunity to decisions involving policy-making and did not include the routine decisions made by employees in the course of their day-to-day activities.⁸ The court stated:

In this case, we believe the function of the department's employees in carrying out a general pursuit policy is operational in nature and is not the type of discretionary act contemplated in the Tort Claims Act. The fact that the employees had to make decisions or exercise some judgment in their activities is not determinative.

Another area for concern regarding the exclusions provided by the Tort Claims Act is that they apparently do not apply separately to each case. In other words, when more than one exclusion applies, each exclusion should independently protect the governmental entity; this is not always the case. In *Steinke v. S.C. Department of Labor, Licensing and Regulation*, the department had asserted two defenses arising out of the catastrophic failure of an elevator car used by a bungee jumping amusement ride in which two people were killed.⁹

⁴ S.C. Code Ann. § 15-78-120.

⁵ For the exceptions to waiver of immunity, see S.C. Code Ann. § 15-78-60.

⁶ C. Tolbert Goolsby, Jr. and Ginger D. Goforth, *The South Carolina Tort Claims Act: A Primer and Then Some* (3rd ed., 2003).

⁷ S.C. Code Ann. § 15-78-20(f).

⁸ *Clark v. S.C. Dept. of Pub. Safety*, 353 S.C. 291, 578 S.E.2d 16 (Ct. App. 2002).

⁹ *Steinke v. S.C. Dept. of Labor, Licensing & Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999).

The first exclusion protects governmental entities from liability arising from its licensing powers, unless exercised in a grossly negligent manner.¹⁰ The second exclusion provides absolute protection for regulatory inspection powers or functions, including failure to make inspections.¹¹

There is no gross negligence exception to this exclusion. In reading these two sections together, the Supreme Court stated:

This court and the Court of Appeals previously have recognized that the correct approach, when a governmental entity asserts various exceptions to the waiver of immunity, is to read exceptions that do not contain the gross negligence standard in light of exceptions that do contain the standard.

Liability of County Officials Under the Tort Claims Act

The Tort Claims Act protects county elected and appointed officials and employees as individuals by giving them immunity from personal liability, if an injury occurs from the performance of their official duties. The liability for such acts can be transferred to the county. However, malicious acts or actions that exceed the employee's or official's scope of duties of authority may result in personal liability. The Tort Claims Act provides that an employee is not personally immune from liability, if the conduct was outside the scope of his/her official duties or it constituted actual fraud, actual malice, an intent to harm, or was a crime involving moral turpitude.¹²

Handling of Claims under the Tort Claims Act

Claims must be filed within two years of the date the loss occurred, or should have been discovered, unless a verified claim is filed beforehand.¹³ Aggrieved persons may file a verified claim "setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained."¹⁴ Each county is required to designate an employee or office to accept the filing of such claims. Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the law relating to service of process. Verified claims against political subdivisions must be received within one year after the loss occurred, or should have been discovered, and have the effect of extending the statute of limitation to three years.

Upon receipt of a verified claim, the county has 180 days in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within the 180-day period is considered a disallowance of the disputed amount. Individuals whose claims are disallowed by a county are entitled to initiate civil actions against the political subdivision. These actions are initially heard in the circuit court with jurisdiction over the county in which the alleged injury occurred. The previously noted statutory limits for liability awards of \$300,000 per person with a maximum of \$600,000 per occurrence would apply.¹⁵

Special care should be taken when a claim or suit has been brought against both the county and the Sheriff's Department. The sheriff and his/her deputies are state employees, not county employees. Therefore, any claims made against both parties should be handled separately, and not as if the two are one and the same entity.¹⁶

¹⁰ S.C. Code Ann. § 15-78-60(12).

¹¹ S.C. Code Ann. § 15-78-60(13).

¹² S.C. Code Ann. § 15-78-70.

¹³ S.C. Code Ann. § 15-78-110.

¹⁴ S.C. Code Ann. § 15-78-80.

¹⁵ S.C. Code Ann. § 15-78-120.

¹⁶ *Edwards v. Lexington County*, 386 S.C. 285, 688 S.E.2d 125 (2010).

Federal Liability: § 1983 and the Civil Rights Act of 1871

State tort law is not the exclusive source of claims against governmental entities in South Carolina. In some cases, a cause of action can be brought in state or federal court against any person who violates a right protected by federal law under 42 U.S. Code § 1983 (commonly referred to as 1983 actions).

Section 1983 actions implicate rights protected under the due process or equal protection clauses of the Fourth, Fifth, Eighth and 14th Amendments to the U.S. Constitution. While these cases do not necessarily involve property damage or personal injury, they are torts resulting from actions that violate the constitutional or statutory rights of another individual. Dozens of examples may be found in any number of functional areas. In law enforcement and public safety, for example, common causes of lawsuits include illegal searches and seizures, refusal of the right to counsel, false arrest and imprisonment, the use of excessive force, improper disciplinary hearings, unwarranted confinement, provision of inadequate medical treatment, physical abuse, and non-access to courts. Another troublesome area is that of employee relations, where charges such as racial and sexual discrimination, illegal hiring practices and improper dismissal are common sources of § 1983 lawsuits.¹⁷

A major difference between actions brought under the state Tort Claims Act and federal actions brought under § 1983 is the defendant party named in the suit. In the state actions, the claim must be made against the governmental entity, unless the individual employee or official was acting outside the scope of employment when the alleged tort occurred or unless actual fraud, actual malice, intent to harm or a crime of moral turpitude is involved.¹⁸ In the federal actions, the proper party is generally the officer or employee alleged to have violated the rights of the individual, except that a local governmental entity can be an “individual” if it is shown that the entity pursued a policy that violated federally protected rights.¹⁹

Under certain conditions, counties can be considered “persons” under § 1983. Unlike claims brought under the Tort Claims Act, punitive damages and plaintiff attorney fees are chargeable

When individual county employees and officials are sued under § 1983 and they were acting in the course and scope of their employment, they would generally be covered by the county’s insurance policy. ☺

to the defendant if the plaintiff is successful; also, the statute of limitations is three years instead of the two years provided for in the Tort Claims Act. For the foregoing reasons, potential liability for local governments, employees and officials under § 1983 can be significant. When individual county employees and officials are sued under § 1983 and they were acting in the course and scope of their employment, they would generally be covered by the county’s insurance policy.

However, if those same employees and officials are sued for actions that are determined to be outside of the course and scope of their employment, then generally they would not be covered and could be forced to pay judgments and legal costs themselves.

Individual officials and employees may avoid personal liability if they acted in good faith, believing that their conduct was lawful and that such belief was “reasonable.”²⁰ Greater comfort is also provided to public officials and employees when insurance is provided to cover them, as well as the entity, for § 1983 claims.

¹⁷ See *Public Officials Liability Handbook*, S.C. Counties Property and Liability Trust.

¹⁸ S.C. Code Ann. § 15-78-70.

¹⁹ *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988).

²⁰ *Butz v. Economou*, 438 U.S. 478 (1978).



The S.C. Counties Property and Liability Trust and the S.C. Counties Workers' Compensation Trust are open to counties and agencies with county government-related functions. During the Trusts' annual membership meeting, participants learn to minimize risks that result from the daily operations of counties.

Both the S.C. Counties Property and Liability Trust (SCCP<) and the state's Insurance Reserve Fund (IRF) provide coverage for § 1983 claims; since there is no cap on these claims and punitive damages are available, a much higher coverage limit should be provided for these claims.²¹

Tort Liability Insurance Coverage

Political subdivisions in this state are given the option of electing one of the following means of insurance coverage:

1. Purchase liability insurance through the IRF;
2. Purchase liability insurance from a private carrier;
3. Self-insure against liability; or
4. Establish pooled self-insurance liability funds by intergovernmental agreements.²²

As a practical matter, private coverage can be difficult or expensive to obtain, and most counties cannot afford to completely self-insure against all potential liabilities. Consequently, essentially all South Carolina counties are insured through the IRF or the SCCP<. In 1995, responding to rapidly rising property and liability insurance rates through the IRF or private carriers, the Association of Counties created the property and liability Trust. The Trust operates under a separate board of trustees elected by the Association of Counties' board of directors. All board members are either county council members or county executives. More than one-third of the state's counties are insured through the SCCP<. Membership in the SCCP< is open to all county governments that are members of the Association of Counties and to other county-related agencies.

Legal Issues: Workers' Compensation

Workers' Compensation is a statutory compromise that was adopted by the legislature in the mid-1930s, and replaces the common law when a person is injured while on the job.²³ It grew out of the perceived unfairness of the tort liability system as it applied in the workplace. Under tort law, employee injury claims often went uncompensated because it was not always possible to establish employer negligence.

²¹ Currently up to \$5 million by both the SCCP< and the IRF.

²² S.C. Code Ann. § 15-78-140.

²³ S.C. Code Ann. §§ 42-1-10 *et seq.*

At the time, South Carolina followed the doctrine of contributory negligence, which prevented recovery if the injured worker contributed in any way to the accident. Other doctrines such as the fellow servant rule—which absolved the employer if another employee (and not the employer) was at fault for the accident—also made recovery difficult for the injured employee. On the other hand, employers felt that when their negligence could be established, the employee was overcompensated.

What grew out of the compromise between tort law and employee fairness was a no-fault system that ensures employees are compensated, if there is an injury or an accident arising out of and in the course of the employment.

Occupational diseases, such as carpal tunnel syndrome, are covered when they result naturally and unavoidably from workplace conditions. Some occupational diseases are statutorily considered to be work-related. In South Carolina, the General Assembly has chosen to create a legal presumption that certain heart and respiratory diseases in police officers and firefighters arise out of their work conditions, unless there is contrary medical evidence.²⁴ The amount of compensation can be separated into two components: indemnity payments and medical costs.

Indemnity payments are determined under formulas set out in the statute and regulations promulgated by the S.C. Workers' Compensation Commission. They vary depending on the average weekly wage of the employee, how long the employee is out of work and the degree of permanent disability, if any. The cost of medical treatment is borne by the employer.

In 2007, the General Assembly enacted a comprehensive set of reforms to the workers' compensation statutes to address increased fraud, advances in medical technology and recognition of complex injuries.²⁵ The statutes and the regulations promulgated by the Workers' Compensation Commission are very lengthy and often complex, but there are some basic principles that county officials need to understand. **If an employee is injured on the job, the employer must provide compensation, even if the employer was not at fault.**

The workers' compensation law is the exclusive remedy for an injured employee against the employer for a work-related injury. The worker cannot sue the employer, even if the employer was grossly negligent, as is the case in some other states. The presumption is that workers' compensation applies to work-related injury. The courts have liberally construed the workers' compensation statutes in favor of finding workers' compensation coverage anytime there is an injured employee. This is especially true in cases involving public safety employees such as police officers and firefighters.

In cases where a direct employer has failed to secure workers' compensation coverage, the courts have held certain third parties liable for injured workers' losses. If an injured worker's primary employer does not have workers' compensation insurance, the court will look to another employer up the line to pay for the loss. Consider the example of a county that hires a general contractor to pave a road and the contractor in turn hires a subcontractor, who does not have workers' compensation coverage, to paint lines after the paving is completed. If an employee of the subcontractor is injured, the court will determine the general contractor to be the employer; if the general contractor has no coverage, the county could be held liable as the statutory employer. This is particularly true in cases where the county engages in the same line of business, such as road construction.

²⁴ S.C. Code Ann. § 42-11-30.

²⁵ Act No. 111 of 2007.

Special Coverage Issues: Volunteers, Law Enforcement and Prisoners

In many cases, counties will have persons completing tasks that do not fall neatly into normal employment categories and, consequently, would not normally be covered under the county's workers' compensation coverage. As a general rule, volunteers are not covered by workers' compensation; however, several specific categories of volunteers (volunteer firefighters, rescue squad members, deputy sheriffs and deputy coroners) may be covered at the discretion of county council.²⁶ Another type of person working in the county are county prisoners assigned by a corrections facility to work assignments at county facilities. Counties may also choose to cover these persons for work-related injuries at the election of county council.²⁷ The S.C. Counties Workers' Compensation Trust (SCCWCT) and some private carriers offer specialized coverage to insure these types of workers.

Handling Workers' Compensation Claims

Workers' compensation claims have four elements:

1. Medical payments;
2. Temporary partial disability;
3. Temporary total disability; and
4. Permanent disability.

An employee injured on the job is entitled to have all medical bills paid for by the employer. The employer is entitled to choose the doctor the employee sees. **It is important for counties to exercise this right to choose the treating physician.** Many employees, given their choice, would see their family doctor—a doctor who may be unfamiliar with the treatment of industrial accidents or with the employer's return-to-work policy.

If an injured employee cannot return to work immediately, he/she is entitled to temporary total disability. The amount of disability payment is determined by formula set out in statute. The only real variable for most employees is the amount of their average weekly wage.²⁸ An employee's disability payment is equal to two-thirds of his/her average weekly wage, but it cannot exceed a cap equal to two-thirds of the statewide average weekly wage, which is calculated and published each year. Because the disability payment is not taxed, in many cases it approximates the normal take home pay for the worker. It is a good idea for counties to offer an injured employee some form of temporary light duty to get them back on the job. The longer an employee remains out, the more likely he/she is to become disgruntled, to incur excess medical treatment and to file for permanent disability.

If the worker is unable to recover fully from the injury, the goal of the medical treatment is to get the injured worker to maximum medical improvement (MMI) as quickly as possible and then to determine the degree of impairment caused by the accident, if any. Generally, treating physicians provide an impairment rating for a specific body part (e.g., a 25 percent loss of use to the left hand). At a hearing, a workers' compensation commissioner will then use this rating, along with other information that may be provided, to determine how this loss of use will affect the worker's ability to make a living. For instance, a 25 percent loss of use to the left hand may not greatly affect the ability of a salesman to earn a living, but would be devastating to a concert violinist.

²⁶ S.C. Code Ann. § 42-7-65.

²⁷ S.C. Code Ann. § 42-1-500.

²⁸ A different formula is used for certain specified volunteers and county inmates. See S.C. Code Ann. § 42-7-65.

Each specific body part has a specific number of weeks of compensation associated with it. In the previous example, the total loss of use for a hand is worth 185 weeks; consequently, 25 percent impairment to the hand would result in an award of 46.25 weeks times two-thirds of the average weekly wage of the employee, subject to the cap. Permanent and total disability is rated at 500 weeks, as is a job-related death. For paraplegic, quadriplegic and physical brain damage cases, lifetime compensation will be awarded. Medical payments that are necessary to treat the injury, even after reaching MMI, can also be expected.

The workers' compensation system is designed to work without lawyers, except when the employer denies that the injury is work-related. Unfortunately, South Carolina has one of the highest incidents of lawyer involvement in workers' compensation. According to the National Council on Compensation Insurance (NCCI), the degree of lawyer involvement in South Carolina ranged from 16 to 26 percent between 1996 and 2000, while the national average remained in the 13 to 14 percent range.²⁹ The effect of increased lawyer involvement is a higher cost for the employer without significant benefit to the injured employee. For example, in 1999 (the latest year available), the average indemnity cost for a case involving a lawyer was \$18,400, compared to \$11,900 without a lawyer.³⁰ When you consider that the client generally pays one-third of the recovery plus the costs of bringing the action, the employee is often no better off with a lawyer.

The best thing a county can do to hold down costs of significant workers' compensation claims is to reduce lawyer involvement. The best way to do this is to stay involved with an injured employee. A county representative should visit the employee in the hospital and find out what the county can do to help his/her family. If the case is compensable, the employee should be told that he/she will be compensated. When the employee is ready for light duty, counties are encouraged to make a temporary position available. It is important to have someone the employee trusts explain the scope of the workers' compensation program so he/she will know what to expect.

Workers' Compensation and Traditional Tort Law

While the workers' compensation system was designed to relieve employers from traditional tort liability, third parties who may have contributed to an employee's injury may still face legal liability. The injured employee can assert a claim against a negligent third party. For instance, if a county employee is injured in an automobile accident while on the job, because the driver of another vehicle ran a stop sign, the employee could sue the at-fault driver, while at the same time filing a worker's compensation claim against the county for the same accident. The county (or its insurer) may also seek damages from negligent third parties through a subrogation action. For instance, a county employee is injured after falling when a ladder breaks. The employee could file a workers' compensation claim, and the county could file a subrogation action against the manufacturer of the ladder.

Additional Resources

- To learn more about various legal issues that affect county employment practices, including many of the federal laws discussed in this chapter, visit the U.S. Department of Labor online. A helpful place to start is the Find It! By Audience—Government page at www.dol.gov/dol/audience/aud-government.htm.
- The S.C. Department of Labor, Licensing and Regulation offers information about workplace safety standards and free Occupational Safety and Health Administration training. Visit www.llr.state.sc.us for details.

²⁹ Seminar notes, S.C. Workers' Compensation State Advisory Forum, National Council on Compensation Insurance, Inc., Nov. 15, 2003.

³⁰ Seminar notes, S.C. Workers' Compensation State Advisory Forum, National Council on Compensation Insurance, Inc., Aug. 6, 2002.

- The S.C. Workers' Compensation Commission provides information about workers' compensation laws and regulations, judicial issues, claims, coverage and medical matters via www.wcc.sc.gov.
- Visit www.sccounties.org/insurance-trust-programs for details about the S.C. Counties Property and Liability and Workers' Compensation Trusts, their member benefits and risk management services.
- *Public Officials Liability Handbook*, published by the S.C. Counties Property and Liability Trust, acquaints county officials with liability issues facing them in their official and individual capacities and provides suggestions for avoiding or reducing liability. To request a copy of the handbook, call 1-800-922-6081.
- The Institutes, an insurance education organization, offers risk management training online and in print through its Associate in Risk Management certification program. Visit www.cpcuia.org/comet/programs/arm/arm.htm to review the courses and sample materials.
- *The South Carolina Tort Claims Act: A Primer and Then Some* by C. Tolbert Goolsby, Jr. and Ginger D. Goforth (S.C. Bar Association, 2003) provides a complete review of the act, leading cases and procedures for bringing claims. Visit www.schar.org to order a copy of this publication from the Bar Association's continuing legal education publications store.

Public Information and the Freedom of Information Act

Richard Harris, South Carolina Department of Archives and History
M. Kent Lesesne, South Carolina Association of Counties

What is a Public Record?

The Public Records Act is the primary legislation governing recordkeeping in South Carolina.¹ Section 30-1-10(A) of the Public Records Act and § 30-4-20(c) of the Freedom of Information Act define a public record to include, “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body.” This includes e-mails and any other electronically stored data or documents. The Public Records Act further defines the responsibilities of public officials as records custodians and identifies the S.C. Department of Archives and History (SCDAH) as the agency charged with carrying out provisions of the law and assisting local governments in developing records programs.

Records Problems and a Solution

Records and information need to be managed just like any other government resource. 

Despite the importance of records to local governments and their citizens, Bruce Dearstyne notes, “...many officials look at records and see only problems: overwhelming volume, too

little space, difficult retrieval, inefficiency, and too many tax dollars being spent with little result...”²

Local government officials often do not recognize the need for systematic records management. Local records custodians frequently take office without training or experience in records management or archival techniques. The everyday duties of office leave little time to give adequate attention to records issues. There are few publications or training courses on local government records management, and exchange of information on workable recordkeeping practices is limited. As a result, records are often not as well managed as their administrative, fiscal, legal and historical value would warrant. Important records may be difficult to locate or inadvertently discarded. On the other hand, obsolete records are often retained longer than necessary, creating an expensive storage burden.³ Records and information need to be managed just like any other government resource.

What is Records Management and What Can It Do?

Records management is the application of systematic and scientific controls to the handling of information. It emphasizes the “life cycle” of a record from its creation or receipt, through its maintenance and use, and onto its final destruction or archival retention.

¹ S.C. Code Ann. §§ 30-1-10 to 30-1-140.

² Bruce W. Dearstyne, *The Management of Local Government Records: A Guide for Local Officials* (Nashville, TN: American Association for State and Local History, 1988).

³ National Association of Government Archives and Records Administrators, *Principles for Management of Local Government Records* (1989).

In simpler terms, it means having the right information in the right form, at the right time and place, for the right persons, and at the lowest possible cost—or as one authority stated, “fewer and better records.”⁴ Local governments often say that establishing a records program or spending funds for records work is too expensive when, in fact, the lack of a defined program has resulted in money being wasted or mismanaged. Certainly, the value of records management can be measured not only in supplies, equipment and personnel costs, but also in the benefits that result from promoting better government and providing better services to constituents.

Elements of a Records Management System

A comprehensive records management and archives program contains numerous elements which help to ensure that important information is preserved and used effectively, while information that has no further value is disposed of in a timely manner. **The basic records question that governments ask is, “What do I keep and for how long, and how do I dispose of it?”** The inability to deal with this question is the basis for most of our records problems, and the answer can be determined only after careful study and planning.

Appointment of a Records Management Officer

One of the first steps in establishing a viable records program should be the designation of one person as the records officer for the local government. The Public Records Act makes the chief administrative officer of any agency or political subdivision of the state the legal custodian of public records and authorizes that individual to appoint a records officer to act on his/her behalf.⁵ The records officer should have clearly defined responsibilities for coordinating all records-related activities and should work closely with all offices to develop and implement improved recordkeeping activities. He/she should have a reasonable amount of authority to make decisions and to take action. The appointment of a records officer and the assignment of that individual to act as liaison with SCDAH helps the department assist local governments more effectively with their recordkeeping. This action also permits the best use of resources to provide one individual with the training and expertise required to administer the records program.

Records Inventory

The next step in getting control of a local government’s records is finding out exactly what records it has. This is accomplished through a records inventory, which will determine what records exist and where they are located (e.g., offices and out-of-the-way storage areas). A records inventory also will be useful in determining the present volume and condition of records, how fast they are accumulating, and who is responsible for their maintenance.

Records Appraisal and Retention Schedules

This step involves the careful analysis of each record series to determine its value and how long it should be kept. A record is usually judged on administrative, fiscal, legal and historical values to determine its retention period. This is then stated in the form of a records retention schedule. A records retention schedule specifies how long a record must be kept and indicates its final disposition.

SCDAH has two types of retention schedules—general and specific. *General schedules* are designed for records that many local governments have in common. The department has developed general schedules that cover many of the records created and maintained by county offices and departments. These general schedules identify records that need to be kept permanently and allow for the legal destruction of non-permanent records.

⁴ Theodore R. Schellenberg, *Modern Archives: Principles and Techniques* (Chicago: University of Chicago Press, 1956).

⁵ S.C. Code Ann. § 30-1-20.

Specific schedules are designed for a specific local government or for individual records that are unique to a specific office. Specific records retention schedules must be approved by the local governing body and by the state archives director. Once approved, specific schedules also authorize local government officials to retain and legally dispose of records according to established retention periods. In addition to the general and specific schedules, the department, in partnership with S.C. Court Administration, has issued retention guidelines for records of the clerks of court, probate judges and summary court, to be implemented at the discretion of these officials.

By using retention schedules, some records may be destroyed after a short period of retention—perhaps a year or two or following an audit. Others may be required for office reference for only a short time (administrative value), but because of some other potential usefulness (e.g., fiscal or legal value), they may need to be kept and housed in less expensive storage where they can be referenced until they are destroyed. Still other records have permanent value and must be retained either in the office or in an archival repository.

Records analysts with SCDAAH have scheduled records of counties, municipalities, school districts and special purpose districts throughout the state, enabling local governments to legally destroy thousands of cubic feet of useless records, while identifying and securing records of significant value. Department records analysts will train local staff in how to use county general schedules as well as how to inventory and appraise records and establish specific records retention schedules.

Management of Inactive Records and Records Storage

One of the major problems encountered in local government records management is dealing with inactive records—those records which no longer need to be kept in the office, but which need to be retained somewhere because of some further value or because no one knows what to do with them. Retention schedules help identify those records which can be destroyed, but those which have continuing value must be housed in acceptable storage (not in a basement, attic, maintenance shed or some other dumping ground—where extremes of temperature and humidity, moisture, insects and so on will render the records useless for further reference). An acceptable records storage area could be a building specifically designed as a records center or it could simply be a clean, secure and properly equipped room.

An inactive records program offers the following benefits:

- Fewer records held in active office areas...frees expensive office space and equipment for newer records;
- Better use of available space: records can be...stored more compactly in a records facility;
- Cost savings: space costs in an inactive records facility are usually less than in active offices;
- Easier, faster records retrieval: records can be retrieved faster and easier...than from overcrowded...disorganized storerooms;
- Better control:...easier to assert and maintain intellectual and physical control;
- Security: records in a secure facility are (better) protected; and
- Systematic legal disposition: built-in procedures and controls...ensure the orderly, periodic disposition of records.⁶

⁶ Dearstyne, 65-67.

Facilities that are used for storing public records of South Carolina state and local governments must meet certain minimum standards in terms of building construction, records storage environment, and security and protection of records.⁷ These minimum standards apply to existing facilities, as well as new construction or renovation, and include both public and private facilities where public records are kept. Meeting the minimum standards will help minimize the danger of losing information vital to current operational and long-term reference requirements and will help ensure that permanently valuable records are preserved for future use.

Archival Records

According to Dearstyne, “Archives are records worthy of permanent preservation because of the importance of their information for continuing administrative, legal or fiscal purposes, or for historical or other research.”⁸

It is generally accepted that only two to five percent of records have permanent value, but their value is immeasurable. The information they contain contributes to the administration of government, to the protection of legal rights, to understanding contemporary problems and issues, and to furthering historical research.

It is generally accepted that only two to five percent of records have permanent value, but their value is immeasurable. ☹

Vital Records

Vital records are those that contain information essential to establishing or continuing the operation of government, especially following a disaster. They might include minutes, financial and tax records, land titles, maps and surveys, payroll and personnel files, and insurance policies. These records are usually prime candidates to be microfilmed and duplicated for security.

Active Records

While we have dealt primarily with records after their creation and active use, records management must begin with records creation at the beginning of the life cycle and carry through with all phases and elements of records control. Forms management deals with originating only those forms which are needed and designing them to be most effective. Reports control will help ensure that only necessary and well-designed reports are created and that they accomplish the purposes for which they were created. Files management will help promote organized filing systems that make it easier to retrieve needed information and that weed out useless data when called for by a retention schedule. **Establishing a good files plan is one of the most significant elements of a records program.** Correspondence management is another component whose use can save time and money through eliminating unnecessary memos and letters, while identifying at the time of filing those items having long-term or permanent value.

Micrographics

Micrographics is an important and valuable tool for local government officials to use in managing records. Microfilming is the photographic process of creating miniaturized images of records on film. It concentrates information in a compact, durable and easy-to-use form which, through the use of microfilm readers and reader-printers, can be projected back to original size when needed.

Film produced to acceptable quality standards will stand the test of time. And, when state legal requirements are met, the original copies of many records can be destroyed and the microfilm copies substituted.⁹

⁷ S.C. Code Ann. Regs. 12-1000 to 12-1003.

⁸ Dearstyne, 104.

⁹ Dearstyne, 80.

Microfilm can be found in several formats: roll film in 16mm and 35mm reels, cartridges, and cassettes and flat film—microfiche, microfilm jackets and aperture cards. It is essential that the records officer knows which records he/she wishes to microfilm and which format or system is best for the county's needs. Another basic decision is whether to contract with a vendor for services, purchase a microfilm system or have a combination of both.

All microfilm must be produced in accordance with strict standards of quality to ensure that the information is preserved and it is retrievable and readable. SCDAH offers to local governments not only advice, but direct microfilm services—including source document filming, film processing, duplication, quality control and storage of security microfilm copies. **By law, when records of permanent value are microfilmed, a security copy of the film must meet archival microfilm standards and must be deposited with the department for safe-keeping.** This service is provided without charge to local governments. Archives staff members are available to discuss these and other micrographics services.

Electronic Records and Digital Imaging Systems

The use of information technology continues to increase in local governments. Although computers are fast, efficient, accurate and generally increase productivity, like microfilm their use in a given situation should be studied and carefully considered. Some records of permanent value are now being produced and maintained solely in digital formats that are unsuitable for archival retention, unless the information is reproduced on microfilm or unless special measures are implemented to ensure preservation and future access in digital form. This is a universal problem within the records profession and one not easily solved.

Local governments are showing an increased interest in digital imaging systems for maintaining their records. Imaging systems offer some very attractive features, including the ability to store large volumes of data and provide users with quick retrieval of information. However, before investing in this leading-edge technology, careful investigation should be made of the particular system hardware and software and whether your application is a good one for converting to an imaging system.

SCDAH has developed electronic records management guidelines to provide guidance and direction for the care, handling and management of electronic records. Some of the topics covered include file naming, digital media storage, e-mail management and electronic signatures. The department has also issued a policy statement with some recommended practices to assist agencies and local governments that are considering a digital imaging system. Staff can provide information about the electronic records management guidelines and the digital imaging policy.

A Source for Advice and Assistance

SCDAH's Local Records Program was established in 1968 to advise and assist local governments with their recordkeeping duties and problems. Staff members are available to assist and answer questions about records inventories, records retention/disposal schedules, the use of micrographics and application of quality standards, the management of electronic records, the development of inactive records storage areas/records centers and archival repositories, vital records protection, document conservation and repair, and disaster preparedness.

SCDAH also offers a number of publications to help local governments manage and care for their records, including a series of public records information leaflets on a variety of records management topics. The general records retention schedules for county records that identify permanently valuable records and provide for disposing of non-permanent records, as well as information leaflets and records management forms, are available on the department's website.

The Freedom of Information Act

Records management officers, elected and appointed county officials, and county employees that deal with the public need to have a basic knowledge of the Freedom of Information Act (FOIA) in order to carry out their job responsibilities effectively.¹⁰ The findings and purpose of the FOIA are set out in the S.C. Code of Laws:

*The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.*¹¹

The FOIA is a hot topic in the legislature, and legislation is introduced almost every session to amend it. For this reason, when FOIA issues come up, it is important to consult the latest supplement to the code. The South Carolina Association of Counties publishes the *Freedom of Information Handbook for County Government*, which is updated annually and includes practice pointers, case law summaries and Attorney Generals' opinions, and an appendix of related statutory law. When using the handbook, please refer to the current supplement to check for amendments to the statutes, case law and Attorney Generals' opinions interpreting the statutes.

Please note that the purpose of this section is only to acquaint the reader with the issues raised by the FOIA, and it should not be viewed as a complete or authoritative reference.

The S.C. Supreme Court has held that the FOIA is remedial in nature and must be construed liberally to carry out the intent of the legislature.¹² This means that the courts will "bend over backwards" on the side of disclosure.

The FOIA is a mandate directed to public bodies and covers both open and closed meetings, as well as access to public records.

The FOIA defines "public body" broadly to include "any public or governmental body or political subdivision of the state...including committees, subcommittees, advisory committees, and the like of any such body..."¹³

A 2001 court case held that an advisory committee composed of staff with no members of the actual public body is nonetheless a "public body" for purpose of the FOIA.¹⁴



Photo courtesy of Lexington County Government

The Freedom of Information Act is a mandate directed to public bodies. It covers open and closed meetings, as well as access to public records.

¹⁰ S.C. Code Ann. §§ 30-4-10 *et seq.*

¹¹ S.C. Code Ann. § 30-4-15.

¹² *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 547 S.E.2d 862 (2001).

¹³ S.C. Code Ann. § 30-4-30.

¹⁴ *Quality Towing, Inc. v. City of Myrtle Beach*.

Basic Principles of the Freedom of Information Act

Public Records

The general rule is that any person has a right to inspect or copy records of public bodies; however, the public body may establish and collect fees not to exceed its costs to produce the records. If a public body receives a written FOIA request, it has 15 working days to provide a valid reason in writing why the request is disapproved or the request will be considered approved.¹⁵ A public body may request clarification when the FOIA request is unclear, or request additional time to respond. Some public records do not require a written request and can be inspected or copied, if the requestor appears in person. Minutes for the meetings of a public body for the preceding six months must be available for inspection and copying during operating hours.¹⁶

Certain matters are exempt from the disclosure requirement, but the public body is authorized to disclose the information if it chooses, unless some other state or federal law prohibits disclosure, such as confidential taxpayer information protected under § 6-1-120.¹⁷ Matters exempt from disclosure, currently 19 in number,¹⁸ are subject to change.¹⁹ A non-exclusive list of matters protected from disclosure include attorney work product and communications protected by the attorney-client privilege; contract and economic development negotiations; certain law enforcement records, particularly when informants or ongoing investigations are involved; and matters of a personal nature when public disclosure would constitute an invasion of personal privacy.

Records relating to the compensation paid to public employees and those relating to the search to fill an employment position receive limited exemption from disclosure.²⁰

Exact Compensation	<ul style="list-style-type: none">• Persons earning \$50,000 or more annually• Part-time employees• Persons paid honoraria for special appearances• Agency or department heads
Compensation level within a range of \$4,000, beginning at \$30,001	Persons earning between \$30,001 and \$49,999 annually, including contract instructional employees
Salary schedule showing the compensation range for that classification, including longevity steps, if applicable	Classified employees earning \$30,000 or less annually
Compensation level within a range of \$4,000, beginning at \$2,000	Unclassified employees, including contract instructional employees, earning \$30,000 or less annually

On July 16, 2014, the S.C. Supreme Court held that autopsy reports are medical records and are therefore exempt under FOIA.²¹

¹⁵ S.C. Code Ann. § 30-4-30.

¹⁶ S.C. Code Ann. § 30-4-30(d).

¹⁷ Many public records contain personal identifying information such as social security numbers that are routinely collected by local government entities. Act 190 of 2008, which deals with identity theft and fraud protection laws, requires agencies that collect social security numbers to segregate those numbers, so they may be easily removed from any document requested under the FOIA.

¹⁸ S.C. Code Ann. § 30-4-40.

¹⁹ Additionally, protection of information which could increase the risk of acts of terrorism, if disclosed, is addressed in S.C. Code Ann. § 30-4-45.

²⁰ *New York Times Co. v. Spartanburg County School District No. 7*, 374 S.C. 307, 649 S.E.2d 28 (2007).

²¹ *Perry v. Bullock*, 409 S.C. 137, 761 S.E.2d 251 (2014).

Certain matters declared to be public information include policy documents, staff manuals, employee identifying information,²² planning policies and goals, and minutes of all meetings.

Open Meetings

The general rule is that all meetings of public bodies shall be open.²³ **Meetings may be closed, but only for one of six specific, enumerated reasons:**

1. Discussion of employment, appointment, compensation, promotion, demotion and so on, of an employee;
2. Discussion of proposed contractual arrangements and proposed sale or purchase of real property, as well as any legal advice protected by the attorney-client privilege;
3. Discussion relating to development of security devices or personnel;
4. Investigation of allegations of criminal misconduct;
5. Discussion relating to proposals to locate, expand or provide services, or to encourage location/expansion of industry or business in the area served by the public body; or
6. Applicable only to the Retirement System Investments Commission.

Prior to closing the meeting to the public (which is referred to as going into executive session), the body must vote in public on the question to go into executive session, and the chair must announce the specific purpose for doing so, which must be for one of the reasons enumerated above.²⁴

Prior notice of meetings must be published, and regularly scheduled meetings must be published at the beginning of the calendar year—including the dates, times and places of the meetings. Public notice of any regularly scheduled, rescheduled, called or special meetings must be posted on a bulletin board at the office/meeting place, along with the agenda, if any, not less than 24 hours prior to meeting. The notice requirement is waived for emergency meetings. Notice requirements extend to committees, subcommittees and advisory committees of the public body.

On June 18, 2014, the S.C. Supreme Court held that amending the agenda during a regularly scheduled council meeting does not violate FOIA.²⁵ However, in addition to the public's desire to know ahead of time what is being considered at a council meeting, an agenda allows council members to know what is being discussed at a meeting. The General Assembly is currently considering whether or not to make agendas mandatory for public bodies. There have also been some discussions about how to amend agendas, as the General Assembly recognizes there may be circumstances where the agenda needs to be amended.

Chance meetings, social meetings and electronic communications may not be used to circumvent the spirit of the requirements under the FOIA. Public bodies are required to notify any person, organization or media that requests notification of meetings, providing them with the date, time and place of the meeting and with the agenda. Efforts to comply with this notification requirement must be noted in the minutes.

²² Includes name, sex, race, title and dates of employment of all employees and officers of public bodies. S.C. Code Ann. § 30-4-50(1).

²³ S.C. Code Ann. § 30-4-60.

²⁴ S.C. Code Ann. § 30-4-70(a).

²⁵ *Lambries v. Saluda County*, 409 S.C. 1, 760 S.E.2d 785 (2014).

Public bodies are required to keep minutes of all their public meetings.²⁶ The term “meeting” is defined as the “convening of a quorum of the constituent membership of a public body...to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.”²⁷ In addition to complying with the FOIA, minutes of public bodies may be used as evidence of legislative intent when interpreting ordinances.²⁸

SCAC’s staff does not believe that minutes of closed or executive sessions are required under the FOIA, although there are others who disagree. Under prior law, in *Cooper v. Bales*²⁹, the S.C. Supreme Court authorized discovery of certain information contained in the minutes of a school board meeting executive session, but protected information covered by the attorney-client privilege. Executive sessions, which are limited to a few specific purposes, allow frank discussions about sensitive matters. Discovery of such information defeats the purpose of executive sessions; for this reason, taking of minutes of executive sessions is not recommended. Furthermore, minutes—once taken—are public records and must be maintained as required by the FOIA. Even if the minutes are not discoverable under present law, a future amendment to the FOIA could open up the information in these old minutes.

Enforcement

Any citizen of this state can file an action within one year of the date of a violation of the FOIA and may seek either injunctive relief or a declaratory judgment.³⁰ If the party alleging a violation of the FOIA is successful, in whole or in part, it may be awarded reasonable attorney fees and other costs for bringing the action. The public body has no similar remedies for a successful defense. Furthermore, any person or group who willfully violates the provisions of the FOIA may be fined or imprisoned.³¹

Additional Resources

- To learn more about the records management program of the S.C. Department of Archives and History, visit the department online at <http://scdah.sc.gov>.
- View/download the *Freedom of Information Handbook for Counties* and the most recent supplement via www.sccounties.org/publications.

²⁶ S.C. Code Ann. § 30-4-90.

²⁷ S.C. Code Ann. § 30-4-20.

²⁸ *Eagle Container Co., LLC v. County of Newberry*, 379 S.C. 564, 666 S.E.2d 892 (2008).

²⁹ *Cooper v. Bales*, 268 S.C. 270, 233 S.E.2d 306 (1977).

³⁰ S.C. Code Ann. § 30-4-100.

³¹ S.C. Code Ann. § 30-4-110.

The Judicial System

Robert S. Croom and Joshua C. Rhodes, South Carolina Association of Counties

Introduction

The state's court system includes the S.C. Supreme Court and the S.C. Court of Appeals as well as the circuit courts, family courts, probate courts, magisterial courts, masters-in-equity courts and municipal courts. This system of courts handles both civil and criminal cases. Civil cases typically involve two or more private parties who retain counsel of their choice, and governmental involvement is limited to providing the forum to decide the case. Criminal actions involve the courts, a prosecutor and defense counsel, all of which may be the government's responsibility to provide. The prosecutorial system is made up of the circuit solicitors and the S.C. Attorney General's Office; while the defense component includes private counsel retained by the defendant, the S.C. Commission on Indigent Defense and Office of Appellate Defense, and private attorneys appointed by the court. This chapter will focus on the state's criminal court system, excluding municipal courts, and will briefly discuss other components of the judicial system.

The Mandate to Provide

The state mandates that county government provide or fund most administrative and support needs for the judicial system's trial court components. This mandate to provide support to the state judicial system is evident in certain blanket provisions, such as the requirement that:

The governing body of each county shall furnish the probate judge...clerk of court... and master-in-equity of their respective counties office room, together with necessary furniture and stationery for the same, which shall be kept at the courthouse of their respective counties, and it shall supply the offices of such officials with fuel, lights, postage, and other incidentals necessary to the proper transaction of the legitimate business of such offices.¹

The requirement to furnish office space to the officers listed above is not lifted during courthouse renovations or even a disaster.²

Lancaster County opened its new courthouse in 2011, after the historic courthouse burned. During construction, court offices moved to the county administration building, a courtroom was constructed in a vacant building, and the county used municipal court facilities. The mandate to support the state judicial system is not lifted—even following a disaster.



Photo courtesy of OswaldDesign.com.

¹ S.C. Code Ann. § 4-1-80.

² S.C. Code Ann. § 4-1-90.

The mandate to provide office space for all county judicial officers also extends to state judicial officials residing in the county. The General Assembly requires that all resident circuit and family court judges be given “an office with all utilities including a private telephone” and, upon request, the same must be furnished to members of the Supreme Court and the Court of Appeals.³

There are numerous more specific mandates for county government support of the various courts of the judicial system found throughout the S.C. Code of Laws. For example, county council is required to furnish the probate court with the seal of the court, books for recording documents of the court and index books for recorded court documents.⁴

Another statute providing for probate court support requires the county council to:

*...provide the salary, equipment, facilities, and supplies of the support personnel and staff of the probate judge, together with all other costs necessary for the efficient operation of the court, including but not limited to, court reporters, secretaries, clerks, per diem, travel, educational, and other benefits for the judge and his staff.*⁵

The salary paid to a probate judge must meet a statutory minimum. Section 8-21-765 sets forth a sliding scale of minimum salaries for probate judges based on county population. The statutory base salary for probate judges is adjusted each year by the same cost-of-living increase classified state employees are given in the general appropriations act of the previous fiscal year. In addition to the salary and cost-of-living, the probate judge must be given the same perquisites provided to county employees of similar position and salary.⁶

Likewise, county council is required to provide the magistrates’ court with facilities and support personnel.⁷ There is also an elaborate minimum pay scale for magistrates based on county population, attending mandatory training and tenure in office.⁸ The pay scale is based upon the salary of a circuit court judge for the preceding year. Magistrates are also entitled to the same perquisites as county employees of similar position and salary. The chief magistrate in each county is provided a salary supplement and reimbursement for travel expenses.⁹

Unlike probate judges, some magistrates serve on a part-time basis.¹⁰ Part-time magistrates are paid the proportion of a full-time salary corresponding to time spent performing judicial duties. Judicial duties include ministerial tasks, travel and training time, as well as time spent “on call.”¹¹

This discussion is not an exhaustive treatment of statutory mandates for county government to support and provide for the state judicial system or even the various courts themselves.¹²

³ Act 73 of 2011, Part IB, § 44.2. This particular provision and other similar provisions are actually temporary requirements valid for one fiscal year, which are included in the general appropriations act each year. Therefore, this budget proviso and others like it function similar to a permanent statute.

⁴ S.C. Code Ann. § 14-23-1130.

⁵ S.C. Code Ann. § 8-21-760.

⁶ S.C. Code Ann. § 8-21-765.

⁷ S.C. Code Ann. § 22-8-30.

⁸ S.C. Code Ann. § 22-8-40.

⁹ S.C. Code Ann. § 22-8-40(a).

¹⁰ S.C. Code Ann. § 8-21-760; § 22-8-40(D).

¹¹ S.C. Code Ann. § 22-8-20; *Ramsey v. McCormick County*, 412 S.E. 2d 408 (S.C. 1991).

¹² Masters-in-equity receive support from county government which is very similar to that given probate judges and magistrates, and they are paid a minimum salary based on population, using percentages of a circuit court judge’s salary. S.C. Code Ann. § 14-11-30.

Some of the remaining mandates to support the judicial system will be mentioned later in this chapter, but the previous discussion illustrates the scope and detail of statutory requirements for county support of the judicial system.

Judicial system support is not left entirely to county government. The appellate courts and the Supreme Court are almost exclusively state supported. The state also pays the salaries of the circuit and family court judges and some of their support staff such as law clerks, secretaries and court reporters.

The S.C. Judicial Department's judicial automation program is another example of state support. The goal is to provide an information network infrastructure to make court resources available to the judiciary, the Bar and the public over high-speed internet, and to allow the management of the judicial system through a statewide case management system. The program provides all county courthouses with high-speed internet connections for the clerks of court and state judges.

A system of web pages was designed for every court in South Carolina to provide contact information for the various courts, downloadable forms and judicial calendars. There is also an intranet for judicial use, and electronic access to court filings and electronic filing of documents. It is hoped that these projects will provide more uniform services across the state, easier access to information and more efficient operations.

The automation program was designed and provided by the Judicial Department with funding from grants and the department's budget. The Judicial Department is to provide support and maintenance from revenue generated by charging a fee for technology support services to users of the system.¹³

Court Revenue

The costs of the judicial system to the county are defrayed by court-generated revenue. The courts generate revenue through the imposition of filing fees, criminal fines, fine assessments, fine surcharges and other charges. The various fees and charges used for trial level courts, land record filings and the distribution of these revenues are set forth in detailed schedules in state law.

Most of the court revenue statutes are found in Title 14 of the S.C. Code,¹⁴ although individual special fees are found throughout the Code. There are also a number of amendments to these statutes, which were codified in the Proviso Codification Act of 2007 and other legislative enactments. For example, all surcharges are now codified. These statutes are often amended, so this discussion will tend towards the general.

In criminal cases, there are fines, assessments (which are added to the fines) and surcharges (which are added to the previous total). As a general rule, general sessions court fines are split between the state and the county, and the assessment revenue primarily goes to the state. In the magistrates' court, the fine goes to the county, and the assessment and surcharge revenue primarily goes to the state. In both courts, there are numerous additional surcharges levied on criminal fines, which go to the state.

The assessments and surcharges added to each criminal conviction are more than the actual criminal fine in all courts. The basic fine assessment in all courts is 107.5 percent, and additional amounts are added depending upon the crime, which court hears the case, and whether the particular charge is exempt from some of the additional surcharges.

¹³ Act 73 of 2011, Part IB, Proviso 44.15.

¹⁴ S.C. Code Ann. §§ 14-1-201 to 14-1-214.

Much of the revenue from the surcharges goes to support state agencies that are components of the criminal justice system. In some instances, these agencies receive more than half of their budget from court revenue. Because of this and the resulting dependency it creates for the affected state agencies, the General Assembly requires specialized audits, reporting of court revenue, state agency follow-up of reporting, and training opportunities for court personnel and treasurers.¹⁵ **If there are discrepancies, penalties could include the withholding of state aid to subdivisions revenue to which the county would otherwise be entitled.** S.C. Court Administration and the State Treasurer's Office are responsible for providing training to court personnel and treasurers on the collection and distribution of court revenue.

The General Assembly requires special audits, reporting of court revenue, state agency follow-up of reporting, and training for court personnel and treasurers. ☞

In civil actions, there are two main revenue streams: filing fees and motion fees, which vary among circuit, magistrates' and probate courts. Common pleas court fees are divided between the state and the county. Both magistrates' and probate court filing fees stay with the county.

The main streams of revenue supporting the family court are state and county appropriations. There are filing fees and a handling fee imposed on child support payments made through the family court clerk's office, which help to defray this cost.¹⁶ These fees are split between the state and the county.

There are also other revenue streams from the probate court, master-in-equity, and fees from the filing of documents with the register of deeds or the clerk of court. These fees are generally retained by the county.

The Unified Judicial System

The S.C. Constitution vests the judicial power of the state in a unified judicial system (please see the chart on page 129).¹⁷ The constitution vests administrative policy formulation and rule-making authority for the judicial system with the Supreme Court. The Supreme Court as a whole is responsible for promulgating administrative rules, rules of procedure and rules governing the practice of law.¹⁸

The Chief Justice of the S.C. Supreme Court is the administrative head of the unified judicial system. Among many things, the Chief Justice is responsible for setting the terms of court and assigning judges to the various trial courts. To carry out assigned administrative duties, the Chief Justice is given the authority to appoint an administrator of the courts and assistants as necessary to administer the court system.¹⁹

The Office of Court Administration assists the Chief Justice in performing administrative responsibilities. The varied tasks performed by court administration include developing recommendations for scheduling terms of court and assignment of judges; supervising the administration of various courts in the state; assisting individual courts with tasks such as calendar management, jury management and recordkeeping, either upon request or in response to problems coming to their attention; managing the funds for interpreters for the deaf and foreign language interpreters; and serving as a liaison between the judicial department and other governmental agencies.

¹⁵ S.C. Code Ann. § 14-1-213.

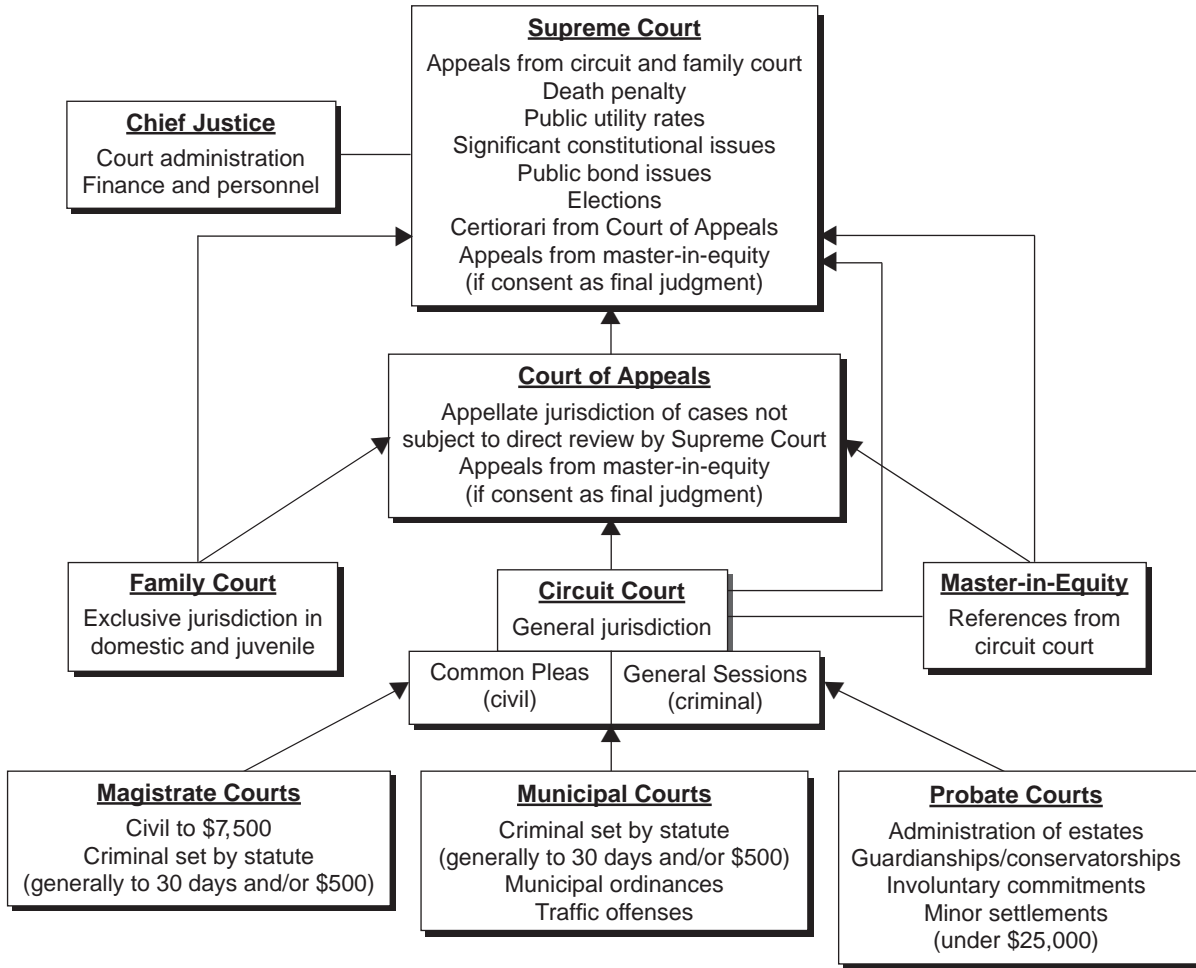
¹⁶ S.C. Code Ann. § 63-3-370(C).

¹⁷ S.C. Const. art. V, § 1.

¹⁸ S.C. Const. art. V, § 4.

¹⁹ S.C. Const. art. V, § 4.

The South Carolina Judicial System



The Chief Justice also appoints a circuit court judge in each judicial circuit and magistrate in each county to serve as the chief judge for administrative matters. The chief judge appointments are made pursuant to the authority given to the Chief Justice in the State Constitution.²⁰ These chief judge positions are the method the Chief Justice has chosen to implement administrative control and leadership throughout the judicial system.

The Courts

The Supreme Court

The Supreme Court is the state's highest court. Most of the cases heard by the court are appeals from lower courts. The court also has jurisdiction allowing litigants to initiate their action at the Supreme Court level.²¹ However, the court limits the use of its original jurisdiction to extraordinary cases, such as emergencies or issues of significant public interest.²² The Supreme Court is composed of the Chief Justice and four associate justices.²³ The justices are elected by the General Assembly to 10-year terms of office.²⁴

²⁰ S.C. Const. art. V, § 4.

²¹ S.C. Const. art. V, § 5.

²² *Key v. Currie*, 406 S.E. 2d 356 (S.C. 1991).

²³ S.C. Const. art. V, § 2.

²⁴ S.C. Const. art. V, § 3.

The Court of Appeals

The S.C. Court of Appeals has appellate jurisdiction only and may hear any appeal from the circuit or family courts except those involving: 1) the death penalty, 2) public utility rates, 3) significant constitutional issues, 4) public bond issues, 5) election laws, 6) an order limiting an investigation of a state grand jury, or 7) an order of the family court related to an abortion by a minor.²⁵ The court consists of a chief judge and at least five associate judges (currently eight) who are elected by the General Assembly to six-year terms.²⁶ The Court of Appeals usually hears cases in three-judge panels, but also may hear cases as a whole.²⁷

Circuit Court

The circuit court is the state's general jurisdiction trial court.²⁸ It is known as the court of common pleas when hearing a civil action and as the court of general sessions when the case is a criminal matter. The circuit court also hears appeals from probate, magistrate and municipal courts.²⁹ The state is divided into 16 judicial circuits (see table below), and each circuit has at least one resident judge. In addition to the circuit-based judges, there are 16 at-large circuit court judges for a total of 49 circuit court judges.³⁰ Circuit court judges are rotated throughout the state.³¹ They are elected by the General Assembly to six-year terms.³²

1st	Calhoun, Dorchester, Orangeburg	9th	Berkeley, Charleston
2nd	Aiken, Bamberg, Barnwell	10th	Anderson, Oconee
3rd	Clarendon, Lee, Sumter, Williamsburg	11th	Edgefield, Lexington, McCormick, Saluda
4th	Chesterfield, Darlington, Dillon, Marlboro	12th	Florence, Marion
5th	Kershaw, Richland	13th	Greenville, Pickens
6th	Chester, Fairfield, Lancaster	14th	Allendale, Beaufort, Colleton, Hampton, Jasper
7th	Cherokee, Spartanburg	15th	Georgetown, Horry
8th	Abbeville, Greenwood, Laurens, Newberry	16th	Union, York
Source: S.C. Judicial Department			

Family Court

The family court is the only court in which to initiate an action regarding a divorce (including alimony and division of marital property), child custody, visitation, termination of parental rights, adoption, child support or a change of name.³³ Generally, minors charged with criminal offenses are triable only in the family court.³⁴ However, magistrate and municipal courts have jurisdiction in most traffic, hunting or fishing offenses, and the trial of juveniles charged with serious criminal offenses may be transferred to the circuit court.³⁵

²⁵ S.C. Code Ann. § 14-8-200.

²⁶ S.C. Const. art. V, § 7 and S.C. Code Ann. §§ 14-8-10 and 14-8-20.

²⁷ S.C. Const. art. V, § 7 and S.C. Code Ann. § 14-8-80.

²⁸ S.C. Const. art. V, § 11.

²⁹ S.C. Code Ann. §§ 62-1-308 and 14-5-340.

³⁰ S.C. Code Ann. § 14-5-610.

³¹ S.C. Const. art. V, § 14.

³² S.C. Const. art. V, § 13.

³³ S.C. Code Ann. §§ 63-3-510 and 63-3-530.

³⁴ S.C. Code Ann. § 63-3-510.

³⁵ S.C. Code Ann. §§ 63-3-510 and 63-3-520.

There are a total of 58 family court judges in the state.³⁶ They are elected by the General Assembly and serve terms of six years.³⁷ The judges of the family court generally rotate among the counties within their circuit, but the Chief Justice may assign them wherever needed.

Probate Court

The probate court is the only court in which to initiate an action concerning the estate of a deceased person, the will of an individual, the estate of a minor, the estate of an incapacitated person (incapacitated by chemical dependence, mental illness or deficiency), the involuntary commitment of an individual to an institution (for chemical dependence, mental illness, mental deficiency or tuberculosis) or matters involving a trust. The probate court is also responsible for issuing marriage licenses.³⁸ Probate court matters are almost exclusively handled without a jury, but the court does have the authority to conduct a jury trial.³⁹

There is a probate court in every county, and the probate judge is selected by popular election to a term of four years.⁴⁰ **The probate judges are unique among the state's judiciary in that they are the only popularly elected judges.** County council may provide funding for one or more associate probate judges who are appointed by the probate judge.⁴¹

Magistrates' Court

The magistrates' court handles both civil and criminal matters. The jurisdiction in criminal matters is limited to those offenses having a maximum fine of \$500 and/or imprisonment not to exceed 30 days.⁴² However, a magistrate cannot sentence any person to consecutive terms of imprisonment totaling more than 90 days, except in matters involving fraudulent checks or shoplifting.⁴³ Magistrates also have been given authority to hear certain cases transferred from the circuit court when the penalty does not exceed \$5,500 and/or one year in prison.⁴⁴

The civil jurisdiction of magistrates' court is limited to actions where the amount in controversy is less than \$7,500.⁴⁵ The magistrates' court also is given jurisdiction over landlord-tenant cases.⁴⁶

Magistrates are appointed to four-year terms of office by the Governor, with the advice and consent of the S.C. Senate. There is a formula that sets a maximum number of magistrates based upon the county population and the geographic area of the county, but additional magistrates may be appointed based on the amount a county collects in accommodations tax revenue. However, no county is required to have fewer than one full-time and one part-time magistrate.⁴⁷ Magistrates must complete a training course and pass a certification examination within one year of their appointment and no less frequently than every eight years thereafter.⁴⁸

³⁶ S.C. Code Ann. § 63-3-40.

³⁷ S.C. Code Ann. § 63-3-30.

³⁸ S.C. Code Ann. § 62-1-302.

³⁹ S.C. Code Ann. § 62-1-306.

⁴⁰ S.C. Code Ann. § 14-23-1010; §§ 14-23-1020 and 62-1-309.

⁴¹ S.C. Code Ann. § 14-23-1030.

⁴² S.C. Code Ann. § 22-3-550.

⁴³ S.C. Code Ann. § 22-3-550.

⁴⁴ S.C. Code Ann. § 22-3-545.

⁴⁵ S.C. Code Ann. § 22-3-10.

⁴⁶ S.C. Code Ann. § 22-3-10.

⁴⁷ S.C. Code Ann. § 22-8-40(c)(3).

⁴⁸ S.C. Code Ann. § 22-1-10.

Master-in-Equity

The master-in-equity is a division of the circuit court.⁴⁹ Any case which could be heard by the circuit court without a jury may be referred to the master-in-equity. A master-in-equity's court is unique among courts in South Carolina in that no action may be initiated in the master's court. Every case which a master hears is received from the circuit court using a procedural device known as an Order of Reference.⁵⁰

The master-in-equity may serve several different roles in the trial court system. The master may be asked to rule on one or more particular issues or the entire case and then make a final decision to be appealed either to the Court of Appeals or the Supreme Court.⁵¹ These items may vary from case to case and are generally set forth in detail in the Order of Reference conferring jurisdiction upon the master-in-equity.

The main role for which the master-in-equity is used is as a court to handle specialized cases such as mortgage foreclosures, land partitions, judicial sales, actions to collect a judgment and complex cases. The master-in-equity is particularly useful in complex cases because the master does not rotate among the other counties, so the same judge hears every phase of the trial. The second major role which the master serves is as a generalized trial court to reduce the backlog of civil cases awaiting trial. Several large counties use the master's court to hear large numbers of motions and sit as the non-jury trial court in an effort to reduce the number of cases waiting to be heard.

Every county with a population greater than 130,000 must have a full-time master-in-equity.⁵² Smaller counties may have part-time standing masters, may join with other counties to employ a full-time, multi-county master or use special masters or referees. Special referees are most common in smaller counties and are appointed by the circuit court judge on a case-by-case basis.⁵³ The special referee is paid by the parties to the suit and does not necessarily have to be an attorney.⁵⁴

The master-in-equity is appointed by the Governor, with the advice and consent of the General Assembly, for a term of six years.⁵⁵ The master-in-equity must be an attorney with eight years of experience, be at least 32-years-old, and have been a South Carolina resident for the immediately preceding five years.⁵⁶ These are the same qualifications required of a Supreme Court justice, judge of the Court of Appeals or a circuit court judge by § 15 of Article V of the S.C. Constitution. The salary of a master-in-equity is a percentage of the salary paid to a circuit court judge, and the percentage depends upon the population of the county.⁵⁷

Other Courts and Diversion Programs

The judicial system's specialized courts include drug courts, mental health courts and veterans treatment courts. These courts are diversion programs in which a person charged with a crime applies to participate or is placed into the relevant program for intensive supervised treatment with the underlying charges held in abeyance pending cooperation and successful participation in the treatment program.

⁴⁹ S.C. Code Ann. § 14-11-15.

⁵⁰ Rule 53, S.C. Rules of Civil Procedure.

⁵¹ Rule 53, S.C. Rules of Civil Procedure; S.C. Code Ann. § 14-11-85.

⁵² S.C. Code Ann. § 14-11-10.

⁵³ S.C. Code Ann. § 14-11-10.

⁵⁴ S.C. Code Ann. § 14-11-60.

⁵⁵ S.C. Code Ann. § 14-11-20.

⁵⁶ S.C. Code Ann. § 14-11-20.

⁵⁷ S.C. Code Ann. § 14-11-30.

These programs frequently do not appear in state law, but are sanctioned using an order from the Chief Justice to allow the appropriate scheduling of a judge to hear cases or to formalize the authority of the court to alter case management procedures.

Clerks of Court

The state constitution requires that each county have a clerk of court elected to a four-year term of office by popular election.⁵⁸ The clerk of court is responsible for the circuit court and the family court.⁵⁹ The clerk of court keeps records of the proceedings of both general sessions (criminal) and common pleas (civil) courts.⁶⁰ The clerk is charged with managing the juries and the county grand jury.⁶¹ The custody of the courthouse is also the responsibility of the clerk of court, including the assignment of office space within the courthouse.⁶²

The clerk of court has significant duties in the family court regarding child support enforcement and establishment of paternity. The duties of the clerk of court in this area are not found exclusively in state statute, but also through contractual agreement with the S.C. Department of Social Services (DSS) pursuant to federal law.⁶³ These duties are driven by federal law and are associated with recouping the costs of public assistance from parents with legal obligations for child support. In return for performing the duties which benefit the federal government, the federal government shares the revenue collected by making incentive payments to DSS, which are shared with the clerk of court. In addition to the federal support, the clerk may also charge a fee of five percent of the delinquent amount, with 66 percent of the fee revenue retained by the county.

The clerk of court also performs duties relating to the recording of land titles, liens and other documents affecting land titles when there is not a separate register of deeds office.⁶⁴ There are also a number of miscellaneous duties assigned to the clerk of court found throughout the code. Many of these duties are to have available for public inspection certain licenses, forms or reports (e.g., maintaining the registry for notaries public).⁶⁵

All of the funding for the clerk of court and the clerk's office is the responsibility of the county. However, there is an annual salary supplement paid by the state to the clerk of court.⁶⁶

Prosecution

The Attorney General is the chief prosecutor in the state and has authority to supervise all criminal prosecutions in courts of record.⁶⁷ As a practical matter, much of the coordination and assistance to the solicitors' offices is handled by the S.C. Commission on Prosecution Coordination.⁶⁸ Most criminal prosecutions in the circuit court are carried out by the solicitor or the solicitor's assistants.

⁵⁸ S.C. Const. art. V, § 24.

⁵⁹ S.C. Code Ann. § 14-17-20.

⁶⁰ S.C. Code Ann. § 14-17-510.

⁶¹ There are numerous statutory provisions imposing jury-related duties upon the clerk of court, which are found in Title 14 of the S.C. Code of Laws.

⁶² S.C. Code Ann. § 14-17-210.

⁶³ S.C. Code Ann. §§ 63-3-370 and 43-5-235.

⁶⁴ S.C. Code Ann. § 30-5-10.

⁶⁵ S.C. Code Ann. § 26-1-50; §§ 8-13-1160, 8-13-1310, 8-13-1356 and 8-13-1366.

⁶⁶ Act 73 of 2011, Part IB, Proviso 86.4.

⁶⁷ S.C. Const. art. V, § 24.

⁶⁸ S.C. Code Ann. §§ 1-7-910 *et seq.*

The solicitor also performs the critical task of scheduling cases for trial in the general sessions court.⁶⁹ However, the S.C. Attorney General's Office is responsible for the statewide grand jury and handles a number of specialized prosecutions and most criminal appellate work.⁷⁰

One solicitor for each judicial circuit is chosen by popular election for a term of four years.⁷¹ The solicitor is a full-time state employee and is entitled to hire three full-time assistants at state expense: an assistant solicitor, an investigator and a secretary.⁷² **The solicitor also has the authority to appoint as many assistant solicitors, investigators and secretaries within the judicial circuit as the counties will fund, and these employees serve at the pleasure of the solicitor.**⁷³

The solicitor's office is funded from a number of sources. Each county in the judicial circuit typically makes an appropriation to support this office. In addition, the solicitor receives support from the General Assembly in the form of payments based upon the population of the circuit.⁷⁴ The Commission on Prosecution Coordination provides blank indictments to the solicitors.⁷⁵

The solicitor is required to enter into an agreement with one of the counties in the circuit to administer the solicitor's office funds. The county accounts for the receipt and disbursement of these funds separately from any other county funds and submits a report of revenues and expenditures to the state auditor.⁷⁶ The administering county within the circuit also is deemed to be the employer of the solicitor's office personnel who are not state employees.⁷⁷

Defense

The state is typically the prosecuting agency, and criminal defense responsibilities are handled by counsel retained by the accused. The one major exception to this general rule is the government's responsibility to provide an indigent criminal defendant with legal counsel and the basic tools with which to mount an adequate defense.⁷⁸ The "basic tools" in some cases include psychiatric experts, forensic experts and DNA analysis.

South Carolina has two mechanisms to provide trial counsel to indigent criminal defendants: the public defender system and private counsel appointed by the court. The majority of the indigent defense burden is borne by the public defender system. Appeals from criminal trials involving an indigent defendant are handled by the S.C. Office of Appellate Defense within the Commission on Indigent Defense.⁷⁹

The public defender system is administered by the Commission on Indigent Defense. The commission was created in 2007 in an attempt to equalize indigent defense with prosecution and to provide more consistency within the public defender system.⁸⁰

⁶⁹ S.C. Code Ann. § 1-7-330.

⁷⁰ S.C. Code Ann. § 14-7-1650.

⁷¹ S.C. Const. art. V, § 24.

⁷² S.C. Code Ann. §§ 1-7-325 and 1-7-406.

⁷³ S.C. Code Ann. § 1-7-405. In addition to the two general statutes cited above, there are several special statutes for individual judicial circuits authorizing additional assistants on certain terms and conditions. See S.C. Code Ann. §§ 1-7-420 through 1-7-540.

⁷⁴ Act 73 of 2011, Part IA, § 46.

⁷⁵ S.C. Code Ann. § 1-7-940.

⁷⁶ S.C. Code Ann. § 1-7-407.

⁷⁷ S.C. Code Ann. § 1-7-407.

⁷⁸ *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Ake v. Oklahoma*, 470 U.S. 68 (1985).

⁷⁹ S.C. Code Ann. § 17-4-10.

⁸⁰ Act 108 of 2007.

Each judicial circuit has a circuit public defender who is nominated by the circuit public defender selection panel, consisting of members of the S.C. Bar Association from each county in the judicial circuit, and confirmed by the Commission on Indigent Defense.⁸¹

Circuit public defenders are appointed to terms of four years and are responsible for the administration of the offices in each county in the circuit.⁸² The circuit public defender is responsible for entering into an agreement with a county within the judicial circuit to be the administering county for the public defender's office funds, and any funds are to be directed to the administering county. The administering county is to account separately for the public defender's funds.

All counties in the judicial circuit are to provide a pro rata share—according to population—for the expense of providing office space, utilities, telephone and supplies for the public defender's office. ☉

All counties in the judicial circuit are to provide a pro rata share—according to population—for the expense of providing office space, utilities, telephone and supplies for the public defender's office. Funding of public defender operations cannot be less than that of the immediate preceding year.⁸³ Obviously, no one-time funds should be appropriated to a public defender office, unless the idea is to permanently increase the appropriation to the public defender.

The circuit public defender may employ a chief county public defender for each county in the judicial circuit who is responsible for that county's public defender office. The circuit and chief county public defenders are permitted to staff their offices with administrative and support staff, all of whom are considered employees of the administering county. The circuit public defenders' offices receive funding from state and county appropriations, a portion of criminal fees and assessments, and support from the administering county within the circuit.

When there are not enough public defender attorneys available or the public defender office has an ethical conflict, the court appoints a private attorney to represent the defendant.⁸⁴ When private counsel is appointed, they must be compensated by a reasonable fee at a rate of \$40 per hour for time spent out of court and \$60 per hour when they are trying a case in court.⁸⁵ All fees and expenses that the court approves for appointed counsel are to be paid out of funds available to the Commission on Indigent Defense.⁸⁶

Victims' Services and Rights

In 1998, the S.C. Constitution was amended to provide for the rights of crime victims.⁸⁷ These rights include notification of the status of the investigation, notification and participation in court proceedings, and assistance or referral to social services. These rights affect more than just the judicial system. One of the most noticeable effects of a victim's rights is the delay of any bond hearing for which reasonable notice was not given to the victim.

⁸¹ S.C. Code Ann. § 17-3-510.

⁸² S.C. Code Ann. § 17-3-520.

⁸³ S.C. Code Ann. § 17-3-550.

⁸⁴ One frequently seen ethical conflict is where two or more people are charged in connection with a crime where the individual who used the weapon will receive a stiffer penalty than the other person(s) involved. It would be impossible for one attorney to present a credible case for two defendants whose main defense is that the other person used the weapon. S.C. Code Ann. § 17-3-100.

⁸⁵ S.C. Code Ann. § 17-3-50.

⁸⁶ S.C. Code Ann. § 17-3-50.

⁸⁷ S.C. Const. art. I, § 24.

While the victim has no civil cause of action for failure of a government to observe and protect these rights, the act may be enforced by obtaining a *writ of mandamus* from a circuit court to require the provision of services. Refusal to comply with the writ is punishable in the same manner as contempt of court.⁸⁸

The statutory implementation of this constitutional provision is found in state law.⁸⁹ These provisions spell out a number of the details of rights given to victims in the constitution and, in some instances, which governmental officer or entity is responsible for providing certain services. However, there is no uniform structure for delivery of victims' services, and the statute adds a number of provisions which do not appear in the constitutional provisions. In some counties, a centralized victim notification office serves all of the offices and municipalities that are required to provide notification and other victims' services. Other counties allow each provider to set up the mechanisms for delivering victims' services or have a victims' services advocate in each department to provide these services.

There is a considerable amount of funding devoted to victims' services, which comes from criminal court fine assessments and surcharges.⁹⁰ The county retains this portion of the fine assessments and surcharges from general sessions and magistrate courts. These revenues only defray the costs of victims' services required by the constitution; **the obligation of the county to provide the required services is not limited to the amount of revenue received from the court-generated revenues.** In the event there is a surplus of revenue after all constitutionally required services are provided, the funds may be used for other victims' services.⁹¹ Counties also may provide additional funding for victims' services from the county general fund. These funds are typically appropriated to local law enforcement agencies, solicitors' offices, magistrates, clerks of court and other agencies through the county budget process.

Additional Resources

- Visit the S.C. Judicial Department online at www.sccourts.org to search and retrieve published opinions and orders of the S.C. Supreme Court and the S.C. Court of Appeals, to find contact information for judicial officials across the state and to review annual reports and statistical trends.
- To learn more about the S.C. Commission on Indigent Defense, the S.C. Office of Appellate Defense, and guidelines/regulations for South Carolina's public defender system, visit www.sccid.sc.gov.
- For information about the S.C. Commission on Prosecution Coordination and administrative functions of the solicitors' offices, go to www.prosecution.state.sc.us.
- Visit the State Office of Victim Assistance via www.sova.sc.gov to learn about victims' services and rights, and the state network of victim service agencies.

⁸⁸ S.C. Const. art. I, § 24 and S.C. Code Ann. § 16-3-1565.

⁸⁹ S.C. Code Ann. §§ 16-3-1505 *et seq.*

⁹⁰ S.C. Code Ann. §§ 14-1-206 and 14-1-207; § 14-1-211.

⁹¹ S.C. Code Ann. § 14-1-206(D).

Planning and Land Development

Mark W. Tollison, Greenville County Attorney

Planning Fundamentals

Identifying Basic Planning

A county making a decision to “plan” can be described as establishing the method and design for accomplishing a particular act or goal. The term “planning” is commonly used to describe local government activities conducted to prepare and organize for the future. For purposes of discussion in this chapter, planning will be defined as an orderly process used by county governments to:

- Identify county problems and needs;
- Collect information and facts necessary to study the county’s problems and needs;
- Arrive at consensus on county goals and objectives;
- Develop plans and programs for fulfilling the adopted goals and objectives; and
- Execute plans and programs in an efficient, organized manner.

When a local government applies the process described above to all private and public actions affecting the development and uses of property within its jurisdiction, it is implementing “land use planning.” The definition of land use planning also includes the activities undertaken by a county government to influence the appearance and growth of the county. Often referred to as “planning,” land use planning is the most visible form of planning because of its impact on the physical makeup of a county. It is important to distinguish land use planning from “zoning.” Zoning is just one of the regulatory tools available to counties carrying out land use planning that can lend a community some influence on the private use of land.

With the local planning activities described above, public input is vital. **Citizens’ direct involvement in plan preparation is the primary source for developing accurate assessments of a county’s problems and needs**, which in turn can give support to the adoption of a final set of community goals and objectives. Developing plans and programs for a county requires close collaboration between citizens and local government officials. Without a measure of public support and understanding of local planning activities, the county’s plans can result in hollow documents, placing the success of the entire planning process at risk.

Planning History in Brief

Planning and zoning have been around the U.S. since the early part of the last century and are recognized as a function of local governments. The U.S. Supreme Court, in the landmark decision of *Village of Euclid v. Ambler Realty Company*, upheld the constitutionality of local government zoning in 1926.¹ Around the time of the *Euclid* decision, the U.S. Department of Commerce published two documents: *A Standard State Zoning Enabling Act* and *A Standard City Planning Enabling Act*.² These publications greatly influenced the shape of the local planning enabling legislation passed by state legislatures, including early local laws in South Carolina.

¹ 272 U.S. 365, 47 S.Ct. 365 (1926).

² Herbert H. Smith, *The Citizen’s Guide to Zoning* (Chicago: APA Planners Press, 1983).

Model planning acts permitted local governments to plan for and control land use and development occurring within their jurisdictions through the oversight of local planning commissions. In South Carolina, the General Assembly passed planning enabling legislation for counties in 1942, after granting similar planning authority to municipalities in 1924.³ Enabling legislation in South Carolina has been reenacted many times over the years, with the last major reenactment occurring in 1994. The General Assembly passed the 1994 S.C. Local Government Planning Enabling Act, which consolidated county and municipal planning laws into one code chapter, the source of current local land use planning and zoning authority.⁴

Planning in the Counties: Behind the Ordinances

Suburban Growth and Changing Rural Landscapes

Urbanized parts of South Carolina have experienced significant growth in both population and building activity in the past six decades. Much of this growth has been experienced in the unincorporated areas of South Carolina's counties. Often, this type of increased development activity is termed "suburban" growth, because it occurs outside the traditional urban/downtown area of communities. The natural impact of suburban growth in the counties is the conversion of once rural, agricultural areas into newly-developed residential and commercial communities.

Planning programs allow counties to foresee and direct the public resources necessary to accommodate new suburban growth. ☺

Changing land uses tend to increase the demand for local government services and infrastructure, as people move out to new developing communities in unincorporated areas of the counties. Planning programs allow counties to foresee and

direct the public resources necessary to accommodate new suburban growth. A lack of planning in the suburbs tends to leave impacted local governments unprepared to keep up with the growing demand for public facilities and services. For example, increased residential and commercial traffic on former "farm-to-market roads" can rapidly take up existing capacity and create traffic backups more reminiscent of downtown than the rural area where the congestion is occurring.

Some jurisdictions have attempted to maintain the resources and quality of life that attracted new growth by engaging in planning for the change from rural to suburban. When growth pushes out into the rural areas of a county, planning can play a vital role in preserving open space as well as protecting valued natural, scenic and historic resources. Specialized zoning can protect historic sites from activities that would otherwise disrupt or destroy their character, while other land use policies can provide levels of identification and preservation for natural areas such as forests, mountains, wetlands and coastal areas. In those areas seeking to harmonize land development with the existing rural character of a community, county planning can assist in the conservation of open space and farmland.

Economic Development

The economic life of a county can be aided by an established planning program. For example, information gathered and analyzed on county demographics and the local economy is a frequently utilized tool in successful economic development efforts. Planning studies can benefit industrial prospects looking to invest, as well as counties assessing their economic growth needs. Through the land use planning process, planners can catalog information about appropriate industrial and development sites, which can be utilized by both prospective industries and local economic development recruiters.

³ Act No. 681 of 1942 and Act No. 642 of 1924.

⁴ Act No. 355 of 1994.

Avoidance of Adverse Impacts

Planning can also provide indirect economic benefits to residents and industry through appropriate land use controls. When land use planning is in full swing, it has the potential to assist in the stabilization of land values.

An established land use policy, when implemented through appropriate zoning and land development regulations, can foster attractive communities and ensure that incompatible land uses are separated or buffered. The prospect of adjoining and incompatible land uses—such as the placement of heavy industrial activity next to an established single-family, residential neighborhood—can produce a degree of uncertainty that can destabilize a community. An industry may want equal assurance that adequate buffers exist between their location and future residential, educational and community developments.

Alternatively, when cities adopt planning programs and enforce strict development regulations within their municipal boundaries, the unincorporated areas of the county can become sites for undesirable and unplanned land uses. In these instances, the outlying areas of the county may become the unwilling depository for activities that have been forced outside of the municipal boundaries of cities with planning programs. This can result in the arrival of activities such as sexually-oriented businesses, junk yards, landfills, hazardous waste sites and noxious industries.

Adequate Infrastructure

Planning has an equally important role in a county council's determinations for the location, capacity and expansion of public facilities, while potentially aiding efforts to strengthen the local economy. A well-managed capital improvement program integrated with land use plans can assist county council in directing the proper amount of public resources. For example, studies on projected county population and land uses can reveal infrastructure needs that allow for the prior identification of potential sites for public facilities. This can reduce infrastructure costs by allowing the county to plan for the future through early acquisition or protection of expansion sites.

The 1994 Planning Act: Providing the Basis for County Planning

Through legislation passed at the state level, local governments in South Carolina are granted the authority to create and maintain a comprehensive planning process, including land use regulations. As previously noted, the General Assembly last passed major legislation in 1994 to reestablish the organization and powers that counties and municipalities can utilize in their planning efforts.



Planning has an important role in a county council's determinations for the location, capacity and expansion of public facilities, while potentially aiding efforts to strengthen the local economy.

The 1994 Planning Act as Fundamental Enabling Legislation

The S.C. Local Government Comprehensive Planning Enabling Act (the 1994 Planning Act)⁵ recodified existing planning law into a single location in the S.C. Code of Laws. The 1994 Planning Act accomplished two important goals.⁶ First, it consolidated existing planning legislation that was previously scattered throughout Titles 4, 5 and 6 of the Code into one location.⁷ Second, it updated the old law with contemporary planning practice, providing for several new tools to assist in local government planning.

Counties with planning and zoning programs in place must maintain compliance with the provisions of the 1994 Planning Act. However, for those counties that are not interested in planning, the General Assembly has never passed enabling legislation mandating that counties adopt plans and enact zoning ordinances. The 1994 Planning Act continued the “no mandate to plan” rule, leaving counties under no requirement from the state to engage in planning programs, including zoning, for their jurisdictions.

In discussing the key legal requirements counties must comply with in order to plan and zone, the focus of this chapter will be on the provisions of the 1994 Planning Act. The act affects all aspects of county planning, from how the county organizes its planning-related boards to the actual regulatory powers exercised in its plans and ordinances.

Local Planning Organization

Local government organization for planning in South Carolina is largely rooted in the 1994 Planning Act. When the requirements of the act and common planning practice are combined, county planning organization breaks out into the following four integral parts:

- County Council
- Planning Commission
- Planning staff
- Other boards concerned with zoning

The following overview will focus on the county council, planning commission and staff. A discussion of the role of the other boards will appear in the section on zoning.

The need for public input is essential for local government planning to be successful. ☎

Absent from the organizational framework listed above is an extremely vital, but not to be forgotten element—the public. As stated at the outset of this chapter, the need for public input is es-

sentential for local government planning to be successful. The level of public understanding and involvement in the planning process, whether acting as concerned citizens or participating as planning board members, can dictate the success or failure of a county’s planning program.

County Council

A major factor in determining the direction of a county planning program rests with the county council. As the policy-making body for county government, county council has the power, through planning activities, to set the agenda on how the community grows and develops.

⁵ Act No. 355 of 1994.

⁶ S.C. Code Ann. §§ 6-29-310 *et seq.*

⁷ S.C. Code Ann. §§ 4-27-10 *et seq.*; §§ 5-23-10 *et seq.* and §§ 6-7-10 *et seq.* Title 4 was the first county planning act. However, Title 5 (municipalities) and Title 6 (counties and municipalities) have been the main statutes utilized by local governments for planning authorization prior to passage of the 1994 Planning Act.

The vitality of a local planning program can be judged by how county council decides issues affecting the county's development and how closely decisions reflect adopted plans and policies.

The county council makes decisions in other areas of governance that have a significant impact on the planning process beyond those directly affecting specific plans and programs. For example, through the annual approval of the county budget, the council determines the level of funding for the departments and boards/commissions that are responsible for carrying out planning activities. Moreover, county council decisions can also influence planning through their approval of various capital projects and public improvements. Another area where county council has a major impact on the success of the planning program is the appointment process. The caliber of county council appointments to the planning commission, board of zoning appeals or board of architectural review can have a large impact on the quality of the planning program.

Planning Commission

The creation of a county planning commission is the first step that a county council takes to develop a planning process. In essence, the planning commission serves as a citizens' advisory group to the county council on planning matters. The planning commission's advice is embodied in the recommendations it makes to county council for the adoption of plans and ordinances.

Appointing the members of the planning commission is the responsibility of county council. Planning commission membership is typically comprised of laypersons from the community. The 1994 Planning Act requires that membership on the planning commission represent a broad cross-section of the interests and concerns within the jurisdiction. To that end, the law states that planning commission appointments be made in consideration of the member's professional expertise, knowledge of the community and concern for the future welfare of the total community. The permissible size of the planning commission varies, based on the number of jurisdictions it serves. A typical county planning commission may not have less than five nor more than 12 members.⁸

A primary function of a planning commission is "to undertake a continuing planning program for the physical, social and economic growth, development and redevelopment of the area within its jurisdiction."⁹ The planning commission fulfills its responsibilities through oversight and recommendations on planning matters. The planning program is embodied in the planning commission's initial preparation of—and amendments to—the comprehensive plan, zoning ordinance and land development regulations. Finally, in order to ensure that the planning commission can carry out its responsibilities, the commission has the flexibility to contract for staff and experts, if necessary, so long as it is consistent with funds appropriated.¹⁰

Planning Staff

In order to fulfill its statutory duties, a planning commission requires assistance, which most jurisdictions provide through a full-time professional planning staff. Comprised of citizen volunteers, a planning commission by itself lacks the time and expertise to ensure that the information necessary to the planning process is gathered and analyzed in a professional manner. A planning staff typically operates "in-house" as a department of the local government under the county administration. Whether employed through contract or in-house, a planning staff provides both research time and professional expertise to the county planning process. By physically conducting the studies and constructing the background information for plans and appeals, the planning staff's role is vital to the planning commission's work.

⁸ S.C. Code Ann. §§ 6-29-320, 6-29-350.

⁹ S.C. Code Ann. § 6-29-340.

¹⁰ S.C. Code Ann. § 6-29-350(C).

Beyond assisting in the production of plans and studies, a zoning administrator is also needed to enforce the requirements of the zoning ordinance. The role of the zoning administrator will be discussed in the section on zoning.

The Comprehensive Plan

The foundation of the planning process is the comprehensive plan. It forms a blueprint for the county's future growth and development. The comprehensive plan should reflect the county's current physical development and predict where future development will occur. A plan should indicate the extent and character of projected land use activities in the county. The "extent" of development refers to the policy decisions reflected in the plan that forecast where future growth will be encouraged or discouraged, as well as the amount of growth. The "character" of development refers to which areas will be developed for residential, commercial, industrial, agricultural and any other land uses appropriate for the county.

Plan Elements

Under the 1994 Planning Act, the comprehensive plan must be organized into nine separate elements:¹¹

1. *Population.* Considers historic trends and projections, household numbers and sizes, educational levels and income characteristics.
2. *Economic Development.* Considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base.
3. *Natural Resources.* Considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands and soil types.
4. *Cultural Resources.* Considers historic buildings and structures; commercial districts; residential districts; unique, natural or scenic resources; archeological and other cultural resources.
5. *Community Facilities.* Considers water supply, treatment and distribution; sewage system and wastewater treatment; solid waste collection/disposal; fire protection, emergency medical services and general government facilities; educational facilities; and libraries and other cultural facilities.
6. *Housing.* Considers location, types, age and condition of housing; owner and renter occupancy; and affordability of housing.
7. *Land Use.* Considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped.
8. *Transportation.* Considers transportation facilities—including major road improvements, new road construction, transit projects, pedestrian and bicycle projects and other elements of the network—coordinated with the land use element.
9. *Priority Investment.* Considers the likely federal, state and local funding available for public infrastructure and facilities during the next 10 years; recommends the projects for expenditure of those funds for infrastructure such as roads, water, sewer and schools. Recommendations are accomplished through coordination with adjacent jurisdictions and area service providers.

¹¹ S.C. Code Ann. § 6-29-510(D).

The comprehensive plan's land use element alone does not regulate the use of land. It is merely a vision of future land uses. **If a county seeks to implement the land use element, a zoning ordinance must be adopted in order to regulate uses of private property.** Counties should be ready to reconcile and correct large-scale inconsistencies between the land use element and any later enacted zoning ordinances and amendments.

The 1994 Planning Act also requires that each of the nine elements include at a minimum the following three items:

- Inventory of existing conditions;
- Statement of needs and goals; and
- Implementation strategies with time frames.¹²

These three requirements form an underpinning for bringing the plan elements to life as part of a continuing planning process. Meeting these three requirements can be accomplished through a process that involves both public input and studies of the specific considerations listed in each element of the comprehensive plan, with policymaker input into final strategies.

Plan Formation through Studies

Background studies provide the necessary groundwork for goal and policy formulation that is in turn reflected in the completed elements of the comprehensive plan. The ability to set out a blueprint for the location of all public infrastructure allows the county to begin a process of accommodating and coordinating future growth patterns. Much of the information necessary for planning studies is revealed in the subject matter described in each of the nine elements of the comprehensive plan. The information, once gathered and analyzed, builds a foundation for assessing the county's current and future needs.

Beyond the studies suggested by the planning elements themselves, certain information is typically gathered and analyzed by the planning staff that is indispensable to making informed planning decisions. To that end, planners generally need to research, analyze and bring forward the following types of information in the planning process:

- *Survey and assessment of county demographics.* This effort involves examining recent and past trends in population growth, which can be accomplished with the aid of U.S. Census data. Population and demographic information provides a picture of the past, present and future attributes of the people in the county. Understanding the characteristics of the county's population—such as sex, age, race, education and other characteristics—lends insight about current problems and future county needs.
- *Data illustrating the makeup of the county's economy by means of economic analysis of the county.* Characteristics describing the nature and extent of the county's employment and labor force can aid in understanding and describing the local economy. In turn, information about the local economy aids in the formulation of plans designed to direct resources where they will be of maximum use. Economic studies also assess the county's strengths and weaknesses, which is important in tailoring efforts geared toward fostering new industrial and business development.
- *Assessment of existing public infrastructure.* This study should consider issues of current capacity as well as expansion plans for the future. All public facilities should be studied including utilities, schools, libraries, parks, cultural facilities and hospitals. Issues of capacity and expansion concerning the provision of services should be examined for law enforcement, fire, emergency medical (EMS), social service delivery and other relevant services.


¹² S.C. Code Ann. § 6-29-510(C).

- *Studies on land uses in the county, to include both the natural conditions and the existing physical development.* Surveys should be conducted mapping the location and qualities of the county’s natural features and landscape—such as prime agricultural lands, wetlands, soil types, topography, drainage, forests, surface and groundwaters, and all other natural resources of the county. Inherent in a study of the land and its uses is a survey of the man-made developments in the county. These surveys should record the existing transportation system—including transit by road, rail, water and air. The existing transportation network should be paired with the location and character of all current improvements to the land—including industrial, commercial, residential, governmental and other uses.¹³

In line with the 1994 Planning Act’s encouragement of coordinating the plans across multiple jurisdictions, the listed surveys and studies for the comprehensive plan need to include an identification of potential conflicts with adjacent jurisdictions, along with a consideration of regional plans or issues.

Plan Adoption

Oversight of the studies and strategies that set the foundation for comprehensive plan adoption rests with the planning commission. After integration of the studies into the plan elements,

Prior to adopting the plan or an element, the governing body must hold a public hearing and give 30 days notice. 

the planning commission recommends a plan and transmits its recommendation to county council. The planning commission can recommend an entire plan or only transmit separate elements of the plan.¹⁴

Formal and final adoption of the plan or elements is accomplished by ordinance of county council. Prior to adopting the plan or an element, the governing body must hold a public hearing and give 30 days notice.¹⁵ Finally, all adopted comprehensive plan elements must be reviewed for possible changes not less than once every five years, and the plan in its entirety must be “updated at least every 10 years.”¹⁶

After Plan Adoption—Public Facilities Review

It is interesting to note that completion of a comprehensive plan sets up the possibility for an ongoing public facility review by the planning commission. Under a little used provision of the 1994 Planning Act, no new public facility “construction” may occur until the location, character and extent of it has been submitted to the planning commission for review and comment as to its compatibility with the comprehensive plan.¹⁷ **By requesting review of local infrastructure decisions within its jurisdiction, the planning commission has an opportunity to bring infrastructure decisions back to the adopted, public facilities related elements in the comprehensive plan.**

¹³ S.C. Code Ann. § 6-29-510(B).

¹⁴ S.C. Code Ann. §§ 6-29-520(B), 6-29-530.

¹⁵ S.C. Code Ann. § 6-29-530.

¹⁶ S.C. Code Ann. § 6-29-510(E).

¹⁷ S.C. Code Ann. § 6-29-540.

Zoning and Land Development Regulations

Zoning

Zoning's Role

The most common tool utilized by a local government to implement a county's land use plan is zoning. In general, a zoning ordinance divides the land within a county's jurisdiction into different districts. Within each district, the zoning ordinance can designate the use, location and size of any structures placed on property. Adoption and enforcement of a zoning ordinance is an exercise of fundamental county authority to protect and preserve the health, safety and general welfare of the county through the regulation of land. Counties derive the ability to enact and enforce zoning through a combination of the Home Rule Act of 1975 and the Planning Act of 1994.¹⁸ These two, long-standing pieces of legislation combine to establish the "police power" of county government and how zoning ordinances are adopted, amended and enforced.

Through a zoning ordinance, a county can determine to undertake a wide array of objectives to encourage outcomes such as: minimum development and design standards; higher aesthetic benefits and values in the community; varied land uses appropriately positioned to avoid potential conflicts; and sufficient land and infrastructure availability for future development.

The control of land use influences the development of the county which, in turn, places importance on how a county conducts its use of zoning. Moreover, zoning actions can have significant impact on the use and value of privately owned lands. Zoning actions are subject to a high degree of scrutiny by citizens' groups and landowners both in favor and against a particular adoption or change. Sometimes, disputes arise over the legality of county zoning actions based on constitutional concerns and private property rights. Because of these heightened interests and potential impacts, **zoning can be one of the most controversial activities undertaken by a local government.**

Zoning Ordinance Structure

A zoning ordinance generally includes two parts: a text and a map. Included in the text of the zoning ordinance are the regulations that will apply in each of the zoning districts and the process governing amendments to the text and the map. The role of the map is to set out graphically the location of the zoning districts. The text and the map combine to partition the land within the county's planning jurisdiction into zoning districts. Within each district, land can be limited through regulations governing: 1) use; 2) dimensions, density and setback requirements; and 3) other guidelines and specifications—such as screening, tree preservation, landscaping, buffers, required public improvements, signage controls, off-street parking and loading.¹⁹

Three of the most commonly utilized zoning districts are residential, commercial and industrial. A typical zoning ordinance incorporates these common zoning districts along with an assortment of other special districts—such as public use, agricultural, mobile home park, office and institutional, and planned unit development. However, districts may be much broader than that, providing for many types of development with variations for lot sizes, density and dwelling types.

Zoning Provisions in the Planning Act

After adoption of at least the land use element of the comprehensive plan, the county council can adopt a zoning ordinance to help implement the plan.²⁰

¹⁸ S.C. Code Ann. § 4-9-10 *et seq.*

¹⁹ S.C. Code Ann. § 6-29-720(A).

²⁰ S.C. Code Ann. § 6-29-720(A).

Zoning ordinances must be designed for the general purposes of “guiding development in accordance with existing and future needs” and promoting the “public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.”²¹ Some examples of specific purposes that the 1994 Planning Act references for possible zoning ordinance consideration are:

- Providing adequate open space;
- Preventing the overcrowding of land, lessening congestion in the streets;
- Facilitating the creation of a convenient, attractive and harmonious community;
- Protecting scenic, historic or ecologically sensitive areas; and
- Facilitating the availability of transportation, police and fire protection, recreational facilities, and other public services and requirements.²²

Nonconformities and Variances

Certain uses and buildings may not conform to the regulations set forth in a new zoning ordinance or amendment. Enforcement of the zoning ordinance can create nonconforming uses, otherwise known as “nonconformities.” A nonconforming use results from conditions on the property existing prior to the adoption of zoning regulations, such as buildings in violation of height and setback rules, lots that violate width and total area rules, or former land uses.

By allowing existing uses to be exempt from the ordinance, zoning ordinances can “grandfather” nonconformities. However, the ordinance can also require that once the use is changed, the previous exemption from the ordinance is dissolved and all future new uses of the site or buildings must comply with the ordinance. Another approach to nonconformities is to encourage the discontinuation of the use after a reasonable time period. This approach is generally referred to as “amortization,” and it is among the powers granted to local governments in the 1994 Planning Act.²³

A variance is a device that can grant a property owner relief from the provisions of a zoning ordinance when strict application of the ordinance would result in an unnecessary hardship. For example, a variance may be granted to reduce yard and setback requirements or the number of parking or loading spaces. In order to receive a variance, the hardship must be beyond a mere inconvenience or monetary considerations. The authority to grant variances is vested in the county’s zoning board of appeals, which will be discussed later in this chapter.

Zoning Ordinance Amendments

A zoning ordinance is subject to amendment as needed. In general, amendments to the zoning ordinance alter the zoning district classification of individual properties or descriptions of uses allowed for properties throughout the county within a particular district. The ability to seek a zoning amendment is not an exclusive right vested in any one individual, group or body. The process for amending the zoning ordinance is set forth for each county in the 1994 Planning Act and the local zoning ordinance. **Only county council has the final authority to enact amendments to the zoning ordinance** (after planning commission review). A public hearing must be held prior to final action for a zoning ordinance amendment, and the act sets out explicit public notice and comment requirements.²⁴

²¹ S.C. Code Ann. § 6-29-710(A).

²² S.C. Code Ann. § 6-29-710(A).

²³ S.C. Code Ann. § 6-29-730.

²⁴ S.C. Code Ann. § 6-29-760.

Zoning Enforcement

A key part of zoning enforcement rests with the zoning administrator, who is commissioned to enforce the requirements of the zoning ordinance. The zoning administrator is responsible for ensuring that submitted plans are in compliance prior to the issuance of certificates of occupancy or building permits. Additionally, nonconformities and direct violations of the ordinance are under the purview of the zoning administrator. The zoning administrator has the authority to withhold building or zoning permits and to issue stop orders against any work undertaken without proper building, zoning or subdivision permits.²⁵

The Board of Zoning Appeals

Once established by county council, the board of zoning appeals becomes an integral part of the administrative mechanism designed to enforce the zoning ordinance. County council provides for the board's existence in the zoning ordinance text and appoints the membership of the board, which may have three to nine members.²⁶

A board of zoning appeals has three general responsibilities under the law: 1) they hear appeals from decisions and actions of the zoning administrator; 2) they have authority to grant variances from the strict application of the zoning ordinance; and 3) they may permit certain uses by special exception.²⁷ In discharging its duties, the board is required to adopt rules of procedure and follow prescribed public notice and meeting requirements.

In hearing appeals and other requests, the board of zoning appeals acts like a court of law. ☺

When it is alleged that an administrative official made an error in enforcing the zoning ordinance, the board of zoning appeals hears and decides appeals. In hearing appeals and other requests, the board acts like a court of law, rendering a decision based on the evidence heard and interpreting the provisions of the zoning ordinance. Decisions by the board are appealable to the state judicial system through the circuit court.²⁸

Additionally, the board may grant a variance from requirements of the ordinance “when strict application of the provisions of the ordinance would result in unnecessary hardship.”²⁹ A variance may be granted in an individual case of unnecessary hardship, if the board finds:

- Extraordinary and exceptional conditions pertaining to a particular piece of property;
- Conditions that do not generally apply to other property in the vicinity;
- Because of these conditions, application of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property; and
- Authorization of a variance would not be of substantial detriment to adjacent property or to the public good, and the character of the district would not be harmed by the granting of the variance.

The board may attach conditions when granting a variance. As stated earlier, the 1994 Planning Act makes it clear that increased profit accruing to property based on a zoning change may not be considered as grounds for granting a variance.³⁰

²⁵ S.C. Code Ann. § 6-29-950.

²⁶ S.C. Code Ann. § 6-29-780(A).

²⁷ S.C. Code Ann. § 6-29-800.

²⁸ S.C. Code Ann. § 6-29-800.

²⁹ S.C. Code Ann. § 6-29-800.

³⁰ S.C. Code Ann. § 6-29-800.

As a general rule, the board may not grant use variances. A “use variance” involves the establishment of a use not otherwise permitted in a zoning district, extends physically a nonconforming use of land, or changes the zoning district boundaries shown on the official zoning map. However, the 1994 Planning Act does allow a county council to authorize the board of zoning appeals to grant “use variances” under certain conditions as set by council.³¹

The Board of Architectural Review

Municipalities and counties that undertake efforts to preserve and protect valued historic districts or scenic corridors have traditionally utilized boards of architectural review. To further historic preservation efforts, boards of architectural review have been employed to govern the exterior appearance of buildings and structures within defined zoning districts. The boards derive their authority through the text of the zoning ordinance.

A board of architectural review may be created when the county council has adopted a “zoning ordinance which makes specific provisions for historic and architecturally valuable districts and neighborhoods or significant or natural scenic areas, or protects or provides, or both, for the unique, special, or desired character of a defined district, corridor, or development area or any combination of it....”³² Review and approval by the board of architectural review is required prior to the undertaking of various building activities within a defined district. The ordinance provisions establishing a board of architectural review must be designed to protect districts through restrictions that govern “the right to erect, demolish, remove in whole or in part, or alter the exterior appearance of all buildings or structures within the area....”³³ Additionally, the board hears appeals on the decisions of the zoning administrator concerning “matters under the purview” of the board of architectural review.³⁴

The general organization and procedures of the board of architectural review are established in similar fashion to the board of zoning appeals. County council may appoint up to 10 members to a board of architectural review and can compensate them for their service. For example, the process for taking appeals to and from the board of architectural review generally duplicates the procedures set up for the board of zoning appeals.³⁵

Land Development Regulations

Land Subdivision and Development

This area of state law enables local regulations concerning the conversion of raw land into subdivided lots for the construction of buildings and other structures. Often referred to as “subdivision regulations,” land development regulations control site design, street layout, provisions for water and sewer service, and other matters relating to the conversion of the land for development. The basis for these types of regulations stems from the idea that the act of subdividing tracts of undeveloped property into separate parcels indicates that once vacant land will now be available for construction. By its nature, the sale, purchase and development of the new subdivision parcels will create an increased demand for public services and facilities.

When land is subdivided, subdivision regulations can require the approval of subdivision plats by the designated county agency as a prerequisite to the recording of a final plat. These requirements provide the county an opportunity to ensure that prior to the final subdivision of land, the necessary utilities, streets, drainage and other public improvements servicing the new parcels are provided by the developer.

³¹ S.C. Code Ann. § 6-29-800.

³² S.C. Code Ann. § 6-29-870(A).

³³ S.C. Code Ann. § 6-29-870(A).

³⁴ S.C. Code Ann. § 6-29-880.

³⁵ S.C. Code Ann. §§ 6-29-890, 6-29-940.

The 1994 Planning Act gives a broad definition of land development regulations to include the types of building activities that are potentially subject to regulation—such as “the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, or lease...”³⁶ County council may adopt land development regulations when the community facilities, housing and priority investment elements of the comprehensive plan have been adopted. The planning commission has the responsibility to prepare and recommend the regulations to the county council.³⁷ Recent additions of note to the land development regulations in state law include definitions for “affordable housing,” “market-based incentives” and “traditional neighborhood design.”³⁸

Review Process for County Development

Land development regulations may specifically provide for staff review of development activity, including requirements for the submission of sketch plans, preliminary plans, and final plans for review and approval. Through a preliminary review process, the developer and the planning staff can assess which requirements will be necessary in order to obtain final approval. The review process typically utilizes sketch plans, followed by preliminary plats to ensure that the developer is providing the required public improvements in the development. The review process includes coordination from all county departments and outside agencies concerned with specific aspects of development plans—such as law enforcement, fire, utilities, public works, transportation, stormwater, and other potential service providers or responsible parties.

Developers can be required to make subdivision improvements, such as the proper construction of streets and the adequate provision of utilities and drainage prior to plan approval. Under the 1994 Planning Act, developers can be required to post a surety bond, certified check, letter of credit or other instrument readily convertible to cash, where site improvements are required prior to approval of a final development plan.³⁹ This can be utilized as a tool to ensure proper construction and completion of the needed public improvements. Upon final inspection and completion, the county may ultimately accept dedicated lands and public improvements shown on approved plats.

Jurisdiction Agreements

Counties and municipalities in South Carolina typically only exercise authority to plan for the areas within their recognized boundaries. For example, the extent of a county’s planning jurisdiction is the entire unincorporated area of the county, while a municipality’s planning jurisdiction is limited to the area within its corporate limits. However, planning enabling legislation has historically allowed the extension of planning jurisdictions beyond established boundaries. **Two approved methods for extending the overall planning jurisdiction are joint city-county planning commissions and grants of extraterritorial jurisdiction.**



The sale, purchase and development of new subdivision parcels creates an increased demand for public services and facilities.

³⁶ S.C. Code Ann. § 6-29-1110.

³⁷ S.C. Code Ann. §§ 6-29-1120, 6-29-1130.

³⁸ S.C. Code Ann. § 6-29-1110.

³⁹ S.C. Code Ann. § 6-29-1180.

Joint City-County Planning Commissions

The establishment of a joint city-county planning commission is one method for increasing the scope of a local government's planning jurisdiction. Through a formal agreement between county and city officials, a single planning commission can be formed to oversee planning activities without regard for traditional jurisdictional boundaries.⁴⁰

Extraterritorial Jurisdiction

Counties can exercise planning jurisdiction within the boundaries of incorporated municipalities after approval of a city council request that the county planning commission be designated as the official planning commission for that city. Alternatively, municipalities may exercise extraterritorial planning jurisdiction in the unincorporated areas of the county adjacent to municipal boundaries upon receiving permission from county council.⁴¹ The extension of planning jurisdiction by a county or municipality must be done by ordinance.

Additional Planning Issues

Growth Management

Designing land use regulations to manage the location and pace of suburban growth is a concept that has been promoted in some parts of the country as a panacea for problems associated with rapid development. The call for better planning has stemmed in part from development patterns that fall under the descriptive phrase "sprawl." Sprawl is a term that has worked its way into planning terminology over the past decade and is used to describe high paced, unplanned development patterns that extend away from established communities. Two outcomes frequently associated with sprawling development are outstripped infrastructure (roads, schools, etc.) and high rates of raw land conversion.⁴²

At local and regional levels, growth management efforts are designed to provide for the coming suburban growth while attempting to mitigate or avoid anticipated negative impacts. Typically, growth management programs tie together land use/development regulations with capital improvement/infrastructure decisions. Some examples of growth management practices that have been utilized nationally are:

- Requiring that adequate public facility capacity be in place before approving new developments;
- Providing incentives for developments that preserve open space;
- Zoning that allows/supports mixed use developments (residential, commercial, office);
- Timing of growth/infrastructure through the use of urban growth boundaries; and
- Increased coordination of land use plans by adjoining jurisdictions.

In many South Carolina counties, the lack of command over some key infrastructure decisions (such as schools and water) can limit growth management possibilities; however, intergovernmental agreements and regional cooperation have potential for overcoming planning authority gaps.

Vested Rights

Court rulings over the past several decades have provided a source of law defining property rights in land use disputes between developers, private landowners and local governments.

⁴⁰ S.C. Code Ann. § 6-29-350(A).

⁴¹ S.C. Code Ann. § 6-29-330.

⁴² Robert H. Freilich. *From Sprawl to Smart Growth* (Chicago: American Bar Association, 1999), Ch. 2.

One form of property right that had long been recognized was formally adopted in 2004 by the General Assembly. Known as “vested rights,” the 2004 law codifies the rule recognizing that once a permit or development plan has been officially approved by a governmental entity, the successful applicant has the right to proceed with construction.⁴³ **Prior “vested rights” (approval) cannot be subsequently taken away by a later action by the government.** The new law allows for a defined period of time that landowners and developers can hold and use permits and plan approval.

Alternative Dispute Resolution

Appeal rights from zoning and land development decisions by counties have been expanded under state law to include a direct path to mediation. This form of mediation is sometimes referred to as alternative dispute resolution, which is a mechanism for bringing the parties and their attorneys together in an informal setting with a certified mediator, typically an experienced attorney. In mediation, the parties are allowed to discuss their respective claims and see if there is mutual agreement or a settlement that can be reached. If settlement is not possible, the lawsuit will move to circuit court for a hearing and determination.⁴⁴

Continuing Planning Education

Since adoption of the 1994 Planning Act, local planning-related activities have increased across the state. To improve the qualifications and training for local planning/zoning staff as well as board and commission members, the General Assembly has mandated continuing education requirements. The requirements include a minimum of six hours of orientation training for new staff and planning/zoning board members and three hours of continuing education annually as prescribed by state law.⁴⁵

Additional Resources

- Visit www.sccounties.org/planning-and-zoning to review the South Carolina Association of Counties planning and zoning library, which offers a sampling of county land use/management ordinances, regulations and standards, comprehensive plans, zoning ordinances and other planning documents.
- For information on required training for local planning and zoning officials and employees, visit the State Planning Education Advisory Committee’s website at www.scstatehouse.gov/SCPEAC/index.htm.
- To learn more about national and state planning efforts and resources, visit the American Planning Association’s website at www.planning.org and the S.C. Chapter of the American Planning Association’s website at www.scapa.org.
- For information on emerging land use trends and issues, creative solutions and best practices, visit the Urban Land Institute’s website at www.uli.org.
- To learn more about historical preservation, visit the State Historic Preservation Office, S.C. Department of Archives and History, at <http://shpo.sc.gov>.

⁴³ S.C. Code Ann. §§ 6-29-1510 *et seq.*

⁴⁴ S.C. Code Ann. §§ 6-29-825, 6-29-915, 6-29-1155. Act. No. 39 of 2003 established a clear path to alternative dispute mediation in zoning and land use appeals, whereby property owners have the ability to seek mediation in advance of a circuit court appeal.

⁴⁵ S.C. Code Ann. § 6-29-1310 *et seq.*

Elections

*Marci B. Andino, S.C. State Election Commission
Helen T. McFadden, Attorney, Kingstree, S.C.
Edited by M. Kent Lesesne, South Carolina Association of Counties*

Elections in South Carolina are conducted pursuant to Title 7 of the S.C. Code of Laws. Additionally, the authority to hold certain specific types of county elections is provided in various sections of Titles 4 and 6 of the S.C. Code.

County Boards of Voter Registration and Elections

State law requires that each county have a board of voter registration and elections.¹ The board is responsible for the conduct of general, special and primary elections for federal, state and county offices, and for the conduct of state and local referenda held in the county. Specifically, the board receives certifications of candidates for county and less than countywide offices, ensures that these names are placed on election ballots, oversees the conduct of the elections, certifies the results of elections for which it is responsible, and hears and decides protests of elections for county and less than countywide offices. The county political party executive committee is responsible for determining protests of party primary elections for county and less than countywide offices.

Act No. 196 of 2014 amended §7-3-20 to authorize the State Election Commission's executive director to supervise the conduct of county boards of voter registration and elections to ensure compliance with state and federal election laws, as well as State Election Commission policies and procedures. The executive director is also allowed to conduct post-election audits and reviews.

Section 7-3-25 was added to the law to allow the executive director to establish a plan of correction if it is determined that a county board of voter registration and elections has not complied with state or federal election laws or election commission policies and procedures. If there is a dispute between the executive director and the board of voter registration and elections, the executive director has the final say. If a county board of voter registration and elections cannot certify the results of an election within the time frame allotted by law, the responsibility to certify the election will devolve to the State Election Commission. If the executive director determines that a county board member or employee is willfully violating election laws or election commission policies and procedures, the executive director may recommend that the Governor remove the board member or that the board terminate the employee. Section 7-3-20 also requires county election changes to be posted on the State Election Commission's website within five days after adoption or within 35 days prior to implementation—whichever occurs first.

Under certain circumstances, a county board of voter registration and elections may also assume responsibility for the conduct of municipal elections. If a municipality wishes to transfer the authority for the conduct of its elections to the county, the municipal governing body must, by ordinance, propose the transfer and state what authority is being transferred. The county's governing body must, by ordinance, accept the transfer and state what authority is accepted.²

¹ Act No. 196 of 2014 amended § 7-5-10 of the S.C. Code of Laws to require that all county elections and voter registration boards be combined into a single entity known as the board of voter registration and elections.

² S.C. Code Ann. § 5-15-145.

Appointment

Each county board of voter registration and elections shall consist of at least five and no more than nine persons, appointed by the Governor at the recommendation of the county's legislative delegation. At least one of the appointees must be a member of the majority political party represented in the General Assembly and at least one appointee must be a member of the minority political party.³ Each board must hire a director who is responsible for hiring and managing staff.

The Governor shall appoint the initial board members by December, 2014. Four of the initial board members shall serve two-year terms and the remaining initial members shall serve four-year terms. After the initial members' terms expire, board members shall serve four-year terms of office and they may continue to serve until their successors are appointed and qualify. They may also be reappointed.

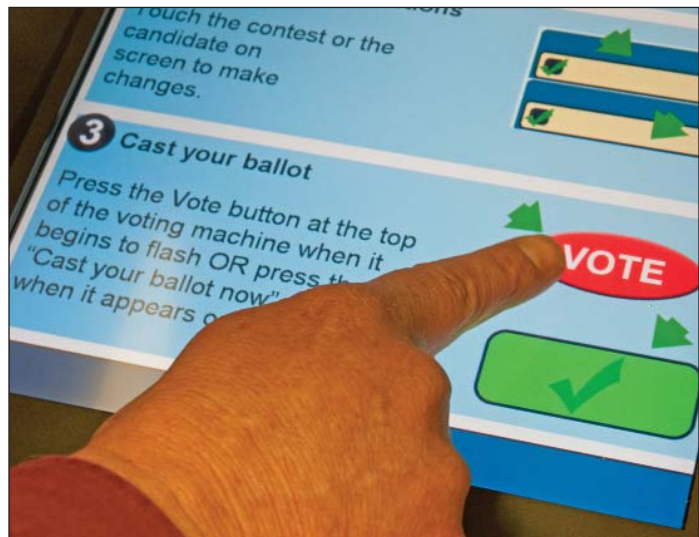
After their appointment, the board members organize and select one of their members to serve as chair. They must take and subscribe the oath of office prescribed by Section 26 of Article III of South Carolina's Constitution:

*I do solemnly swear (or affirm) that I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge the duties thereof, and preserve, protect and defend the Constitution of this State and of the United States. So help me God.*⁴

Board members must complete a training and certification program conducted by the State Election Commission within 18 months of appointment or reappointment. They must also take at least one additional course each year after completing the initial certification.

Board members must be present at meetings in order to vote. If a member misses three consecutive meetings, the chair or his/her designee shall notify the Governor immediately, who shall then remove the member from office. Board vacancies for unexpired terms must be filled in the same manner as the initial appointment.

In an effort to ensure the nonpartisan conduct of the election and voter registration process, the General Assembly has established political activity guidelines for members of county voter registration and elections boards. No board member may participate in political management or in a political campaign during his/her term of office. No member may make a contribution to a candidate or knowingly attend a fundraiser for a candidate over whose election the member has jurisdiction.⁵



The county board of voter registration and elections is responsible for the conduct of federal, state and county general, special and primary elections.

³ S.C. Code Ann. § 7-13-70.

⁴ S.C. Code Ann. § 7-13-70.

⁵ S.C. Code Ann. § 7-13-75.

Responsibilities

As stated earlier, the board of voter registration and elections is, by law, responsible for the conduct of federal, state and county general, special and primary elections held in the county. **The major duties and responsibilities of the board in the conduct of these elections are set out below.**

Public Notices

Two public notices of general, special and primary elections held in the county must be published in a newspaper of general circulation in the county.⁶ The first notice must appear not later than 60 days before the election, and the second notice must appear not later than two weeks after the first notice. Certain information—including the deadline for registering to vote in the election, notification of the date, time and location of the challenged ballot hearing, and a listing of the precincts and location of polling places involved in the election—must be included in the notice. Generally, the board of voter registration and elections is responsible for giving these public notices; however, certain types of elections may require that additional notices be given by the county governing body.

Appointment of Poll Managers

The board of voter registration and elections must appoint managers of election for each election held in the county for which it is responsible.⁷ The managers are responsible for the conduct of the election in the polling place to which they are assigned. Managers must be residents and registered electors in that county or in an adjoining county.⁸ The board must designate a clerk for each precinct from among the managers appointed to serve in the precinct.

Managers of election are appointed at a ratio set by law as outlined below:

- *Primary elections.* Three managers are appointed for the first 500 registered voters in the precinct, and three additional managers for each additional 500 voters or portion thereof *may* be appointed by the board.
- *General elections.* Three managers are appointed for the first 500 registered voters in the precinct and three additional managers for each additional 500 voters or portion thereof.
- *Special elections and special primary elections.* Three managers are appointed for the first 500 registered voters in the precinct and one additional manager for each additional 500 voters or portion thereof.

Political parties holding primary elections are allowed input in the selection of managers working in their primary election. Forty-five days prior to any primary (except municipal primaries), each political party holding a primary may submit a list of prospective managers for each precinct to the county board of voter registration and elections. The board must appoint at least one manager for each precinct from the list of names submitted by each party holding a primary.

No person may be appointed as a manager in a general, primary or special election unless he/she has completed a training program (which covers the manager's duties and responsibilities and has been approved by the State Election Commission) and has received training certification. This training and certification is carried out by each county board of voter registration and elections.

⁶ S.C. Code Ann. § 7-13-35.

⁷ S.C. Code Ann. § 7-13-72.

⁸ S.C. Code Ann. § 7-13-110.

Preparation and Distribution of Ballots

The county board of voter registration and elections is responsible for the preparation and distribution of ballots for all Senate, House of Representatives, circuit, county and less than countywide elections.⁹ **All counties in South Carolina use the same voting system.** The voting system consists of direct recording electronic (DRE) machines and optical scan systems. The laws governing voting machines and optical scan voting systems are found in Articles 13 and 15 of Title 7 respectively.

As noted below, the voting system determines the type and quantity of ballots prepared:

- DRE – Ballots containing candidates and issues for each precinct appear on the machine. Voters make their selections by touching the screen to indicate their choice.
- Optical scan – Optical scan ballots are used for absentee ballots cast by mail, emergency, failsafe, and provisional ballots. Candidates and issues are printed on the ballots. The voter, once he/she is issued the proper ballot, uses the voting booths provided and shades in the ovals on the ballot that indicate his/her choices. Ballots are tabulated by running the voted ballots through an optical reader that scans the shaded areas on the ballots and records the voters' choices.

All ballot costs for primary elections are borne by the state. For general and special elections, the ballot costs are proportionately divided between the county and state, depending on the type of election and the offices on the ballot.

Certification of Election Results

The results of an election are received from the managers of each precinct involved in the election by the county board of voter registration and elections, after the polls close. The results declared election night are *unofficial* results. On the Friday following a general election or the Thursday following a primary election, sometime before 1 P.M., the board of voter registration and elections meets and organizes as the county board of canvassers. Its responsibility is to canvass and certify the official results of the election. The certified results are then transmitted to the State Election Commission for final certification.¹⁰ If a county board does not certify the results of an election within the time frame set by law, the responsibility to certify and determine the election results devolves to the State Election Commission.

Protests

The county board of voter registration and elections hears and decides protests or contests filed by candidates in a general election for countywide and less than countywide offices.¹¹ Protests must be in writing and must be filed with the board chair or the county sheriff no later than noon on the Wednesday following the certification of election results for that office.

The board must conduct a hearing on any protest filed on the Monday following the deadline for filing protests. These hearings are formal hearings and are conducted, as nearly as possible, following the procedures and rules of evidence observed by the circuit courts in this state. The board's decision may be appealed to the State Election Commission.¹²

⁹ S.C. Code Ann. §§ 7-13-310, 7-13-340.

¹⁰ S.C. Code Ann. §§ 7-17-10, 7-17-20, 7-17-80, 7-17-100.

¹¹ S.C. Code Ann. §§ 7-17-30, 7-17-50.

¹² S.C. Code Ann. §§ 7-17-60, 7-17-70.

Voter Registration

In order to vote in elections in South Carolina, a person must be registered. Any person at least 18 years of age (or who will be 18 on or before the next general election), who is a U.S. citizen, a resident of the state, and a resident of the county and polling precinct in which he/she offers to vote is entitled to register. Voter registration is conducted by the county boards of voter registration and elections. An individual must submit a completed application for voter registration to the board in his/her county of residence at least 30 days prior to the election in which he/she wishes to vote.¹³ Citizens may register in person with their county board of voter registration and elections, at registration drives held in the county, by mail using a state registration form, at S.C. Department of Motor Vehicle offices throughout the state, and at any of the other state agency locations mandated by the National Voter Registration Act.

County Elections

As mentioned previously, there are three types of elections: primary, general and special. Primary and general elections are held on a statewide basis. Details about each type of election follow.

Primary Elections

A primary election is an election held by a political party to select nominees to represent that party in an upcoming general or special election. Primaries are conducted by the State Election Commission and county boards of voter registration and elections. Municipal primaries are conducted by municipal parties in accordance with state law.

In 2007, the General Assembly passed legislation authorizing the State Election Commission to conduct the 2008 presidential preference primaries.¹⁴ In *Beaufort County et al v. S.C. Election Commission*, the State Supreme Court found that provisos contained in the 2011-12 State Appropriations Act suspended the temporal limitations of S.C. Code Ann. § 7-11-20(B)(2) and authorized the State Election Commission and the counties to conduct presidential preference primaries in 2012.¹⁵ This court decision was codified by Act 256 of 2014.

Primary elections are held on the second Tuesday in June of each general election year. In order for a candidate to win a primary election, the individual must receive a majority of the votes cast for that office. Majority is determined by a formula established by law.¹⁶ If no candidate receives a majority in a first primary election, a runoff primary must be held between the top two candidates. Any runoff primary, if necessary, will be held two weeks after the first primary. In a runoff, the candidate(s) receiving the largest number of votes will be declared the winner(s).

General Elections

A general election is held for the election of officers to the regular terms of office provided by law—whether federal, state, county, municipal or of any other political subdivision of the state—and for voting on constitutional amendments proposed by the General Assembly.¹⁷ Most general elections are held on the first Tuesday following the first Monday in November of even-numbered years, while municipalities and school boards hold elections at various times throughout the year.

¹³ S.C. Code Ann. § 7-5-120.

¹⁴ S.C. Code Ann. § 7-11-20.

¹⁵ *Beaufort County v. S.C. Election Commission*, Op. No. 27069 (S.C. Sup. Ct. filed Nov. 22, 2011).

¹⁶ S.C. Code Ann. § 7-17-610.

¹⁷ S.C. Code Ann. § 7-1-20.

General election runoffs, which can only occur in the event of a tied vote for the two candidates who receive the greatest number of votes, operate similarly to primary runoffs. If neither candidate withdraws, a runoff election is held two weeks after the general election. If that date is a legal holiday, the runoff will be held one week later.¹⁸

Special Elections

Special elections are defined as any election, other than a general election, including any referendum provided by law to be held under the provisions of law applicable to general elections.¹⁹ There are several types of special elections. The timing for an election to fill a vacancy in office is established by law. In other cases, the county governing body may determine when the election will be held. The various types of special elections are set out as follows.

Special Election to Fill a Vacancy in Office

A vacancy may occur in an elected office because of death, resignation or removal from office. If the office is one in which the law calls for a special election to elect someone to fill the remainder of the term of office, § 7-13-190 is followed (or § 5-7-200 for the offices of mayor and city council). This statute establishes the time frames for both partisan and nonpartisan elections. All county elected offices in South Carolina are partisan.²⁰ One exception, however, is Fairfield County, where the county council is elected on a nonpartisan basis pursuant to court order.

If the election is one to fill a partisan office, the filing opens at noon on the third Friday after the vacancy occurs and closes 10 days later at noon. Candidates file with their political party during this period, and the parties select their nominees by party primary election or by convention.

If a primary is used to select a political party's nominee, the primary election is held on the 11th Tuesday after the vacancy occurs. In the event that a runoff primary is necessary, the runoff is held on the 13th Tuesday following the vacancy. The special election to fill the vacancy is held on the 18th Tuesday after the vacancy occurs. Petition candidates in a partisan special election must file their petitions with the county board of voter registration and elections no later than noon 60 days prior to the election. Verification of these petitions must be made by noon 45 days prior to the election.

Nonpartisan special elections to fill vacancies in office follow the same filing period as partisan special elections (except for municipal elections²¹). The special election is held on the 13th Tuesday after the vacancy occurs.

If more than one office in the voting jurisdiction becomes vacant, if each vacancy requires a special election to be held, and if these special elections would be held within a period of 28 days, only one election date will be used for all of the elections. The election date for the multiple elections must be the latest of the dates required by law.²²

Special Election or Referendum to Create a New Tax District

All counties have the power to create a special tax district.²³ The purpose of the district is to tax a designated area at a rate different from the remainder of the county in order to provide requested or necessary services. The taxes may be used for the provision of the service or to retire general obligation bonds issued to provide the service.

¹⁸ S.C. Code Ann. § 7-13-2210.

¹⁹ S.C. Code Ann. § 7-1-20.

²⁰ S.C. Code Ann. § 7-13-15.

²¹ S.C. Code Ann. § 5-15-70.

²² S.C. Code Ann. § 7-13-190.

²³ S.C. Code Ann. § 4-9-30.

Special tax districts can be created in one of three ways. Two methods are initiated by voters, and one is initiated by county ordinance:

1. Fifteen percent of the electors (registered voters) who reside in the proposed designated tax district may petition the county council to declare either a special election or place the special tax district on the ballot for the general election. The election will determine whether to create the special tax district, what services it will provide and what will be the maximum level of taxes it can levy. If a majority of electors in the proposed district support its creation and empowerment, the county council must create it by ordinance.
2. A special tax district can also be created by petition and referendum. A petition requesting the district, signed by 75 percent of the freeholders (property owners) who own 75 percent of the assessed value of the property within the proposed special district, is necessary to begin the process. After receiving the petition, county council must schedule a special election or place the proposal on the ballot in the general election. In the election, a majority of all electors in the special district must vote in favor of the measure to create the special tax district.
3. Special tax districts can also be created by county ordinance. For special tax districts created after June 5, 1991, county councils possess broad powers to restrict the bonded indebtedness of special tax districts and to abolish or diminish their boundaries.²⁴

Referendum to Levy a One Cent Local Option Sales Tax

The General Assembly has authorized counties to collect a one cent sales tax on retail purchases in the county after a favorable referendum. County councils must schedule the election for the

The General Assembly has authorized counties to collect a one cent sales tax on retail purchases in the county after a favorable referendum. ☉

sales tax option on the first Tuesday after the first Monday in November.²⁵ The county sales tax is collected by the state as it collects the state sales tax.

A minimum of 71 percent of the local option sales tax must go towards the reduction of property taxes. Two weeks before the referendum, the respective county and municipal councils must publish a notice showing the anticipated changes on property taxes for primary residences, personal property, commercial property and industrial facilities during the first year of implementation.

A minimum of 71 percent of the local option sales tax must go towards the

Local option sales taxes can also be rescinded. A referendum for rescission cannot be held earlier than two years after the tax has been levied. A rescission can be placed on the ballot by a petition of at least 15 percent of the qualified electors being submitted to the county governing body at least 120 days before the Tuesday following the first Monday in November. If the vote to rescind the tax fails, it cannot be placed on the ballot again for at least two years.²⁶

Referendum for a Capital Project Sales Tax

A county governing body may impose a one percent sales and use tax by ordinance, subject to a referendum, within the county for a specific purpose or purposes and for a limited amount of time to collect a limited amount of money.²⁷

²⁴ S.C. Code Ann. § 4-9-30.

²⁵ S.C. Code Ann. § 4-10-30.

²⁶ S.C. Code Ann. § 4-10-35.

²⁷ S.C. Code Ann. §§ 4-10-310, 4-10-370.

The revenue collected may be used to defray debt service for bonds issued to pay for projects authorized and approved by the voters in the required referendum.²⁸ Any referendum for this purpose must be held at the time of the general election.

Initiative

Initiative is a two-step process in which electors petition the council to either repeal or pass an ordinance.²⁹ If a petition is submitted to the county council, the council will then have time to consider either repealing or passing the ordinance concerned in the petition. If, however, council fails to act on the petition or passes an ordinance substantially different than that petitioned for, a special election must be held.

The process of voter initiative begins when at least 15 percent of the registered voters in the county or special district sign a petition requesting action by the council. If the council denies the petition, a special election must be called not less than 30 days, nor more than one year, from the date of the council vote. The election can be held at the same time as a general election, or if no general election occurs within the time frame, the council can order a special election by ordinance. If a special election is held to consider an initiative, a majority of those voting in the election is required for the proposed ordinance to be accepted or repealed. Voters may not initiate an ordinance appropriating money or authorizing the levy of taxes.

If the electors request that an ordinance authorizing a general obligation bond for the county or a special service district be repealed, the process is slightly different. A petition signed by 15 percent of the electors in the affected area must be submitted within 60 days of the enactment of the ordinance. If the council fails to act on the petition, a special election is required. Electors cannot petition for the repeal of ordinances issuing bonds, if the bond issuance was approved by a voter referendum. For this and other reasons, most general bond issues are submitted for voter referendum.

Referendum to Change the Form of County Government

A referendum to change the form of county government, number of council members or election method may be conducted in one of two ways. The county council may call for a referendum to consider the change, or a petition signed by at least 10 percent of the registered voters in the county may begin the process. If the referendum is initiated by the voters, the county board of voter registration and elections must certify the petition within 60 days of submission, and the election will be held not more than 90 days after certification. Such referenda can be held during the general election or scheduled as a special election.³⁰

In a referendum to change the form of government, number of council members or method of election, the ballot will always include the option of retaining the existing form or practices or changing to one other designated form or practice. ☉

After a referendum is held, whether it results in a change or not, no additional referendum asking for a change in form, number of council members or method of election may be held for four years.³¹

In a referendum to change the form of government, number of council members or method of election, the ballot will always include the option of retaining the existing form or practices or changing to one other designated form or practice. After a referendum is held, whether it results in a change or not, no additional referendum asking for a change in form, number of council members or method of election may be held for four years.³¹

²⁸ S.C. Code Ann. § 4-10-330.

²⁹ S.C. Code Ann. §§ 4-9-1210, 4-9-1230.

³⁰ S.C. Code Ann. § 4-9-10.

³¹ S.C. Code Ann. § 4-9-10(c).

Special Election for Consolidation of Political Subdivisions

Consolidation of governing structures is an established idea in the U.S. It allows for uniformity on a countywide basis in the delivery of services and is sometimes desired by the citizenry. If at least 10 percent of the registered voters in a county petition or the county governing body requests a consolidation, a charter commission consisting of 18 members may be created for the purpose of drafting a charter to provide for consolidation of the county's political subdivisions.³²

The charter commission must draft a consolidation charter within 12 months and include at least three public hearings in its deliberations. Not more than 30 days after the charter commission conveys its draft consolidation charter to the county governing body, a special election must be scheduled within 60 to 90 days. If the consolidation charter fails, another charter commission cannot be formed for at least four years from the election date of the failed charter.

Special Election for Change of County Boundaries

If a county seeks to annex a portion of another county, an election must be held after proper notification procedures have been followed. Those eligible to vote in the election include those electors in the annexing county. If no polling places in the area being considered for annexation exist, the Governor will designate the polling places.³³

An election is not required if the area proposed for annexation is less than 50 acres and is titled to 10 or fewer freeholders (property owners). Rather, those affected are canvassed by the county board of voter registration and elections, with two-thirds support necessary for annexation.

Special Election for a New County

State law provides for the possibility that a new county can be created by dividing up two or more existing ones. Should a special Governor's commission decide a new county is necessary (and the Governor concurs), an election would be held in the proposed area allowing voters to agree or disagree with such a proposal. If they agree with the creation of the new county, the voters also determine the location of the new county seat.³⁴

Nomination and Election Process for County Office

County elected positions include the council, coroner, probate judge, sheriff, clerk of court, auditor, treasurer, and solicitor of the judicial circuit that contains the county. Some counties also elect a county supervisor, register of deeds, soil and water commissioner, watershed conservation district commissioner and various public service district trustees.

Candidates for county office must be qualified electors of the county at the time of the election. If the county uses single-member districts, the candidates must reside in that district. Candidates for special district boards must reside within that district. Candidates for the state Senate and House of Representatives must be legal residents in the district at the time of filing. Nomination for county office may be by political party primary, by party convention or by petition.³⁵ No person who was defeated in a party primary or convention can be listed on the general or special election ballot unless the person originally nominated dies, resigns, is disqualified or is otherwise removed from the ballot.

³² S.C. Code Ann. §§ 4-8-10, 4-8-150, 4-9-41.

³³ S.C. Code Ann. §§ 4-5-120, 4-5-70, 4-5-180.

³⁴ S.C. Code Ann. § 4-7-90.

³⁵ S.C. Code Ann. §§ 7-11-10.

County Party Conventions and Primaries

Candidates seeking office in a general election as political party nominees must file a statement of intention of candidacy between noon on March 16 and noon on March 30.³⁶ The filing form is provided by the State Election Commission and is available on its website.

Candidates seeking nomination for a statewide, congressional or district office that includes more than one county must file their statements of intention of candidacy and party pledge and submit any filing fees to the State Election Commission. Candidates seeking nomination for the state Senate or House of Representatives, or for a countywide or less than countywide office, shall file their statements of intention of candidacy and party pledge and submit any filing fees to the county board of voter registration and elections. Candidates must file three signed copies of the form. Upon receipt, the State Election Commission or county board must stamp each copy with the date and time it was received, return one copy to the candidate and send one copy to the appropriate political party's executive committee.³⁷ Each party must certify its candidates with the State Election Commission and county boards of voter registration and elections by noon on April 5. Candidates are also required to submit a statement of economic interests, as discussed in Chapter 5.

In some cases, a candidate will be unopposed for office in the primary or convention. Unopposed candidates shall be declared the party's nominee. Their names will not be placed on the primary ballot, but will be certified for the general election ballots. If not more than two candidates file with their parties for the same office and one candidate withdraws or dies, the party may, at its discretion, allow other candidates to enter the race. Otherwise, the party may declare the remaining candidate as its nominee.

County party conventions must be held during a 12-month period ending March 31 of a general election year. However, this date may be changed to another date, provided published notices are given three weeks before the set time. In order to nominate candidates for county offices by party convention, there must be a three-fourths vote of the total membership at the convention. Otherwise, a primary election will be held. Other party business conducted at the county conventions includes choosing party officers and delegates to the state party convention. Parties holding conventions for the purpose of selecting candidates for office must certify the names of their nominees by noon on August 15.

Primary elections for county offices are conducted in June of general election years. Only those parties legally recognized by the state are allowed to participate. Ordinarily, only the Democratic and Republican parties field candidates in primaries. A party may become legally recognized and participate through conventions or primaries (and thus be guaranteed a place on the general election ballot) by collecting the supporting signatures of 10,000 registered voters. Any new party must have a name substantially different from other recognized parties. Primary winners are certified by the county board of voter registration and elections, and their names appear as their party's nominees for office in the general election. Parties holding primaries must certify the names of their nominees by noon on August 15.

If a party nominee dies, becomes disqualified or resigns the nomination for legitimate nonpolitical reasons, and there is not enough time to have another primary election or convention to select another nominee, the county party executive committee can nominate another individual to run. Resignation for legitimate nonpolitical reasons requires that a nominee sign an affidavit and file it with the county board of voter registration and elections. The board can decide whether the resignation is, in fact, for a legitimate nonpolitical reason and thus allow a substitute nominee. If the resigning party nominee was to be unopposed in the general election, each certified political party has the privilege of nominating a candidate for the office involved.³⁸

³⁶ S.C. Code Ann. §§ 7-11-15, 7-11-55, 7-9-70, 7-9-100.

³⁷ Act 61 of 2013

³⁸ S.C. Code Ann. § 7-11-50.

Petitions

Candidates seeking to run for office independently, or without party affiliation, may do so by obtaining a nomination through a petition.³⁹ Those petitioning to run for office must submit a petition signed by at least five percent of the registered voters of the geographical area of the office they are seeking. Those petitioning to be on the ballot for commissioners of public service districts need only supply 250 signatures or five percent of the electors of the district, whichever is less. Exactly what number constitutes five percent is determined by the number of registered voters in the district or county 120 days prior to the election. It is recommended that petition candidates collect substantially more than the number of required signatures, since some signatures will be disallowed because of illegibility, non-registration or non-residency.

Petitions must be completed and submitted to the county board of voter registration and elections no later than noon on July 15 prior to the general election. Signatures are reviewed and verified by the board and certified by noon on August 15.

Petitions must follow a standard format and must, from left to right, allow for separate columns containing the signature and printed name of the registered voter, the address where registered, phone number, precinct, voter registration number and date of birth. However, no specific signature may be ruled invalid if the address, registration certificate number, or precinct of the voter is missing or incorrect.

The board of voter registration and elections is required to check every name on petitions with 500 or less signatures. For those requiring more than 500 signatures, the first 500 and 10 percent of the remaining signatures are checked. This percentage method is used to project the validity of the remaining signatures. If not enough signatures are projected in this manner, the board must check every signature to determine if there are a sufficient number. Petition forms are available on the State Election Commission's website.

S.C. Ethics, Government Accountability, and Campaign Reform Act

All candidates for elective office and individuals supporting or opposing any ballot measure should thoroughly familiarize themselves with the sections of South Carolina law concerning ethics and campaign finance. The S.C. State Ethics Commission administers this phase of the election process and can supply detailed information regarding ethics laws.⁴⁰

Each candidate for office must file a statement of economic interests for the preceding calendar year at the same time, and with the same authority, with whom they file as a candidate. This statement of economic interests is supplied by the State Ethics Commission to the county clerk of court and may be obtained from the clerk or from the State Ethics Commission's website. The authority responsible for receiving the statement of economic interests must, in turn, file it within five days of the date that filing closes. Any candidate who fails to file a statement of economic interests will not have his/her name placed on the election ballot. All elected officials are required to file an updated statement prior to March 30 of each year they are in office.

A campaign receiving or spending more than \$500 must file an organizational statement listing the names and addresses of the principals involved. An initial certified campaign report must be filed within 10 days of the receipt or expenditure of the funds. A campaign that does not spend or receive more than \$500 during a cycle must still file a report at least 15 days before the election. Following the filing of an initial certified campaign report, additional reports must be filed within 10 days following the end of each calendar quarter in which funds are received or spent, whether before or after the election.

³⁹ S.C. Code Ann. §§ 7-11-70, 7-11-85.

⁴⁰ S.C. Code Ann. §§ 8-13-100, 8-13-1520.

This quarterly report must be filed even if there is no activity. Candidates must continue to file until a final report is filed and the account is closed. These reporting requirements are applicable not only to candidates, but also to any organized committee that supports or opposes a ballot measure.

Contributions to local races are capped at \$1,000, and any contribution of more than \$25 must be made by check or money order and must include the name and address of the contributor. Records must be kept for contributors, including names and addresses, but only those who contribute \$100 or more in aggregate must be disclosed on election reports. A campaign may have only one designated account. Since there are restrictions on how campaign money may be spent, detailed records of all expenditures are required.

Compliance with the Voting Rights Act of 1965

The Voting Rights Act of 1965 has traditionally required South Carolina local governments to obtain preclearance from the U.S. Department of Justice, Civil Rights Division, before any change could be made in election procedures, registration procedures or requirements, polling places, precinct or ward boundaries, form of government, or any other feature of the election process that could have the effect of diminishing the ability of racial and language minority groups to effectively exercise their right to vote.⁴¹ However, on June 25, 2013, the U.S. Supreme Court declared that the formula for determining which states are subject to preclearance is unconstitutional.⁴² South Carolina is no longer subject to preclearance until such time, if ever, Congress determines there is a need for preclearance and creates a new formula.

Additional Resources

- To learn more about the role of the S.C. State Election Commission and to view recent election returns for statewide and countywide races, go to www.scvotes.org.
- For more information about ethics and public service in South Carolina, visit the S.C. State Ethics Commission website at <http://ethics.sc.gov>.
- To learn more about federal voting rights laws, including the Voting Rights Act of 1965, visit the U.S. Department of Justice at www.justice.gov/crt/index.php.

⁴¹ 28 C.F.R. Part 51.

⁴² *Shelby County, Ala. v. Holder*, 133 S.Ct. 2612, 2013 WL 3184629

Intergovernmental Relations

Jon B. Pierce, Ph.D., Formerly with the University of South Carolina

Introduction

In this era of accountability, suburban growth, high public expectations for services, complex issues and expensive solutions, unfunded mandates and taxpayer unrest, the matter of intergovernmental relations (IGR) is of critical importance to counties in South Carolina. Increased intergovernmental cooperation is no longer a luxury—in fact, it is fast becoming a necessity.

If governments were separate and distinct, either physically or functionally, there would be little need to discuss the topic of IGR. In a rigidly structured system, certain powers and responsibilities would be the exclusive venue of the federal government, the state government, the county government or the municipal government. This clear definition of responsibility and power would determine the ways governmental units—or political subdivisions—interact. This model of government might be thought of as a layer cake, each layer atop the other and clearly defined.

In reality, government is more like a marble cake.¹ The powers and responsibilities of political subdivisions comingle, making distinctions among them difficult. Complete separation is not only impractical, but also undesirable in a system where overlapping jurisdictions with similar goals provide services to the same citizens. Those units must work together to perform the function of governing. That process is usually described as IGR.

Federalism and Intergovernmental Relations

The concept of federalism revolves around the relationship between a national government and subnational units of government. Federalism describes a division of power among governmental units in countries such as the U.S., Canada and West Germany. By contrast, countries like Great Britain and France do not divide power with subunits and are referred to as unitary systems. The formal or legal concept of federalism as applied in the U.S. refers to the relationship between the national government and the states. This narrow and legalistic construct obviously neglects to recognize the significant role of local government in our governmental system. The more appropriate concept is that of IGR.

IGR occurs within our federal system and “encompass[es] all the permutations and combinations of relations among the units of government in our system.”² The significance of this broader definition is quite apparent, when one recognizes that there are over 84,000 units of government in the U.S. These units of government are composed of some 500,000 elected officials and tens of millions of employees. And if this governmental landscape is not complex enough, as we have more recently come to realize, the concept of IGR needs to be expanded to also include the not-for-profit and private sectors.

This expansion is justified in that more and more “governmental” services are being delivered by nongovernmental organizations that are either under contract with a governmental entity or receive support from the governmental entity.

¹ Morton Grodzin and David Elazar, *The American System* (Chicago: Rand McNally, 1966).

² Deil S. Wright, *Understanding Intergovernmental Relations* (Belmont, CA: Brooks/Cole, 1988).

For example, many county governments have privatized one or more services and also provide support to not-for-profit groups to provide such services as victim counseling and housing for the homeless.

What makes this concept so challenging and complex, aside from the sheer magnitude of the numbers of units and players involved in IGR, is the fact that to a very real extent, the term is a misnomer. **There really is no such thing as IGR; rather, there are interpersonal relations between officials of different units.** There is a strong human element to IGR. The ability of a county government to work with its municipalities is often more a function of the relationships between the council chair, the mayors, council members, other elected officials, the chief administrative officers and staff than a technical or legal matter. Another key characteristic is the fact that these relationships are built over time and are based as much on the past as the present or future. The refrains of, “We tried working with those folks 10 years ago, and it just didn’t work,” or, “We just can’t trust those people,” are often used as justification for not undertaking a particular cooperative effort with another unit of government. Conversely, if a county’s past experiences have been positive in working with another unit of government, then they are more likely to do so again in the future.

Having discussed the concepts of federalism and IGR, we now turn our attention to the key governmental actors.

The Federal Government

There is little doubt that the federal government is a powerful, if not the most powerful, player in the intergovernmental arena. Although state and local governments receive a relatively small portion of their revenues from the federal government and increasingly states and localities have been left to “fend for themselves,” the federal government does intervene in local processes.

The federal government usually intervenes into local government in one of two ways. The first is through the judicial system. Since 1819, the authority of the U.S. Supreme Court to decide constitutional disputes between governments has been clear.³ Two decisions have had a tremendous impact on local government operations. The *Garcia* decision required overtime pay for local employees rather than compensatory time, increasing local labor costs significantly.⁴ Setting aside sovereign immunity in *Monell v. Department of Social Services*, the court changed a longstanding tradition of local protection from civil action.⁵ Its effect was to require local governments to purchase expensive liability insurance or absorb damage awards from unfavorable rulings in civil negligence suits.

The main federal avenue into the local process is the legislative one. The federal government, in an attempt to guarantee all American citizens a certain standard of living regardless of the state in which they live, uses its power to require that certain programs provide a minimal level of quality. These requirements, usually called mandates, ensure that in any area of the country there is an adequate supply of safe drinking water, the air is fit to breathe, and solid and hazardous waste is disposed of in ways that do not harm people or the environment. In many cases, the federal government works with the states to set standards for services like education and highway safety. Some programs are uniquely federal, like the Family Independence and the Supplemental Nutrition Assistance programs, but are administered at the county level.

³ *McCulloch v. Maryland*, 17 U.S. 316 (1819).

⁴ *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

⁵ *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

There is another aspect of federalism that is important to an understanding of IGR. Fiscal federalism describes the way in which the federal government impacts the operation of state and local governments by the distribution of federal funds. Grants are the primary mechanism of federal aid to state and local governments.

There are two kinds of grants: formula grants and project grants. Formula grants provide funds to eligible communities on the basis of some formula, usually derived from a combination of factors like population and income. The most famous of formula grants was the general revenue sharing program, which provided local governments money for capital projects from 1972 through 1986. Project grants offer selected communities the opportunity to undertake certain projects at subsidized costs (or at concessionary borrowing rates), provided the community is willing to meet certain standards. The standards vary from reporting requirements, to matching funds, to minority contract quotas, to private sector participation levels. The government applies for the grants and competes with other applicants. Once selected, continuing eligibility requires compliance with federal standards during each phase of the project. The federal government can exercise total control over a project, or it can exercise minimal control.

The cases of the minimum drinking age and the speed limit on interstate highways exemplify the impact of fiscal federalism. Decisions about drinking ages and speed limits are under the control of the states. However, by threatening to withhold highway funds from states that did not raise the minimum drinking age and did not reduce the speed limit on interstates, the federal government was able to significantly influence decisions made by the states.

The relationship between our national, state and local governments is a fluid one and is constantly changing; generally the changes are small, but occasionally at particular points in our history as a nation, the changes have been broader and more significant. Such a change occurred during the Reagan administration (1980-88). During the 1960s and 1970s, federal programs were aimed at mitigating some of the disparities among states and localities. The 1980s saw a return to the expectation that state and local problems would be solved at the state and local levels. As evidence of the Reagan influence on intergovernmentalism, federal aid to state and local governments dropped dramatically. There was no attempt by the federal government to soften the blow of the 1981-82 recession on the states and localities, and general revenue sharing was eliminated in 1987.⁶

The federal government can, and does, intervene in state and local affairs by the promise of dollars or the threat of loss of dollars. In the past, particularly during the 1960s and 1970s, the non-biblical golden rule was clearly at work: "He who has the gold rules." In more recent decades when the federal government seemed to have less gold, mandates and judicial action became the preferred methods of intervention. Many students of IGR have dubbed this the era of "fend-for-yourself federalism" or "pass-the-buck federalism." Others characterize the situation as "IGR by mandates." Mandates will be addressed in more detail later in this chapter.

In recent years, the signals have been mixed. It is apparent that a return to the days when "Uncle Sam's purse" was wide open for state and local governments is gone. It is worth noting that the federal government seems to be somewhat more willing to allow the states, and by extension the localities, some flexibility in the design and administration of programs. Welfare reform is a good example of this. However, it also seems likely that the federal government will continue to intervene in state and local governmental processes through legislative mandates, the courts and regulatory requirements.

⁶ John Shannon, "The Return to Fend-for-Yourself Federalism," *Intergovernmental Perspective*, Summer/Fall 1987, p. 36.

South Carolina State Government

Like the federal government, each state has its own constitution and bill of rights. While the U.S. Constitution is certainly superior to that of the states, state constitutions are a viable instrument for formally establishing the principles of IGR. South Carolina's Constitution was enacted in 1895. Like most other state constitutions, it defines local governments and their powers (that is, the ability to tax and borrow) and guarantees public education and free elections, among other things. It has been amended on many occasions, but is still a fairly antiquated document, establishing the broad principles of state and local governments more than anything else. The Dillon's Rule doctrine—that local governments are creatures of the state and may do only those things specifically permitted by the state—prevailed among states for more than a century. Now many states have enacted home rule, a doctrine that grants to local governments the power to do anything not expressly forbidden by the state. As discussed in Chapter 1, home rule was implemented in South Carolina in 1975. Under home rule, the counties gained the authority to provide a broad array of services, but the S.C. General Assembly has been less willing to give local governments the flexibility to pay for these services. The General Assembly further defined local government fiscal authority, most notably with passage of the Local Government Fiscal Authority Act,⁷ as well as several acts since that time (see Chapter 7).

The state's intervention into local government takes one of three forms: judicial, administrative or legislative. The body of judicial rulings is found in the proceedings of the state's courts and the opinions of the S.C. Attorney General. Administrative rules and regulations from state agencies to local governments abound. They set standards for delivery and quality of education (S.C. Department of Education) and health (S.C. Department of Health and Environmental Control—DHEC). DHEC is a major influence on local governments as it regulates air and water quality, waste disposal, pollution and public health. The S.C. Department of Revenue, S.C. Revenue and Fiscal Affairs Office, and the S.C. Department of Health and Human Services regulate certain revenue and spending matters at the local level.

Far and away, the bulk of rules exercising state control over local governments is found in the S.C. Code of Laws. The power of the legislature over local governments is absolute, except when it conflicts with the federal or state constitution.⁸ This power has been consistently recognized by the U.S. Supreme Court.⁹ The state exercises significant control over local operations. The control mechanisms are the hundreds of state mandates to local governments. These mandates specify both what local governments must do and what they may not do. While the topic of state mandates to local governments will be discussed more fully later in this chapter, research suggests that mandates hamper local autonomy and impair the spirit of home rule in South Carolina. Home rule only works if latitude is given to local governments by the legislature, and home rule is only as empowering as the legislature permits.

In 1993, the General Assembly significantly restructured state government. This restructuring resulted in an increase in the authority and responsibility of the Governor for the operation of state government. Those agencies that are a part of the Governor's cabinet follow the lead set by the Governor. Thus, the Governor is a much more important intergovernmental player than in the past.

⁷ Act No. 138 of 1997.

⁸ *Hunter v. Pittsburgh*, 207 U.S. 161 (1907) and *Wombat Realty Corp. v. State of New York*, 41 N.Y. 2d 490 (1977).

⁹ *Williams v. Baltimore*, 289 U.S. 36 (1933) and *Newark v. New Jersey*, 262 U.S. 192 (1923).

Local Government in South Carolina

Although they cannot exert control over other units of government in the way that the federal government or the states can, local governments are obviously critical players in the intergovernmental arena. Increasingly, local governments in South Carolina are choosing to work more cooperatively with other local entities to address the needs of their citizens. This is as it should be and, as noted at the beginning of the chapter, is increasingly necessary because of the financial and political realities of the day.

There are 46 counties and 270 incorporated municipalities in South Carolina. The number of municipalities fluctuates as new towns and cities are incorporated and, on rare occasions, merge or go out of existence.

Local governments in South Carolina have been granted certain “intergovernmental” powers or authorities as follows: to enter into joint service agreements with the state and with each other; for two or more counties to work together in developing an industrial or business park; and for a county to consolidate with a municipality or municipalities. Interlocal cooperation is discussed in much greater detail later in this chapter.

Other Political Subdivisions

Special Purpose Districts

In addition to the 46 counties and numerous municipalities that operate as general purpose governments in South Carolina, the state contains hundreds of special purpose districts (SPDs). These governments are limited in scope and often provide a single service to an area delineated by their individual statute of origin. Historically, SPDs were created to “fill the gap” by providing services in areas where counties could not respond and where cities were either unable or unwilling to extend their services outside the corporate limits. Prior to home rule, counties were restricted by the state constitution under the “county purpose doctrine,” which limited their ability to provide services that were not constitutionally enumerated. These specific services included roads, education and law enforcement, but did not include other services like fire protection, recreation, and water and sewer services. Most SPDs were created on an individual basis through special legislative acts of the General Assembly to provide essential services to those areas not being reached by the county or nearby towns. Creation of districts by special legislation resulted in a fragmented system of local service delivery in the state.

Revisions to the state constitution in 1973 and the passage of the Home Rule Act in 1975 allowed counties to offer many of the services previously provided by SPDs. The constitutional revisions also prohibited the enactment of special legislation. Further, the Home Rule Act gave counties the power to establish special tax districts so that services could be provided and paid for on a less than countywide basis, allowing for special needs in individual sections of a county. These changes effectively eliminated the need for, and legislative ability to create, new SPDs.

The most numerous type of SPD is the fire protection district, followed by water and sewer districts. Other districts address services such as airports, natural gas, auditoriums, recreation, watershed/drainage and hospitals. Efforts to determine the number and locations of active districts statewide have been largely unsuccessful. This is due in part to the lack of an established system of accountability for districts created through special legislation prior to passage of the Home Rule Act.

In order to provide better information about SPDs, the General Assembly enacted legislation requiring each district to register with the S.C. Secretary of State's Office, providing basic information regarding service areas, board membership and financial data. Districts are required to register at the end of even-numbered years. According to the latest publication, a total of 241 special purpose districts are registered with the Secretary of State's office.

State law provides for a procedure for the dissolution of an SPD which does not provide any governmental services and which has made no provision for providing such services.¹⁰ Unless it receives the express authorization of the governing body of an overlapping political subdivision, an SPD is restricted from providing governmental services within its boundaries where it has not previously provided such services, if the overlapping political subdivision is authorized to provide that same service in the area and the area is situated within the boundaries of the overlapping political subdivision.¹¹

If a consolidated or enlarged SPD is precluded from providing a governmental service to an area within its boundaries, no ad valorem taxes may be levied for providing the service to the remaining portions of the district. A procedure is provided for the consolidation and enlargement of SPDs where the consolidation or enlargement results in an overlapping political subdivision authorized to provide like services.¹²

The taxing authority of SPDs has been addressed by the S.C. Supreme Court. In *Weaver v. Recreation Dist.*,¹³ the constitutionality of Act No. 317 of 1969 creating the commission was called into question. The act allowed the commission to levy a tax of up to five mills per year to pay for maintenance and operation of its recreational facilities. The plaintiffs challenged the act, stating that it violated Article X, § 5 of the state constitution that states that, "no tax shall be established, fixed, laid, or levied...without the consent of the people or their representatives." They contended that the result of the act was "taxation without representation," since commissioners were appointed rather than elected. The court ruled that the act did, in fact, violate Article X, § 5. The court noted that this decision would cause a disruption for many appointed commissions and boards across the state. Therefore, the decision was to be applied beginning Dec. 31, 1999.

In response to this ruling and in an attempt to provide direction to SPDs, the General Assembly passed legislation to provide for a referendum relative to election of the board of an SPD. This section only applies to SPDs with governing boards that are not already elected. It does not include, however, those that cover more than one city or those that provide services outside the city. In order for a referendum to be held, 15 percent of the qualified electors must petition for a referendum. The governing body of the district can, by majority vote of all members, request a referendum. The question is then placed on the next general election ballot. A majority is needed for the referendum to pass. Nonpartisan, at-large elections are then held in the general election during even-numbered years.¹⁴

There is also a procedure for the dissolution of SPDs whose boundaries are wholly within a single county. An SPD can be dissolved with a two-thirds vote of the qualified electors of the district. A petition calling for a referendum to address dissolution must first be signed by 40 percent of the qualified electors.

¹⁰ S.C. Code Ann. §§ 4-11-290, 6-11-435 *et seq.*

¹¹ S.C. Code Ann. § 6-11-435.

¹² S.C. Code Ann. §§ 6-11-440 *et seq.*

¹³ *Weaver v. Recreation Dist.*, 328 S.C. 83, 492 S.E.2d 79 (1997).

¹⁴ S.C. Code Ann. §§ 6-11-350 *et seq.*

The petition must also include the name(s) of the party that will assume responsibility for providing the services of the SPD as well as assume the district's assets and liabilities. Before circulation of the petition, the entities named in the petition as successor providers must be provided with a copy of the proposed petition.¹⁵

The named successor providers have the opportunity to state whether they agree to be successor providers or not. If they agree, they must act in the affirmative by ordinance or resolution. A certified copy of the ordinance or resolution must be forwarded to the governing body of the district and the party submitting the petition within five days of its adoption. If the successor provider is a county and the county proposes to finance the provision of one or more services provided by the district to the area within the district in whole or in part through the levy and collection of ad valorem taxes, the tax district must be established pursuant to the passage of the ordinance indicating willingness to become the successor provider. The referendum is to be held on the date of the general election. Two-thirds of the electors must vote to dissolve in order for dissolution to take place. If the referendum passes, the successor provider must adopt a resolution or ordinance agreeing to become the new provider for the district.¹⁶

State law addresses the authority of an SPD with a non-elected board that has authority to levy for operations and maintenance millage. Two mechanisms exist for raising the millage levy above the levy for FY 1998. The SPD may request that the county board of voter registration and elections schedule a referendum for the purpose of raising the millage rate, and qualified electors within the district boundaries may vote. If approved by referendum, such modification in tax millage remains effective until changed in a manner provided by law.¹⁷ Alternatively, all SPDs located wholly within a single county are authorized to modify their respective millage limitations by approval of the governing body of the district and the governing body of the county in which the district is located.¹⁸

School Districts

South Carolina has 81 other SPDs in the form of school districts. Please refer to Chapter 8, "Understanding School Funding," for information about school districts, including the role they serve and their relationship with other local governments and the state.

State and Local Government Relations

State Mandates to Local Governments

Few intergovernmental issues have been as controversial nationwide as the issue of mandates, and South Carolina has been no exception to the mandates battle. Just as the federal government mandates standards, programs and activities that states must assume, states frequently mandate activities that local governments must shoulder. Many mandated programs and policies, particularly those related to environmental issues, begin at the federal level and "pass through" state governments to local officials that must work under these directives.

Most mandates are well-intended. Few could argue against the value of clean water, unpolluted air and landfills that do not leak hazardous chemicals into the soil, rivers and streams. However, at the heart of the mandates controversy is the question of funding. Often, well-intentioned federal and state mandates were issued with no provisions for funding mandated activities or programs. **In South Carolina, this practice results in fiscal pressure exerted upon elected county and municipal officials to raise millage rates or institute user fees to comply with the mandates.**


¹⁵ S.C. Code Ann. §§ 6-11-2010 *et seq.*

¹⁶ S.C. Code Ann. § 6-11-2130.

¹⁷ S.C. Code Ann. § 6-11-271(D).

¹⁸ S.C. Code Ann. § 6-11-271(E)(1).

Mandates to local governments can come in the form of legislative, administrative or executive. The vast majority of mandates have been imposed by the General Assembly; however, state agencies also impose administrative mandates to establish regulations that apply to local governments. Many of these regulations are developed as agencies implement legislation passed by the General Assembly. Local government officials have always complained about the impact of mandates upon local budgets, and several studies have illustrated the magnitude of the problem.

Mandates to local governments can come in the form of legislative, administrative or executive. 

The following definition of mandate has been cited:

*Those statutes, regulations or orders that require the locality to undertake an activity or to comply with some standard, even when the locality would have voluntarily undertaken the activity or complied with the standard, are mandates. Similarly, any statute, regulation or order which prevents the locality from undertaking an activity, even when the locality would not consider undertaking it in the absence of the statute, regulation or order, is a mandate.*¹⁹

This definition addresses both active mandates, which require local action in a certain policy area, and restrictive mandates, which prohibit certain local actions. Restrictive mandates include legislative acts that prohibit local governments from using many non-property tax revenue sources to raise general fund revenue.

There are also mandates that do not exist in law, but simply derive from custom and practice. These traditional mandates are based on decades of customs and include such local duties as providing office space to county offices of state agencies. Although these offices are agents of the state, counties have traditionally provided support in the form of office space and supplies. Even though it may be justifiable to assume that county governments should share in the costs of providing these services to their residents, the level of expected local support can vary from county to county. For this reason, traditional mandates often cause the most frustration for county officials.

The federal government also initiates mandates, which are then passed through the state legislature to local governments. Although pass-through mandates are not wholly creations of the state, they still affect the decision-making ability of local governments.

The most controversial types of mandates are those which cost local governments, but are unfunded by the state. Many states have attempted to remedy this problem by establishing fiscal noting systems. Fiscal notes provide legislators with details of the anticipated costs that will be incurred by local governments if legislative proposals are enacted. The notes are often prepared by a neutral third party. South Carolina's fiscal impact statement law was enacted in 1983, requiring that the authors of bills affecting local governments attach cost estimates.²⁰ However, this requirement proved to be inadequate.

In 1991, progress was made through the adoption of stronger fiscal notes requirements.²¹ As a result, the Local Government Fiscal Impact Statement Team (FIST) Network was created and serves as a vehicle for soliciting the input of local officials as to the cost of proposed legislation. Over 40 municipalities and one-half of all county governments participate in the network by providing cost estimates of proposed laws that affect local governments.

¹⁹ Janet M. Kelly, *State Mandated Local Government Expenditures and Revenue Limitations in South Carolina* (Columbia: S.C. Advisory Commission on Intergovernmental Relations, 1988).

²⁰ S.C. Code Ann. § 2-7-71.

²¹ S.C. Code Ann. § 2-7-76.

This local input is considered by the Office of State Budget in constructing fiscal notes for each bill. **This system provides a much stronger method of cost estimating than did previous statutes, primarily because city and county officials are involved in the process on a consistent basis.** Communication with local officials has been the cornerstone of the program's success.

Further progress was achieved in 1993 when legislation was enacted to directly address the issue of unfunded mandates. The law provides that, "A county may not be bound by any general law requiring it to spend funds or to take an action requiring the expenditure of funds unless the General Assembly has determined that the law fulfills a state interest and the law requiring the expenditure is approved by two-thirds of the members voting in each house of the General Assembly..."²² In general, the statute provides that the General Assembly must fund most mandates to local governments.

However, it is important to note that the mandates issue is not moot. The legislation contains several exceptions or cases in which the funding requirement and the two-thirds voting requirement do not pertain. These include federal pass-through mandates, laws that have a fiscal impact of less than 10 cents per capita statewide, criminal laws and election laws. Legislation that qualifies under one or more of these exceptions may still be passed as an unfunded mandate. Provisions also do not apply to mandates passed prior to July 1, 1993. Therefore, mandates from the past continue to pose challenges for local officials.

There are also budget provisos that direct or restrict local government fiscal actions.²³ Each year, the general appropriations act contains provisos that affect state agencies, employees and local governments. These provisos have the effect of permanent mandates to local governments. Some provisos are repeated from year to year in the appropriations act, while others appear only in one budget year. The statute clarifies that the two-thirds vote requirement applies to budget amendments and provisos, but not to the budget as a whole.

The cumulative impact of hundreds of mandates under which local officials operate creates an environment that is detrimental to effective governance. ☹

Future efforts to identify and catalog mandates will focus heavily on determining the impact of mandates that continue to be created. Most importantly, attention must be paid to the mandates issue in its entirety. Examining mandates individually does not illustrate the difficulty and fiscal stress that local officials face in complying with these statutes. The cumulative impact of hundreds of mandates under which local officials operate creates an environment that is often detrimental to effective governance.

The Role of the Judiciary

Another key issue for local governments has been, and will continue to be, the interpretation by the state judiciary of local home rule. County governments have operated under home rule for nearly four decades. As they strive to provide greater services and fund their operations creatively in the future, judicial interpretations of South Carolina's home rule statutes will likely play an important role.

The S.C. Supreme Court's opinion in *Williams v. Town of Hilton Head Island* is an example of the judiciary's role in defining and clarifying the home rule powers of local government. The court's opinion addressed the powers of local governments to generate revenue by charging certain types of fees.

²² S.C. Code Ann. § 4-9-55(A).

²³ S.C. Code Ann. § 4-9-55(E).

At issue was the Town of Hilton Head's real estate transfer fee ordinance. The court upheld the legality of this fee as a revenue source. The fee equaled one-fourth of one percent of the real estate purchase price with revenue collected from the fee used for the following purposes:²⁴

- To acquire fee and less-than-fee interest in land while it is still available to be held in perpetuity as wildlife preserves or believed to be needed by the public in the future for active and passive recreation uses and scenic easements...and land for future public recreational facilities; and
- To acquire already developed land or development rights in order to convert its use to a public use, restore the property to open space, or redefine that property in accordance with the town's current comprehensive plan and dispose of it as soon as possible.

The court addressed two basic issues in determining the legality of this fee. First, whether or not the home rule amendments of Article VIII of the state constitution confer upon the municipality the power to adopt the ordinance, or whether there still exists the requirement for express statutory authorization. Also, is the purchase of land with revenue generated from the transfer fee necessary and proper for the security, general welfare and convenience of the municipality or for the preservation of its health, peace, order and good government?

In addressing the first question, the court determined that the Home Rule Act intended to "... restore autonomy to local government." It was decided that the town did not need expressly stated authorization to levy the fee.

In addressing the second question, the court determined that purchasing land for the stated purposes did not violate the state's constitution or statutes. The specific earmarking of this revenue was in accordance with "...the general scheme, policies, legislation and prevailing law of the state to protect, develop and preserve the coastal region for the benefit of the public and posterity."

At this time, the *Williams* decision was considered a precedent in terms of making alternative revenue sources available to local governments and enabling cities and counties to enact new fees. In fact, some local governments quickly enacted new fees as a result of this decision. However, early interpretations suggested that the decision had some key limitations as far as providing the "green light" for cities and counties to supplement their budgets with new fees.

Many local government attorneys interpreted the decision as one approving the charging of various fees if the revenue from those fees is earmarked for a specific purpose that is "necessary and proper for the security, general welfare, and convenience...or for preserving health, peace, order, and good government..." Under this interpretation, the decision did not establish the authority of counties and cities to levy additional fees and taxes for general revenue purposes. Rather, the fee, as in the *Williams* case, must be generated and earmarked for a specific, appropriate purpose.

There are several important footnotes regarding this case. Although the use of such fees was affirmed by the Supreme Court as a reasonable local government practice, the General Assembly, through the Local Government Fiscal Authority Act, expressly prohibited the imposition of real estate transfer fees.²⁵ The General Assembly further countered the *Williams* decision by providing that, "A local governing body may not impose a new tax after December 31, 1996, unless specifically authorized by the General Assembly."²⁶ Restrictions were also placed on user fees.

²⁴ *Williams v. Town of Hilton Head Island*, 311 S.C. 417, 429 S.E.2d 802 (1993).

²⁵ S.C. Code Ann. § 6-1-70.

²⁶ S.C. Code Ann. § 6-1-310.

A local governing body can only charge and collect a user fee by passage of an ordinance approved by a positive majority of the governing body (a majority of the entire governing body, whether present or not). Public notice and a public hearing is required prior to final adoption. The revenue must be used to pay costs directly related to the provision of the service, and if the revenue is five percent or more of the entity's prior year's total budget, it must be kept in a separate fund.²⁷

Local Intergovernmental Cooperation and Consolidation

Functional Consolidation

The state's constitution permits counties, municipalities and other political subdivisions to consolidate functions through the use of intergovernmental, or interlocal, agreements.²⁸ Such consolidation among local governments can be an important tool to meet public service demands while making the provision of services financially feasible to all parties involved. This practice may be used much more often as the costs of providing key services such as solid waste disposal and jail services continue to skyrocket.

There is a surprising amount of intergovernmental service and facilities sharing among counties, cities and SPDs in South Carolina. Counties share water, sewer, garbage collection and landfill facilities with cities and other counties. Public safety functions and facilities—such as fire and law enforcement—are frequently shared. Many counties perform tax billing and collection services for cities and some even share computers and data processing facilities.

Political Consolidation

The sharing of local service functions among local governments, often called functional consolidation, is distinct from political consolidation, which merges two or more separate local governments. The idea behind political consolidation is that one large unit can perform services more effectively and efficiently and at less cost, compared to several smaller units. Attempts to consolidate often fail at the polls where citizens must approve the process. Political consolidation has worked in some areas of the U.S. (Jacksonville, Fla.; Nashville, Tenn. and Indianapolis, Ind. to name a few), and it can be argued that it should remain a viable option for areas that wish to attempt it.

Until 1992, consolidation—or the merger of local governments on a countywide basis—was not available in South Carolina. However, 20 years earlier voters approved an amendment to Article VIII of the state constitution, to authorize this type of consolidation.²⁹

The Meyer-Finlay Pet Adoption Center of Lexington and Richland Counties is a consolidated animal control project. The center is operated by Pawmetto Lifeline, a not-for-profit organization that works to end animal overpopulation through rescue collaboration, adoption, medical services and educational programs. This project received the 2012 Barrett Lawrimore Regional Cooperation Award.



²⁷ S.C. Code Ann. § 6-1-330.

²⁸ S.C. Const. art. VIII, § 13.

²⁹ S.C. Const. art. VIII, § 12.

This amendment required the General Assembly to provide by law for the procedures by which this process could take place. Repeatedly from 1972 to 1992, this issue was discussed, and legislation was filed in the General Assembly every year. Although this was simply enabling legislation providing another structural option for local governance, SPDs and public utilities lobbied successfully against passage of such legislation for many years.

Finally, in 1992, legislation was enacted to specify procedures for undertaking consolidation.³⁰ These are described below.

- A consolidated government charter commission consisting of 18 members may be created upon request of the county governing body or upon a petition of not less than 10 percent of the registered electors in the county. The county governing body must appoint six members; six members must be residents of the incorporated municipalities in the county based on an appointive index, with no single municipality appointing more than four members; and the SPDs appoint six members in the same manner as the municipalities.
- Within 10 days of appointment of the members, the county council chair must call an organizational meeting. A majority of members constitutes a quorum for the transaction of business, but no recommendation can be included in the proposed charter without a two-thirds vote. The commission is authorized to draft a proposed consolidated government charter, which can contain any one or more of a number of provisions enumerated in the act.
- The commission must complete its studies and draft a proposed charter within 12 months following the date of its initial appointment. It cannot make any recommendations relating to school districts, nor can any charter result in diminution or alteration of the political integrity of those subdivisions which agree to and become part of the consolidation. No constitutional office can be abolished by it. At least three public hearings must be held during the commission's studies.
- Not more than 30 days after receipt of the certified copy of the proposed charter, the commission must select one of the following methods of presenting the question of consolidation and the adoption of the charter:
 - The charter is effective upon the approval of a majority of the qualified electors of the county; or
 - If the charter is approved as above but not approved by a majority of the qualified electors voting on the question in a municipality or SPD, the charter is void only in that municipality or SPD.

Another charter commission cannot be created in the county for at least four years from the date of an unsuccessful election. An SPD or municipality may elect to exclude itself from the consolidation. The government for the consolidated subdivision becomes effective when its governing body has been elected and qualified. It becomes the owner of all property and assets previously belonging to the entities absorbed into the consolidated government.

Although there are potential cost savings in consolidating governments, other advantages of consolidation are just as important, particularly for high-growth areas. Consolidation may be the answer for a county that is struggling to address area-wide problems that are seemingly impossible to solve with multiple governing bodies.

³⁰ S.C. Code Ann. §§ 4-8-10 *et seq.*

It is also important to note that the more complicated government is, the less enthusiastic citizens may be about participating. When citizens are intimidated by the existence of multiple governments and authorities, not knowing who they should call about specific problems, accountability is often obscured. Consolidated governments may be an attractive option to citizens that want to participate as knowledgeable, active constituents.

Though consolidation may prove to be a viable growth management tool for the state's metropolitan areas, interest may eventually be stronger in more rural counties that experience slow growth or the loss of population and tax base. Their shifting fiscal scene may, by necessity, force officials to examine every means possible to eliminate duplication of functions and to provide services at the lowest possible costs.

With modification and technical improvement, the state's existing consolidation legislation may prove to be a viable option for growth management and coordinated service delivery. Even if a large number of counties never pursue consolidation, in the future it may be a valuable option for certain areas of the state. To date, no counties have opted for political consolidation.

Annexation

Another approach to increasing service area size for municipalities is annexation. Annexation is the process of expanding municipal boundaries. Although the law is highly restrictive, South Carolina's municipalities may annex land that is contiguous to existing municipal boundaries.

As construed by the S.C. Supreme Court, contiguous means the proposed land to be annexed and the municipality share a common boundary. Two methods of annexation are allowed in South Carolina: the 75 percent petition method and the 100 percent petition method.³¹ With both methods, the process is complete when the council enacts an ordinance declaring the area annexed.

Often county officials view annexation as a threat. In reality, however, annexation may have positive benefits for counties, particularly those experiencing areas of rapid urban growth where citizens expect a higher level of services. If such an area is annexed, the responsibility for providing these services is transferred to the city, while the property tax revenue for the county from the annexed area is not reduced. Thus, counties can see demand for services from fast-growing areas decrease while property tax revenue does not.

Cooperation in Economic Development

State law authorizes two or more counties to collaborate in developing an industrial or business park.³² Counties share expenses and revenues equitably when entering into such a venture. Tax increment financing statutes allow cities and counties to encourage development, especially in urban areas.³³ Local governments can use the projected increased property tax revenues that may accrue from public and private development in a blighted area to finance the public investment necessary to induce the private investment. Simply stated, if the city/county thinks the area is worth redevelopment, it may issue bonds to invest in the area in the hopes that the public investment will stimulate private investment. The result of both public and private investment will drive land values up, and the amount of property taxes due from the area will rise. Those additional property tax dollars will be used to retire the bonds. Additionally, the debt does not count against the local government's constitutional debt limit. Municipalities may jointly engage in this venture.³⁴

³¹ S.C. Code Ann. § 5-3-150.

³² S.C. Code Ann. § 4-1-170.

³³ S.C. Code Ann. §§ 31-6-10 *et seq.* and §§ 31-7-10 *et seq.*

³⁴ S.C. Const. art. X, § 14 (10).

Regional Councils of Governments

By the mid to late 1960s, there was a growing realization that many of the problems facing local communities and their governments could not be addressed satisfactorily by a single local government, because many of the most vexing problems did not respect jurisdictional lines. As at least a partial response to this concern, most of the states created substate regional organizations, generally referred to as regional councils of governments or regional planning commissions. The development of substate regional councils of governments is primarily a post-1965 phenomenon. In 1965, there were only 10 such groups. By 1975, most states had created substate regional bodies.

The basic rationale for creating regional councils was that they could address and solve regional problems and issues more effectively than the existing local governments working independently. At their inception, they were viewed as a means of bringing some coordination and understanding among the myriad of competing jurisdictions and organizations in a region. Such beliefs led to the creation of regional councils in South Carolina and are reflected in this statement from the Office of the Governor issued in 1969:

Many of the problems and opportunities to which South Carolina cities and towns and counties must respond cannot be dealt with effectively by these local governments individually. Regardless of the categories into which these problems and opportunities fall—whether social, economic, or physical—an effective response to them, in many cases, requires the bringing together of resources which are beyond the capacities of the individual governmental units.

The legal authority for regional councils of governments in South Carolina is found in the State Constitution, which allowed the General Assembly to write enabling legislation for the creation of such councils.³⁵ Pursuant to this constitutional authority, the General Assembly declared regional councils necessary for “the promotion, protection, and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare.”³⁶

The 10 South Carolina Councils of Governments (COGs) were created by voluntary participation of two or more counties in geographic regions delineated in statute and approved by the Governor.³⁷ The following table lists the COGs along with their member counties.

Council of Governments	Member Counties
Appalachian	Anderson, Cherokee, Greenville, Oconee, Pickens, Spartanburg
Upper Savannah	Abbeville, Edgefield, Greenwood, Laurens, McCormick, Saluda
Catawba	Chester, Lancaster, Union, York
Central Midlands	Fairfield, Lexington, Newberry, Richland
Lower Savannah	Aiken, Allendale, Bamberg, Barnwell, Calhoun, Orangeburg
Santee-Lynches	Clarendon, Kershaw, Lee, Sumter
Pee Dee	Chesterfield, Darlington, Dillon, Florence, Marion, Marlboro
Waccamaw	Georgetown, Horry, Williamsburg
Berkeley-Charleston-Dorchester	Berkeley, Charleston, Dorchester
Low Country	Beaufort, Colleton, Hampton, Jasper

³⁵ S.C. Const. art. VII, § 15.

³⁶ S.C. Code Ann. § 6-7-10.

³⁷ S.C. Code Ann. § 6-7-110.

The powers and duties of the COGs are to:

- Prepare studies and make recommendations on such matters as they deem appropriate;
- Coordinate and promote cooperative programs and action with and among their members and other governmental and nongovernmental entities, including those of other states;
- Study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development, and such other matters as the common interest of the participating governments may dictate;
- Provide continuing technical assistance and information to the member local governments and other agencies and individuals;
- In general, carry on such planning activities and the development of such studies and programs as deemed to be in the interest of the area;
- Acquire and dispose of real and personal property necessary to the conduct of their business; and
- After coordination with the appropriate local, state and federal agencies, regional councils may adopt such plans and programs as they may from time to time prepare; such plans and programs as adopted shall constitute the recommendations of the regional councils of governments.³⁸

The COGs are empowered to accept and appropriate funds from a variety of sources and spend them on staff and expenses.³⁹ They are public agencies, exempt from taxation and entitled to many privileges of other public agencies.⁴⁰ They are not, however, considered political subdivisions in the same sense as cities, counties and other incorporated bodies and are, therefore, not eligible for some types of federal assistance.⁴¹ They may receive federal funds as planning agencies, however.

Each county and municipality executing the agreement creating the regional council are members. COGs are governed by a policy board as prescribed in the agreement. At least a majority of the members of the policy board must be members of the governing bodies of the participating counties and cities.⁴²

The composition, type and level of services and funding patterns vary greatly from region to region. An individual COG to a large extent reflects—or certainly should reflect—the needs and wants of its member governments.

COGs can be significant players and should play a leadership role in fostering and enhancing intergovernmental cooperation in their region. However, because of their voluntary nature and their very limited legal authority to compel cooperation, this is not an easy role to fill. Increasingly, local governments should look to and enable their COG to play such a leadership role.

³⁸ S.C. Code Ann. § 6-7-140.

³⁹ S.C. Code Ann. §§ 6-7-150 to 6-7-180.

⁴⁰ S.C. Code Ann. § 6-7-190.

⁴¹ 1986 WL 191965 (S.C.A.G.).

⁴² S.C. Code Ann. § 6-7-130.

Regional Cooperation

Over the past few years, more and more counties are partnering with other counties, municipalities, state agencies and not-for-profit organizations in delivering services to citizens. Some examples of multi-county cooperative efforts include animal control, fire protection, building codes, planning and zoning, and emergency management, just to name a few. Counties and cities share public safety facilities and other office or service sites. The South Carolina Association of Counties also recognizes efforts of regional cooperation with its annual Barrett Lawrimore Memorial Regional Cooperation Award.

Conclusion

Looking to the future, local governments in South Carolina are likely to be increasingly called upon to solve their own problems using their own money. This will be a significant challenge, as both the federal and state governments continue to play a role in defining what the problems are and in mandating solutions. It is very likely that, as in the past and the present, many of these mandates will be of the unfunded variety.

Counties have entered an era of “fend-for-yourself” and “pass-the-buck” federalism with regards to federal and state relations with local government. Building and maintaining effective intergovernmental relations with other local entities and their officials will be an ever more important undertaking for county elected and appointed officials, if counties are to adequately serve their citizens. Increased intergovernmental cooperation is no longer a luxury, but is fast becoming a necessity.

Additional Resources

- Visit www.scsos.com/library_of_forms_and_fees#SpecialPurposeDistricts, the Secretary of State’s website, to learn more about special purpose districts and to access the biennial directory of such districts.
- To review fiscal impact statements for proposed legislative bills, visit the State Budget’s fiscal impact page at www.budget.sc.gov/OSB-fiscal-impact.phtm.
- Visit www.sos.sc.gov/Municipalities to learn more about municipal incorporation and annexation.
- For a listing of multi-county industrial parks, visit the S.C. Department of Commerce’s website at <http://sccommerce.com>.
- Visit www.sccogs.org to learn more about South Carolina’s regional councils of governments.

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