
Coates' Canons Blog: Special Purpose Local Governments and Public Authorities

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Article: <https://canons.sog.unc.edu/special-purpose-local-governments-and-public-authorities/>

This entry was posted on February 10, 2015 and is filed under Finance & Tax, Financial Management & Oversight, Public Authority
Finance

North Carolina is a non-home rule state, which means that its local government entities are created by, and derive all their authority from, the General Assembly. The General Assembly has created a relatively flat local government structure. Almost all governmental responsibilities have been vested in two general-purpose governments—counties and municipalities (cities, towns, villages). This makes North Carolina relatively unique; many other states have a tiered local government structure with various boards, districts, commissions, townships, hamlets, and other local entities layered on top of one another.

The legislature has authorized some special-purpose local governments, though. A special-purpose local government typically serves only limited functions—such as providing water or sewer services, tourism development, public education, public transportation, or even mosquito control. The territorial boundaries of a special-purpose local government often cut across more than one general-purpose local government. This allows for certain services to be provided within a portion of a governmental unit or across multiple governmental units.

A special-purpose local government is commonly referred to as a public authority. I am frequently asked about the general powers and authorities of a public authority. There are actually none. A public authority is not a legal entity. And the term “public authority” is not synonymous with “special-purpose government.” Instead, “public authority” derives from the Local Government Budget and Fiscal Control Act (LGBFCA), specifically **G.S. 159-7**. That provision makes certain types of special-purpose local governments—labeled either “units of local government” or “public authorities”—subject to the fiscal control act based on their particular structures. Being classified a public authority only means that a particular entity is subject to the LGBFCA’s provisions. It says nothing about the powers or authorities of the particular special-purpose local government.

This post reviews the various ways that special-purpose local governments are established. It then details how to determine whether or not a special-purpose government is a unit of local government or public authority, and thus subject to the LGBFCA.

Special purpose local governments

The general assembly has broad authority to create special-purpose local entities to provide a variety of functions. To a large extent the legislature has used this authority to encourage regional provision of particular services. And, for the most part, the special-purpose governments supplement, rather than supplant, the authority of the general-purpose governments to engage in a particular undertaking.

There are three main ways in which the legislature creates or authorizes a special-purpose government. The first is through enacting a general law. At last count, I’ve identified more than twenty-five special-purpose local governments that are authorized by general law. In most cases, the general law merely authorizes the creation of the special-purpose government and defines its powers and functions. It then requires action by the board(s) of one or more general-purpose governments and/or a voter referendum to establish the entity.

The second method is to create a special-purpose entity by local act. This method allows the legislature to tailor the

powers and authority of the local government agency to the particular needs of a community. It also allows it to experiment with regionalization efforts for different functions, such as parks and recreation. Occasionally the local act method is used by the General Assembly to remove powers and authorities from one or more general-purpose governments. There are some constitutional limitations on what the legislature may do by local act, though. For example, it may not grant borrowing authority or property tax exemptions or exclusions. It also may not enact a local act relating to health, sanitation, and the abatement of nuisances, or regulating labor, trade, mining, or manufacturing.

The third method used to create a special-purpose government is also somewhat unique to North Carolina. In our state, counties and municipalities have a significant amount of overlapping authority. For example, both types of governments may undertake most public enterprise activities, land use planning and regulation, parks and recreation, and community and economic development. Furthermore, local governments have very broad authority to partner with one another to engage in most activities. The General Assembly has authorized the general-purpose governments and several special-purpose governments to enter into interlocal agreements to jointly undertake any function or activity that all of the parties to the agreement have statutory authority to perform. See **G.S. 160A, Art. 20**. The local units may use this authority to establish a joint agency (a type of special-purpose government) and, with some exceptions, “confer on the joint agency any power, duty, right, or function needed for the execution of the undertaking . . .” **G.S. 160A-462**.

Local Government Budget and Fiscal Control Act

But which of these methods creates a public authority? The answer is potentially all three. As stated above, the phrase “public authority” is merely a designation given to a type of special-purpose local entity that is subject to the LGBFCA.

The LGBFCA act comprises **G.S. 159, Art. 3**. It prescribes “a uniform system of budget adoption and administration and fiscal control,” detailing the proper procedures for budgeting, managing, disbursing, and accounting for public funds. **G.S. 159-7(c)**. There are two types of entities that are subject to the fiscal control act—*units of local government* and *public authorities*—as those terms are defined in **G.S. 159-7**.

Unit of Local Government

A *unit of local government* is defined as “a municipal corporation that is not subject to the State Budget Act and that has the power to levy taxes . . . and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.” **G.S. 159-7(b)(15)**. There are three important components to this definition. First, the entity must be a municipal corporation. A municipal corporation is a public agency with corporate status. If the enabling legislation for a local entity specifically states that it is a municipal corporation or otherwise indicates that the entity is a “body corporate and politic” or a “public corporation,” then the entity is a municipal corporation. Second, the entity may not be part of the state’s budgeting system. G.S. Chapter 143C, known as the State Budget Act, governs the budgeting and expenditure of state money by state agencies. Although local entities are subject to several provisions of the State Budget Act with respect to the receipt of state funds, they are not required to comply with the actual budgeting requirements. Third, the local entity must have the power to levy taxes.

The two types of general-purpose local governments (counties and municipalities) clearly satisfy the definition of unit of local government. There are several special-purpose local governments that do as well, including:

- Consolidated City–County Governments, G.S. Chapter 160B
- Sanitary Districts, G.S. Chapter 130A, Article 2, Part 2
- County Water and Sewer Districts, G.S. Chapter 162A, Article 6
- Metropolitan Sewerage Districts, G.S. Chapter 162A, Article 5
- Metropolitan Water Districts, G.S. Chapter 162A, Article 4
- Mosquito Control Districts, G.S. Chapter 130A, Article 12, Part 2
- Special Airport Districts, G.S. Chapter 63, Article 8
- Regional Public Transportation Authorities, G.S. Chapter 160A, Article 26
- Hospital Districts, G.S. Chapter 131E, Art. 2, Part 3

For purposes of the LGBFCA, a unit of local government also includes all boards, agencies, commissions, authorities, and institutions that are established or created by the unit’s governing board or that are not themselves municipal corporations.

Governing boards often appoint citizen advisory boards for the administration of libraries and parks and recreation. Counties and municipalities also are served by functional boards and commissions in the areas of health, social services, elections, and planning. If these entities are not municipal corporations (and many are not) then their fiscal affairs are the responsibility of the county, municipality, or other unit of government with which they are associated.

Occasionally, the LGBFCA refers to a “special district.” A special district is a unit of local government that is created for the “performance of limited governmental functions or for the operation of a particular utility or public service enterprises.”

G.S. 159-7(b)(13). Any local entity that meets the definition of a unit of local government set forth above that is not a county, municipality, or consolidated city–county government is a special district for purposes of the LGBFCA.

Public Authority

A local entity also is subject to the LGBFCA if it is a *public authority*. **G.S. 159-7(b)(10)** defines two different types of public authorities. The first type of public authority has three distinguishing characteristics, two of which are analogous to a unit of local government. First, the local entity is a municipal corporation, and second, it is not part of the state’s budgeting system. The third characteristic, however, is the differentiating factor—the entity does not have the power to levy taxes.

Under this definition, the following local entities are public authorities (note that this is not a comprehensive list):

- Housing Authorities, G.S. Chapter 157, Article 1
- Redevelopment Commissions, G.S. Chapter 160A, Article 22
- Water and Sewer Authorities, G.S. Chapter 162A, Article 1
- Parking Authorities, G.S. Chapter 160A, Article 24
- Public Transportation Authorities, G.S. Chapter 160A, Article 25
- Tourism Development Authorities, Local Act 16
- Regional Transportation Authorities, G.S. Chapter 160A, Article 27
- Regional Natural Gas Districts, G.S. Chapter 160A, Article 28
- Single- and Multicounty Public Health Authorities, G.S. Chapter 130A, Article 2, Part 1B
- Metropolitan Water and Sewerage Districts, G.S. Chapter 162A, Art. 5A
- Hospital Authorities, G.S. Chapter 131E, Art. 2, Part 2

The second type of public authority has five distinguishing characteristics. First, it is not a municipal corporation. Second, it is not part of the state’s budgeting system. Third, it has no power to levy taxes. Fourth, it operates on an area, regional, or multi-unit basis. Fifth, it is not part of the budgeting and accounting system of a unit of local government. The last two characteristics are particularly important. As mentioned above, there are many local entities that are not municipal corporations, are not part of the state budgeting system, and lack the power to levy taxes. In fact, most of the boards, agencies, commissions, authorities, and institutions of a unit of local government satisfy these criteria. Very few are not part of the budgeting and accounting system of a unit of local government, though.

Local entities that satisfy this second definition of public authority include the following (note that this is not a comprehensive list):

- Councils of Government, G.S. Chapter 160A, Article 20, Part 2
- Regional Planning Commissions, G.S. Chapter 153A, Article 19
- Regional Economic Development Commissions, G.S. Chapter 158, Article 2
- Regional Planning and Economic Development Commissions, G.S. Chapter 153A, Article 19
- Single- and Multicounty Area Mental Health, Development Disabilities, and Substance Abuse Authorities, G.S. Chapter 122C, Article 4, Part 2
- District Health Boards, G.S. Chapter 130A, Article 2, Part 1
- Joint Municipal Power Agencies, G.S. Chapter 159B
- Regional Libraries, G.S. Chapter 153A, Article 14; G.S. Chapter 160A, Article 20

Local government entities that are not units of local government or public authorities



Most special-purpose local governments are subject to the LGBFCA. There are a few significant local government entities that are not—local school boards and ABC boards. Both these local government entities are subject to separate fiscal control provisions. Furthermore, occasionally the legislature will exempt a local government entity from the LGBFCA, or limit the Act's applicability, even though the entity otherwise satisfies the definition of a unit of local government or a public authority. For example, public hospitals, **G.S. 159-39**, joint municipal power agencies, **G.S. 159-41**, and public housing authorities, **G.S. 159-42**, are only subject to certain provisions of the LGBFCA.